



Application Assessment Panel

Agenda: *Application Assessment Panel*

Date: *Tuesday 6 February 2007*

Time: *3.00pm*

Part: *One of One Part*

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 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 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 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 Committee to the Development Control Committee (DCC) by Councillors subject to the following requirements:

- Calling requires one Councillor
- Calling must be lodged before 3.00pm on the business day preceding the Application Assessment Panel meeting at which the item is listed.

WOOLLAHRA MUNICIPAL COUNCIL

Notice of Meeting

29 January 2007

To: General Manager
Director – Technical Services
Director – Planning & Development
Manager – Compliance
Manager – Strategic Planning

CC: The Mayor
All Councillors

Application Assessment Panel Meeting – 6 February 2007

In accordance with the provisions of the Local Government Act 1993, I request your attendance at a Meeting of the Council's **Application Assessment Panel** to be held in the **Committee Room, 536 New South Head Road, Double Bay, on Tuesday 6 February 2007 at 3.00pm.**

Gary James
General Manager

Meeting Agenda

Part One of One Part

Item	Subject	Pages
1	Apologies	
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 30 January 2007	1
D2	DA651/2006 – 15 New Beach Road, Darling Point – Installation of ducted air conditioning – 27/9/06 *See Recommendation Page 2	2-15
D3	DA738/2006 – 2-16 Bellevue Road, Bellevue Hill – Fitout of premises to facilitate its use as a dry cleaners – 24/10/2006 *See Recommendation Page 24	16-33
D4	DA735/2005 – 224 Old South Head Road, Vaucluse – Demolition of existing triple garage, provision of 5 hard stand off-street car parking spaces & alterations & additions to existing residential flat building creating an additional 2 bedroom unit increasing the total number of units from 5 to 6 – 30/11/2005 *See Recommendation Page 45	34-67
D5	DA747/2006 – 624-634 New South Head Road, Rose Bay – New awning to front façade of building – 26/10/2006 *See Recommendation Page 74	68-80

Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 30 January 2007**
Author: Les Windle, Manager - Governance
File No: See Application Assessment Panel Minutes
Reason for Report: The Minutes of the Meeting of Tuesday 30 January 2007 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.

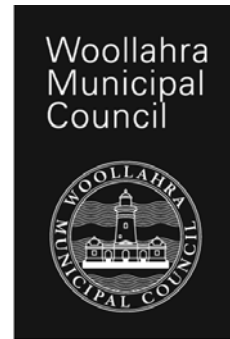
Recommendation:

That the Minutes of the Application Assessment Panel Meeting of 30 January 2007 be taken as read and confirmed.

Les Windle
Manager - Governance

Memorandum

Item No. D2
Date 29 January, 2007
File No. DA 651/2006/1
To Application Assessment Panel
CC
From Mr T Wong
Address **15 NEW BEACH ROAD DARLING POINT 2027**



ABN 32 218 483 245

Redleaf Council Chambers
536 New South Head Road
Double Bay NSW 2028

Correspondence to

General Manager
PO Box 61
Double Bay NSW 1360

DX 3607 Double Bay
records@woollahra.nsw.gov.au

www.woollahra.nsw.gov.au

Telephone (02) 9391 7000

Facsimile (02) 9391 7044

At the Application Assessment Panel of 23 January 2007 the Panel resolved in the following manner:

THAT Development Application No. 651/2006, for the installation of ducted air conditioning, on land at No. 15 New Beach Road, Darling Point, be referred to the meeting of the Application Assessment Panel to be held on 6 February 2007, for further consideration due to a substantive change to Parts A and B of the Officer's recommendation. This is in accordance with the Rules of the Panel and the Panel's recommendation is as follows:

Recommendation: "Pursuant to Section 80(1) of the Environmental Planning and Assessment Act, 1979

A. THAT Council, as the consent authority, refuse development consent to Development Application No. 651/2006 for installation of ducted air conditioning on land at 15 New Beach Road, Darling Point for the following reasons;

1. The works have already been carried out without development consent, where prior development consent was required.
2. The location of the air conditioning condensers in the western side passageway would unduly impact on the amenity of the adjoining property to the west.
3. The acoustic works required by the 'Acoustic Logic Consultancy' Report (Reference 2006266/0405A/R1TT) dated 5 April 2006 are unable to be carried out within the boundaries of the site and do not achieve the Council's objective of no increase in the existing background noise level as measured at any boundary of the site.

4. In the public interest.
- B. THAT Council commence action pursuant to Section 121B of the *Environmental Planning & Assessment Act 1979* to require the removal of the unauthorised air conditioning condenser units located in the western side passageway.
- C. THAT this matter be referred to the Manager –Compliance to take appropriate action under Part 6 of the *Environmental Planning and Assessment Act 1979* in accordance with Council’s Policy on Unauthorised Uses, Buildings and Works for failure to obtain Council’s prior development consent.”

Regards

Les Windle
Manager Governance

DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D3
FILE No.	DA 738/2006/1
PROPERTY DETAILS	2-16 Bellevue Road BELLEVUE HILL 2023
	Lot & DP No.: LOT: 0 SP: 74921
	Side of Street: North
	Site Area (m²): 2922
	Zoning: Neighbourhood Business 3(c)
PROPOSAL:	Fitout of premises to facilitate its use as a dry cleaners
TYPE OF CONSENT:	Local
APPLICANT:	Mr A Davies
OWNER:	The Proprietors of Strata Plan 74921 and PDP Bellevue Hill Pty Ltd
DATE LODGED:	24/10/2006
AUTHOR:	Ms B Thomas

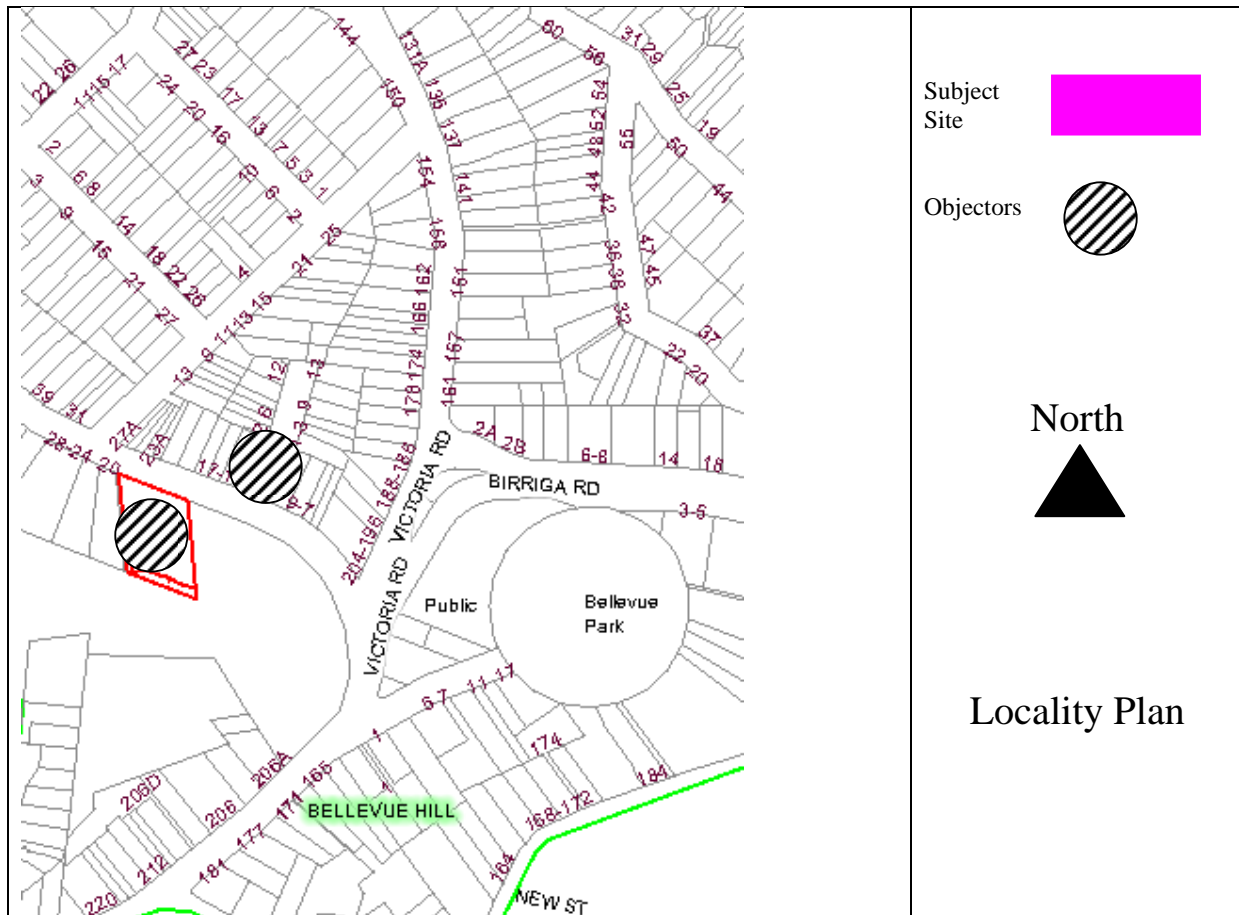
1. RECOMMENDATION PRECIS

It is recommended that approval be granted.

2. PROPOSAL PRECIS

Approval is sought for a fitout of the premises to facilitate its use as a dry cleaner.

3. LOCALITY PLAN



4. DESCRIPTION OF PROPOSAL

Approval is sought to install purpose built environmentally friendly garment cleaning machines to facilitate use of the premises as a dry cleaners. The operator uses the “Greenearth” solutions in the cleaning process. The applicant advises that the “Greenearth” solution differs from traditional drycleaners in that they do not use a chemical called perperchloroethylene in the cleaning process and that it has no environmental or health affects.

The premises are currently vacant and have not been occupied since construction of the building. Two parking spaces are available on site for staff.

The proposed hours of operation are Monday to Friday 7.30am-7.30pm, Saturday 8.00am-3.00pm and closed on Sundays.

5. SUMMARY

Reasons for report	Issues	Submissions
The DA does not satisfy the criteria for determination under staff delegation as there are unresolved objections.	Parking	5 submissions were received

6. ESTIMATED COST OF WORKS

The applicant has estimated the cost as being \$50 000. This figure has been checked using Councils adopted policy and is accurate.

7. DESCRIPTION OF SITE OF LOCALITY

THE SITE AND LOCALITY	
Physical features	The premises are located on the western side of Bellevue Hill Road, near to its intersection with Victoria Road. The premises are located on the ground floor of a recently constructed mixed use building.
Topography	Not applicable.
Existing buildings and structures	The premises are vacant and have not been occupied since construction of the building. There are apartments located above.
Environment	The site is located within the Bellevue Hill neighbourhood shopping centre..

8. PROPERTY HISTORY

PROPERTY HISTORY	
Current use	The premises are vacant.
Previous relevant applications	Development Application No. 416/2001/1 which was approved by Council on the 18 February 2002 granted consent to the demolition of the existing and erection of a new mixed use building containing three levels of car parking, retail tenancies fronting Bellevue Road, and 27 residential apartments. DA703/2004/1 which was approved on 5 th January 2005 granted consent for the strata subdivision of the building into 26 residential units and 5 retail shops.
Pre-DA	No Pre-DA was held.
Requests for additional information	Requests for additional information regarding hours of operation, mechanical ventilation systems, waste storage facilities, noise and wastewater information was required.
Amended plans/ Replacement Application	No amended plans were provided.
Land & Environment Court appeal	There is no current appeal.

9. REFERRALS

9.1 The following table contains particulars of internal referrals.

INTERNAL REFERRALS		
Referral Officer	Comment	Annexure
Environmental Health Officer	No objection subject to conditions of consent (refer to conditions 8,9,10,11,12)	2
Fire Safety Officer	No objection subject to conditions of consent (refer to condition 7)	3

9.2 The following table contains particulars of external referrals.

Not relevant.

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:

10. RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION

10.1 SEPPs

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. The premises are part of a new building and have not been previously occupied. No further consideration is required under Clause 7(1)(b) and (c) of SEPP 55.

10.2 REPs

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The land is within the Sydney Harbour catchment but is outside of the Foreshores and Waterways Area and therefore there are no specific matters for consideration.

10.3 Section 94A contribution

The cost of works is below \$100 000 and in accordance with the direction given by the Minister for Planning under section 94E of the Environmental Planning and Assessment Act 1979 on 10 November 2006, Council is unable to levy for a contribution.

10.4 Other relevant legislation

None relevant.

11. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

11.1 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 3(c) zone.

11.2 Statutory compliance table

The statutory compliance table is not required due to the nature of the application.

11.3 Site area requirements

The site area will not change.

11.4 Height

The proposed works comply with the height control.

11.5 Floor space ratio

No change in floor space ratio is proposed.

11.7 Other special clauses/development standards

Clause 18 Excavation: No excavation is proposed.

Clause 19 HFSPA: The site is not located with the Harbour Foreshore Scenic Protection Area.

Clause 24 Land adjoining public open space: This site adjoins Cooper Park at its rear. The subject premises are located on the northern side of the building and are separated from the park by the main body of the building. Subject to compliance with the conditions of consent, the development will not have any unreasonable impact on the amenity of the public open space.

Clause 25 Water, wastewater and stormwater: The proposal is acceptable in terms of Clause 25(1) and (2).

Clause 25D Acid Sulphate Soils: The proposed works do not require the need for an assessment of Acid Sulphate Soils under Clause 25D of Woollahra LEP 1995.

Clauses 26-33 Heritage and conservation area provisions: The site is not a heritage item, is not located within the vicinity of an item, nor is it located with a conservation area.

12. DRAFT AMENDMENTS TO STATUTORY CONTROLS

None applicable.

13. DEVELOPMENT CONTROL PLANS

13.1 Numeric Compliance table - Woollahra Residential Development Control Plan 2003

The compliance table is not required due to the nature of the application.

Site analysis performance criteria (*Part 3*)

The site is located within the Bellevue Hill neighbourhood shopping centre. Opposite the site is a row of retail shops consisting of uses such as, pasta shop, an automatic teller machine, a fruit and vegetable shop and florist. The dry cleaners would be conducive to the surrounding neighbourhood character and would respond well to the urban form.

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

The proposed development respects and enhances the existing local character within the Bellevue Hill South precinct. The proposed use as a dry cleaner will contribute to the area.

Streetscape performance criteria (*Section 5.1*)

The proposal addresses the street by having an entry which is readily apparent from the street.

Building size and location performance criteria (*Section 5.2*)

The proposed works do not change the form of the building.

Acoustic and visual privacy performance criteria (*Section 5.8*)

The proposed works do not create any opportunity for greater overlooking of any neighbouring property.

Councils Environmental Health Officer has assessed the proposal and is satisfied that the development will have an acceptable impact subject to the requirements of conditions 8 and 9.

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

Please refer to Section 13.4.

Mixed development in business zones performance criteria (*Section 5.12*)

The proposed use is at ground level of a mixed use development, there will be interaction between pedestrians and shopfronts. Pedestrians will be able to view straight into the dry cleaners through the window, maintaining an active street frontage.

Access and mobility performance criteria (*Section 5.13*)

The proposal has an appropriate level of access.

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

There are two car parking spaces available on-site.

Table 2.6-Entertainment, Recreation & Personal Services dry cleaners requires 4.5 spaces per 100m². The gross floor area is 86m² generating a requirement for four (4) car parking spaces. The parking requirement is reduced by the car parking multipliers of 0.7 which applies to the development. The overall car parking requirement is three (3) car parking spaces leaving a shortfall of one (1) car parking space.

Due to the nature of the use as a dry cleaner, customers would generally stay for a period of no longer than 15minutes if only using the dry cleaner. Customers would most likely visit the dry cleaners in combination with other shopping means, causing minimal additional demand.

The proposal is considered to be supportive of the relevant objectives of the DCP for off-street car parking.

13.3 Woollahra Access

The proposal has an appropriate level of access.

13.4 Other DCPs, codes and policies

No other DCPs, codes and policies are relevant.

14. APPLICABLE REGULATIONS

Not applicable.

15. THE LIKELY IMPACTS OF THE PROPOSAL

Signage has not been proposed within this development. All likely impacts of the proposal have been assessed elsewhere in this report.

16. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

17. SUBMISSIONS

The proposal was advertised and notified in accordance with Council's Advertising and Notifications DCP.

5 submissions were received from:

Tailer Investments Pty Ltd
560 New South Head Road
Double Bay, N.S.W 2028

Professor Les Copeland and Eva Copeland
10/8 Bellevue Rd
Bellevue Hill.

Stasha Berger
22/2-16 Bellevue Road
Bellevue Hill

Jae Young Yun
3/817 Sussex Street
Sydney 2000

Anatoly Kitayenko owner of shop
4/13 Bellevue Road
Bellevue Hill

The objectors raised the following issues:

- Fumes
- Noise
- Storage
- No need for another dry cleaner
- Bordering park land
- No credibility for Green Earth cleaning
- Parking
- Increase water usage
- Local traffic increase

Comment

Fumes

The equipment only produces a small amount of heat which will not require the installation of a mechanical ventilation system therefore fumes would have minimal impact. Condition 11 is imposed to control air emissions.

Noise

Conditions 10 and 11 have been imposed to protect the amenity of the neighbourhood against the transmission of offensive noise. Please see conditions.

Storage

The machine sits in a "spill tray" and generally the solvent is not stored outside of the machine.

No need for another dry cleaner

Development applications cannot be assessed on the commercial viability of a proposal.

Bordering park land

Refer to Section 11.7 of the report.

No credibility for green earth cleaning

It is not Councils role to assess the merits of the Greenerth products.

Parking

Please refer to Section 13.4.

Increase water usage

Water usage is a matter governed by the State government. Council is unaware of any direction by the state government to prevent this type of use on the basis of its water usage.

Local traffic increase

The location of the premises is within a local shopping centre, the increase in local traffic will be minimal as the nature of the drycleaners will be drop off and pick up service.

18. CONCLUSION - THE PUBLIC INTEREST

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

19. RECOMMENDATION: Pursuant to Section 80(1) of the Environmental Planning and Assessment Act, 1979

THAT the Council, as the consent authority, grant development consent to Development Application No. 738/2006 for fitout of premises to facilitate its use as a green friendly dry cleaners on land at 2-16 Bellevue Road Bellevue Hill, subject to the following conditions:

1. Approved Plans

The development must be carried out in accordance with plans for Shop 4, dated received 24th October 2006 drawn by Ray White Commercial Eastern Suburbs, all of which carry a Council stamp "*Approved DA Plans*" and the signature of a Council officer, except where amended by the following conditions.

2. Requirement for a Construction Certificate

In accordance with the provisions of Section 81A of the *Environmental Planning and Assessment Act 1979*, the erection of the building must not be commenced until:

- (a) detailed plans and specifications of the building have been endorsed with a Construction Certificate by:
 - (i) Council; or
 - (ii) an accredited certifier; and
- (b) a principal certifying authority (PCA) has been appointed and the Council has been notified in writing of the appointment, and
- (c) at least two days notice, in writing, has been given to Council of the intention to commence work.

3. Occupation of premises

A person must not commence occupation or use of the whole or any part of a *new building* (within the meaning of section 109H (4) of the *Act*) unless an occupation certificate has been issued in relation to the building or part.

Note: *new building* includes an altered portion of, or an extension to, an existing building.

Note: In circumstance where the works do not relate to occupation the required *occupation certificate* is essentially a certificate of completion of the approved work.

4. Hours of operation

The hours of operation are limited to the following:

Monday to Friday	7.30am-7.30pm
Saturday	8.00am-3.00pm
Sunday	Closed

5. Payment of Long Service Levy, Security, Development Levy and Fees

The person(s) with the benefit of this consent must pay the following long service levy, security, development levy, and fees prior to the issue of any *construction certificate*, *subdivision certificate* or *occupation certificate*, as will apply.

The *certifying authority* must not issue any *Part 4A Certificate* until provided with the original receipt(s) for the payment of all of the following levy, security, contributions, and fees. Specifically;

- a) prior to the issue of a *construction certificate*, where a construction certificate is required; or
- b) prior to the issue of a *subdivision certificate*, where only a subdivision certificate is required; or
- c) prior to the issue of an *occupation certificate* in any other instance.

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Long Service Levy Use Calculator: http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm	Contact LSL Corporation or use their online calculator	No	
SECURITY under section 80A(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit - Making good any damage caused to any property of the Council as a consequence of the doing of anything to which the consent relates.	\$2000	No	T600
DEVELOPMENT LEVY under Woollahra Section 94A Development Contributions Plan 2005 This plan may be inspected at Woollahra Council or downloaded from our website www.woollahra.nsw.gov.au .			
Development Levy	\$175+ Index Amount	Yes, quarterly	T94
INSPECTION FEES under section 608 of the Local Government Act 1993			
Security Administration Fee	\$163	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$2338 Plus any relevant indexed amounts and long service levy		

How must the payments be made?

Payments must be made by:

1. Cash deposit with Council,
2. Credit card payment with Council, or
3. Bank cheque made payable to Woollahra Municipal Council.

The payment of a security may be made by a bank guarantee where:

- a) the guarantee is by an Australian bank for the amount of the total outstanding contribution;
- b) the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first;
- c) the bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent; and
- d) the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

How will the section 94A levy be indexed?

To ensure that the value of the development levy is not eroded over time by increases in costs, the proposed cost of carrying out development (from which the development levy is calculated) will be indexed either annually or quarterly (see table above). Clause 3.13 of the Woollahra Section 94A Development Contributions Plan 2005 sets out the formula and index to be used in adjusting the s.94A levy.

Do you need HELP indexing the levy?

Please contact our customer service officers. Failure to correctly calculate the development levy will delay the issue of any Part 4A Certificate and could void any Part 4A Certificate (construction certificate, subdivision certificate, or occupation certificate).

Deferred periodic payment of section 94A levy under the Woollahra Section 94A Development Contributions Plan 2005

Where the applicant makes a written request supported by reasons for payment of the section 94A levy other than as required by clause 3.9, the Council may accept deferred or periodic payment. The decision to accept a deferred or periodic payment is at the sole discretion of the Council, which will consider:

- a) the reasons given;
- b) whether any prejudice will be caused to the community deriving benefit from the public facilities;
- c) whether any prejudice will be caused to the efficacy and operation of this plan; and
- d) whether the provision of public facilities in accordance with the adopted works schedule will be adversely affected.

Council may, as a condition of accepting deferred or periodic payment, require the provision of a bank guarantee where:

- a) the guarantee is by an Australian bank for the amount of the total outstanding contribution;
- b) the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first;
- c) the bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent; and
- d) the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

Any deferred or outstanding component of the section 94A levy will be adjusted in accordance with clause 3.13 of the plan. The applicant will be required to pay any charges associated with establishing or operating the bank guarantee. Council will not cancel the bank guarantee until the outstanding contribution as indexed and any accrued charges are paid.

6. Fire safety

A schedule of all existing and proposed safety measures within the building must be submitted to Council with or before the application for a Construction Certificate.

7. Mechanical Ventilation or Air Conditioning Systems

The *Construction Certificate* plans and specifications, required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation*, must detail all mechanical ventilation or air-conditioning systems complying with Part F.4 of the *BCA* or clause 3.8.4 and 3.8.5 of the *BCA* Housing Provisions, inclusive of [AS 1668.1](#), [AS 1668.2](#) and [AS/NZS 3666.1](#). If an alternate solution is proposed then the *Construction Certificate* application must include a statement as to how the performance requirements of the *BCA* are to be complied with and support the performance based solution by expert *evidence of suitability*. This condition does not set aside the mandatory requirements of the *Public Health (Microbial Control) Regulation 2000* in relation to *regulated systems*. This condition does not set aside the effect of the *Protection of the Environment Operations Act 1997* in relation to offensive noise or odour.

Note: Clause 98 of the Regulation requires compliance with the BCA. Clause 145 of the *Regulation* prevents the issue of a *Construction Certificate* unless the *Accredited Certifier/Council* is satisfied that compliance has been achieved. Schedule 1, Part 3 of the *Regulation* details what information must be submitted with any *Construction Certificate*. It is the Applicant's responsibility to demonstrate compliance through the *Construction Certificate* application process. Applicants must also consider possible noise and odour nuisances that may arise. The provisions of the *Protection of the Environment Operations Act 1997* have overriding effect if offensive noise or odour arises from the use. Applicant's must pay attention to the location of air intakes and air exhausts relative to sources of potentially contaminated air and neighbouring windows and air intakes respectively, see section 2 and 3 of [AS 1668.2](#). Standard Condition C59 (Autotext CC59)

8. Trade Waste

The applicant seek permission from Sydney Water for connection to Sydney Water's sewerage system for the discharge of wastewaters from the proposed development. A copy of the Wastewater permit being forwarded to Council prior to occupation of the premises. The applicant is referred to *Trade Waste Processes Website* at www.sydneywater.com.au.

9. Noise Emissions

The *Construction Certificate* plans and specification required to be submitted pursuant to clause 139 of the *Regulation* must be accompanied by a certificate from a *professional engineer* (acoustic engineer) certifying that noise from the operation of mechanical plant and equipment will not exceed the background noise level when measured at any boundary of the site. Where sound attenuation is required this must be detailed.

Note: Further information including lists of Acoustic Engineers can be obtained from:

1. **Australian Acoustical Society**—professional society of noise-related professionals (www.acoustics.asn.au/index.php).

2. **Association of Australian Acoustical Consultants**—professional society of noise related professionals (www.aaac.org.au).

Standard Condition: C62 (Autotext CC62)

10. Offensive Noise

The use of the premises must not give rise to the transmission of *offensive noise* to any place of different occupancy. *Offensive noise* is defined in the *Protection of the Environment Operations Act 1997*.

Reason: This condition has been imposed to protect the amenity of the neighbourhood.

Note: Council will generally enforce this condition in accordance with the *Noise Guide for Local Government* (<http://www.environment.nsw.gov.au/noise/nglg.htm>) and the *Industrial Noise Guidelines* (<http://www.environment.nsw.gov.au/noise/industrial.htm>) publish by the Department of Environment and Conservation. Other state government authorities also regulate the *Protection of the Environment Operations Act 1997*.

Useful links:

Community Justice Centres—free mediation service provided by the NSW Government (www.cjc.nsw.gov.au).

Department of Environment and Conservation NSW, Noise Policy Section web page (www.environment.nsw.gov.au/noise).

New South Wales Government Legislation home page for access to all NSW legislation, including the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Noise Control Regulation 2000* (www.legislation.nsw.gov.au).

Australian Acoustical Society—professional society of noise-related professionals (www.acoustics.asn.au/index.php).

Association of Australian Acoustical Consultants—professional society of noise related professionals (www.aaac.org.au).

11. Air Emissions

The use of the premises must not give rise to the emission of any air impurity or lead to the discharge of wastewaters causing “pollution” as defined in the Protection of the Environment Operations Act 1997.

Ms B Thomas
ASSESSMENT OFFICER

Mark Schofield
TEAM LEADER

ADVISINGS

1. Other approvals

This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, including:

- an Application for Approval under Section 68 of the *Local Government Act 1993* for an activity under that Act, including the erection of a hoarding. All such applications must comply with the Building Code of Australia.
- an Application for Approval under Section 68 of the *Local Government Act 1993* for a Place of Public Entertainment. Further building work may also be required for this use in order to comply with the Building Code of Australia. If there is any doubt as to what constitutes "Public Entertainment" do not hesitate to contact Council's Fire Officer.
- an application for an Occupation Certificate under Section 109(C)(2) of the *Environmental Planning and Assessment Act 1979*.
- An application for an Occupation Certificate may be lodged with Council if the applicant has nominated Council as the Principal Certifying Authority.
- an Application for a Subdivision Certificate under Section 109(C)(1)(d) of the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed;
- an Application for Strata Title Subdivision under the *Strata Schemes (Freehold Development) Act 1973*, if strata title subdivision of the development is proposed.

2. Signs

A separate Development Consent or Complying Development Certificate may need to be obtained prior to the erection of any advertising sign.

3. Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Belinda Thomas. However, if you wish to pursue your rights of appeal in the Land & Environment Court you are advised that Council generally seeks resolution of such appeals through a Section 34 Conference, instead of a full Court hearing. This approach is less adversarial, it achieves a quicker decision than would be the case through a full Court hearing and it can give rise to considerable cost and time savings for all parties involved. The use of the Section 34 Conference approach requires the appellant to agree, in writing, to the Court appointed assessor having the full authority to completely determine the matter at the conference.

ANNEXURES

1. Plans
2. Referral from Environmental Health
3. Referral from Fire Safety Officer.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D4
FILE No.	DA 735/2005/1
PROPERTY DETAILS	224 Old South Head Road , Vaucluse
	Lot & DP No.: LOT: 53 DP: 17541
	Side of Street: Western
	Site Area (m²): 616.3 m ²
	Zoning: Residential 2(a)
PROPOSAL	The demolition of an existing triple garage, the provision of 5 hard stand off-street car parking spaces and alterations and additions to an existing residential flat building creating an additional 2 bedroom unit increasing the total number of units from 5 to 6.
TYPE OF CONSENT:	Integrated development
APPLICANT:	AFD Designs & Drafting Pty Ltd
OWNER:	Ms H Selle
DATE LODGED:	30/11/2005 (original submission) 13/07/2006 (amended submission)
AUTHOR:	Mr D Booth

1. RECOMMENDATION

The application, as amended, is recommended for conditional approval because it:

- is satisfactory with all relevant provisions of environmental planning instruments and policies that do not derogate (detract) from the existing use rights provisions
- is consistent with the planning principles, in relation to the environmental assessment of proposals on land with existing use rights, established in the Fodor Investments v Hornsby Shire Council Land & Environment Court in light of the Land and Environment Court judgment in the Stromness P/L v Woollahra Municipal Council handed down on 26 October 2006
- will not have adverse impacts upon the amenity of adjoining properties or the public domain such that refusal is justified.

2. DESCRIPTION OF PROPOSAL

The proposal was amended 13 July 2006 in terms of addressing concerns raised by Council's Development Engineer. The amendments involved the provision of an additional off-street car parking space and the introduction of a turntable to enable vehicles to exit and enter the site in a forward direction. These amendments significantly reduced the loss of deep soil landscape area associated with the original scheme such that a similar total area is maintained as existing but with additional area provided immediately adjacent to the rear boundary than existing.

The proposal, as amended, involves the demolition of the existing triple garage, the provision of 5 hard stand off-street car parking spaces and alterations and additions to an existing residential flat building creating an additional 2 bedroom unit at lower ground floor level, thereby increasing the total number of units from 5 to 6.

Fenestrational changes are proposed to the northern and southern side elevations at lower ground floor level. A new external stair and path are proposed adjacent to the front section of the southern side elevation of the existing building. A vehicular turntable is proposed to facilitate access to the 5 hard stand off-street car parking spaces that are proposed to be located at the rear of the site.

The erection of a 1.6 m high timber lattice screen is proposed adjacent to the northern elevation at lower ground floor level in order to screen the bin storage area.

A minor toilet addition (approximately 1.5 m²) is proposed adjacent to the northern elevation at lower ground floor level.

3. LOCALITY PLAN



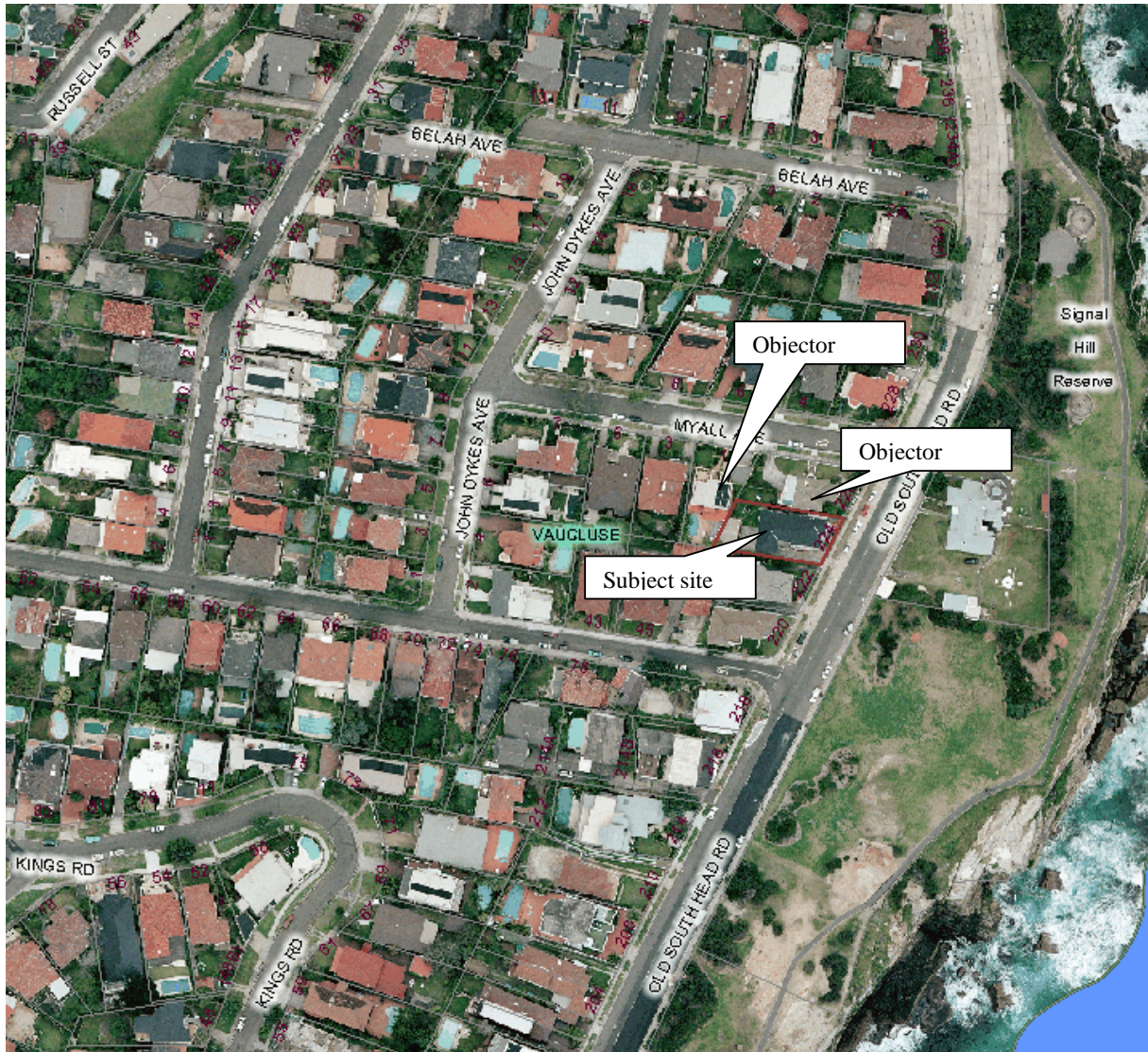
4. SUMMARY

Reasons for report	Issues	Submissions
<ul style="list-style-type: none"> objectors' concerns cannot be resolved comprehensively via conditions of consent 	<ul style="list-style-type: none"> objectors' concerns 	2

5. ESTIMATED COST OF WORKS

Council adopted (DCC 6 June 2005) administrative changes for determining DA fees based on the estimated cost of work of \$2,000/m². The stated cost of the proposed work of \$159,000 has been checked using this criteria and is considered to be accurate.

6. DESCRIPTION OF SITE OF LOCALITY



THE SITE AND LOCALITY	
Physical features	The site is located on the western side of Old South Head Road and has a site area of 616.3m ² . The site has an eastern frontage 17.6 m in length, a northern (side) boundary 36.3 m in length, a southern (side) boundary 36.5 m in length and a western (rear) boundary 17.6 m in length.
Topography	The site falls approximately 4 m from the street frontage to the rear boundary.
Existing buildings and structures	The site is currently occupied by a part 2 and part 3 storey cement rendered residential flat building with a hipped roof form. A triple garage is located at the rear of the site. Driveway access to the existing garage exists adjacent to the length of the southern side boundary.
Environment	The site is located within the Vaucluse East precinct under WRDCP 2003. Adjoining the site to the south (222 Old South Head Road) is a part two and part three storey cement rendered residential flat building with a hipped roof form. Adjoining the site to the north (226 Old South Head Road) is a part two, part three storey dwelling-house. On the opposite side of Old South Head Road is the Signal Hill Reserve and the Signal Station. The locality is characterised by 1-3 storey dwelling-houses and residential flat buildings of various architectural styles.

7. PROPERTY HISTORY

PROPERTY HISTORY	
Current use	Residential flat building
Previous relevant applications	BA 65/40
Requests for additional information	26/4/2006 & 4/7/2006-unsatisfactory off-street car parking provision
Amended plans/ Replacement Application	13/7/2006

8. REFERRALS

8.1 The following table contains particulars of internal referrals.

INTERNAL REFERRALS		
Referral Officer	Comment	Annexure
Development Engineer	Council's Development Engineer has determined that amended proposal is satisfactory subject to conditions (see Conditions 2-22.)	2

8.2 The following table contains particulars of external referrals.

EXTERNAL REFERRALS		
External Referral Body	Reason for referral	Comment
Roads and Traffic Authority	s.138 of the <i>Roads Act</i> 1993	The RTA raises no objection to the proposal. See Annexure 3.
Department of Planning	Clause 6 (3) of the SEPP 10- Retention of Low-Cost Accommodation	The Director-General's concurrence has been granted unconditionally. See Annexure 4.

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:

9. Existing Use Rights Assessment

Does the existing use satisfy the definition of "existing use" under the Act?

Section 106 provides:

"106 Definition of "existing use"

In this Division, existing use means:

(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

(i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and

(ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."

This necessarily requires the following questions to be answered.

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

The existing residential flat building on the site was approved by the Vaucluse Municipal Council in 1940.

2. Was the use of the building, work or land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

The existing residential flat building on the site was approved by Council in 1940 prior to the prohibition of residential flat buildings in the subject locality upon the gazettal of the Woollahra Planning Scheme on 12 December 1972.

3. Has the use of the building, work or land been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Information submitted with the development application reasonably demonstrates that the use of the site as a residential flat building has continued uninterrupted since it became a prohibited use.

It has been concluded from the above that the existing use satisfies the definition of "existing use" under section 106 of the Act.

What is "the land on which the existing use was carried out" for the purposes of cl 42(2)(b) of the Environmental Planning and Assessment Regulation 2000 ("the EP&A Regulation") ?

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: “*that if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose*”.

Having regard to the above case law, it is considered that, as the residential flat building is the sole use of the subject land (other than a triple garage used by occupants of the subject residential flat building), the existing use rights apply to the whole of the subject site.

What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles which should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The four principles adopted by the court in this case will have general application in dealing with DAs that rely on existing use rights.

The four principles are:

1. *How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?*

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Note that this principle was clarified in the *Stromness* case. The following is a quote from the Chief Judge.

In Stromness Pty Ltd v Woollahra Municipal Council [2006] NSWLEC 587 the planning principles in *Fodor* were considered and confirmed by Pain J at pars 83-89. Principle 2 was specifically supported in paragraph 87 and principles 1, 3 and 4 were specifically supported in paragraph 89. Her Honour states in para 89 that care must be exercised in the application of the principles to ensure that there is not a de facto application of standards in environmental planning instruments as that is prohibited by s 108(3) of the *Environmental Planning and Assessment Act*.

The following consideration of the bulk and scale of the proposal is made without any reference to Council's building envelope controls including site frontage, floor space ratio and height development standards as well as number of storeys and boundary setback policy controls as to do so would be unlawful in light of the above-mentioned case law.

The proposed alterations and additions to the existing residential flat building occur at lower ground floor level predominantly within the existing building footprint and will not significantly increase the existing bulk and scale as presented to the streetscape or adjoining properties. The demolition of the existing triple garage and the provision of 5 hard stand off-street car parking spaces will achieve a reduction to the bulk and scale presented to adjoining properties.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

The subject proposal does not involve a change of use or the total demolition of the existing building and the erection of new building.

The following consideration of the bulk and scale of the proposal is made without any reference to Council's building envelope controls including site frontage, floor space ratio and height development standards as well as number of storeys and boundary setback policy controls as to do so would be unlawful in light of the above-mentioned case law.

The proposed alterations and additions to the existing residential flat building occur at lower ground floor level predominantly within the existing building footprint and will not significantly increase the existing bulk and scale as presented to the streetscape or adjoining properties. The demolition of the existing triple garage and the provision of 5 hard stand off-street car parking spaces will achieve a reduction to the bulk and scale presented to adjoining properties.

In terms of car parking provision, the proposed 2 additional spaces are considered to be sufficient in terms of absorbing the additional demand generated by the proposed additional 2 bedroom unit.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

The owners of the adjoining property to the north (226 Old South Head Road) have objected to the proposal on the grounds that the proposal involves an overdevelopment of the site, adverse visual impact, loss of landscaped area and increased noise pollution.

The proposal will not result in any additional overshadowing or loss of views to adjoining properties.

The proposed fenestrational changes are considered acceptable in terms of maintaining the visual privacy of adjoining properties as they are located at lower ground floor level (lines of sight to adjoining properties screened by side boundary fencing) and are highlight windows.

The proposed additional 2 bedroom unit is not considered to be capable of generating any significant adverse impact upon the acoustic privacy of adjoining properties assuming normal behaviour on behalf of the occupants of the unit due to the limited population increase that would result and the lower ground floor level location of the unit.

The proposed works are at or close to ground level and would be largely screened from adjoining properties by boundary fencing. The proposal essentially maintains the existing overall quantity of deep soil landscaped area (approximately 60 m² existing and 57 m² proposed). As such, the proposal is considered to be satisfactory in terms of visual impact upon adjoining properties.

With regard to the potential for increased noise levels associated with vehicular movements generated by the proposed 2 additional car parking spaces and the replacement of the existing triple garage with 3 hard stand car parking spaces. The anticipated increase in noise levels is not considered to be significant due to low-frequency of vehicular movements associated with the residential nature of the development.

In order to maintain ensure that the operation of the vehicular turntable does not adversely affect the amenity of adjoining properties, **Condition 28** requires it not be audible above the background noise level, when measured at the boundaries of the subject site.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

The internal amenity of the proposed unit would be satisfactory with adequate solar access and natural ventilation. The proposal maintains the existing private and communal open space provision which is considered to be sufficient to accommodate the proposed additional unit.

10. OTHER CONSIDERATIONS

The following matters for consideration are based on the provisions of environmental planning instruments and policies that do not derogate (detract) from the existing use rights provisions.

10.1 SEPP 10-Retention of Low-Cost Rental Accommodation

The existing residential flat building contains low-rental units and as such, the subject application was referred to the Department of Planning for the concurrence of the Director-General as required by the provisions of Clause 6 (3) of the SEPP. The Director-General's concurrence to the subject application was granted on 8 January 2005.

The provisions of Clause 6 (4) of the SEPP requires Council to consider the following prior to the determination of the application:

- (a) *whether there is likely to be a major reduction in the number of low-rental units on the subject land*

- (b) *whether there is available sufficient comparable accommodation in the locality to satisfy demand for low-cost accommodation*
- (c) *whether the development is likely to cause adverse social and economic effects on the general community*
- (d) *whether adequate arrangements have been made to assist the residents of the building likely to be displaced to find alternative comparable accommodation and the locality*
- (e) *whether the cumulative impact of the loss of low-rental residential accommodation will result in a significant reduction in the stock of the accommodation in the Municipality*

With regard to the above, the Department of Planning is satisfied that the proposal does not represent a significant impact upon to the supply of low-cost rental accommodation in the area.

- (f) *the structural soundness of the building, the extent to which the building complies with any relevant fire safety requirements and the estimated cost of carrying out works necessary to ensure the structural soundness of the building and the compliance of the building with the fire safety requirements.*

Conditions 24, 28 and 34 address structural engineering and fire safety issues.

10.2 SEPP 55-Remediation of Land

Under Clause 7 (1) (a) of State Environmental Planning Policy 55-Remediation of Land, consideration has been given as to whether the land is contaminated. An assessment of the documentation provided by the applicant indicates that the land does not require further consideration under Clause 7(1) (b) and (c) of SEPP 55.

10.3 SREP (Sydney Harbour Catchment) 2005

The land is within the Sydney Harbour catchment but is outside the Foreshores and Waterways Area and therefore, there are no specific matters for consideration in relation to this DA.

10.4 Section 94 Contribution

The development generates a recreation contribution under Council's Section 94 Contributions Plan 2002 of \$1331.68, including the administration fee. **Condition 45** addresses this issue.

10.5 WLEP 1995

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

The amended proposal is consistent with the aims and objectives of the LEP that do not derogate (detract) from the existing use rights provisions.

Clause 18 Excavation

The provisions of Clause 18 require Council, when considering a development application involving excavation, to have regard to 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*
- (b) *public safety*
- (c) *vehicle and pedestrian movements*
- (d) *the heritage significance of any heritage item that may be affected by the proposed excavation and its setting*
- (e) *natural landforms and vegetation and*
- (f) *natural water run-off patterns*

The proposal involves excavation to an average depth of 1.5 m over an area of 81.6 m², a volume of approximately 122.4 m³. The remaining excavation associated with the proposal is limited to footings. In assessing the environmental impact of the proposed excavation, the following matters have been considered:

- *the amenity of the neighbourhood by way of noise, vibration, dust or other similar circumstances related to the excavation process*

Subject to **Conditions 5, 6, 7, 19-22, 27 and 30** requiring adequate sediment/soil management, limiting the times and duration of machine excavation, requiring the preparation of a dilapidation survey, requiring a construction methodology report, requiring compliance with the construction methodology report and the structural certification of excavation works and associated structures, the amenity of the adjoining residential properties will be adequately maintained.

- *public safety and vehicle and pedestrian movements*

Issues relating to public safety and pedestrian movements during the excavation phase are inter-related and are addressed by **Conditions 13 and 42-44** requiring a safe pedestrian circulation route, requiring the excavation to be executed safely and in accordance with appropriate professional standards and requiring the structural support of neighbouring buildings and public places during excavation.

- *natural landforms and vegetation*

The proposed excavation does not significantly alter the natural landform. No significant trees will be affected.

- *natural water run-off patterns*

Council's Development Engineer has assessed the proposal and considers the stormwater and sub-surface runoff to be satisfactory, subject to **Conditions 2-4**.

Subject to the above-mentioned conditions, the excavation associated with the proposal is considered to be satisfactory with regard to the provision of Clause 18 of WLEP 1995.

Clause 25 Water, wastewater and stormwater

Clause 25 of Woollahra LEP 1995 requires Council to take into consideration the provision of adequate stormwater drainage and the provision of adequate water and sewerage services. The proposal is considered to be satisfactory in terms of the provision of adequate stormwater drainage and the provision of adequate water and sewerage service, subject to **Conditions 2-4 and Advising 2**.

Clause 25D Acid Sulfate Soils

The subject site is within the Class 5 Acid Sulphate Soil area identified in the Planning NSW Acid Sulphate Soil Risk Map. However, the subject works are not likely to lower the water table below 1 m AHD on any land within 500 m with a 1, 2, 3 or 4 land classification and therefore, there is no issue of acid sulphate affectation in this instance.

Clause 27 Development in the vicinity of heritage items

Clause 27 of Woollahra LEP 1995 requires Council to take into consideration the likely effect of a development proposal upon the heritage significance of any heritage item in its vicinity. The Signal Hill Battery within the Signal Hill Reserve located on the opposite side of Old South Head Road. In this regard, Council's Heritage Officer raises no objection to the proposal on heritage related grounds.

10.5 WRDCP 2003

The amended proposal is consistent with the aims and objectives of the WRDCP 2003 that do not derogate (detract) from the existing use rights provisions.

10.6 Woollahra Access DCP

The provisions of Council's Access DCP require the provision of adequate access to the development by all people in the community including people with disabilities. The proposal is considered to be satisfactory with regard to the provisions of this policy.

11. Applicable Regulations

Clause 92 of the EPA Regulation 2000 requires that Council take into consideration Australian Standard AS 2601-1991: The demolition of structures, as in force at 1 July 1993. This requirement is addressed via **Condition 36**.

Clause 94 requires us to consider fire safety measures for alterations and enlargements of existing buildings. This is addressed via **Condition 34**.

12. The Suitability of the Site

The subject site is suitable for the proposed development, as conditioned.

13. Submissions

The proposal was advertised and notified in accordance with Council's Advertising and Notifications DCP. In response, two objections were received from the following:

- 1. A. and B. Cooley-1 Myall Avenue, Vacluse**
- 2. G. and D. Geritis-226 Old South Head Road, Vacluse**

The following matters were raised:

- replacement of existing rear boundary fencing/wall
- overdevelopment of the site
- adverse visual impact of the proposed addition to the building and the proposed hard stand car parking
- loss of landscaped area as a result of the hard stand car parking area

- inadequate and inappropriate private open space provision at the front of the site
- increased noise pollution associated with vehicular movements
- inappropriate intensity of use for the low density residential zoning of the locality

These issues have been addressed elsewhere in this report with the exception of the following:

- *replacement of existing rear boundary fencing/wall*

The owners of the adjoining property to the rear (1 Myall Avenue) have raised concerns in relation to the retention of the rear elevation (wall) of the existing triple garage and have requested details of its replacement in the event that it is proposed to be removed.

The proposal does involve the complete demolition of the existing triple garage including the rear wall. No details have been provided in relation to replacement fencing to the rear boundary. This matter is regulated by the provisions of the Dividing Fences Act 1991 and is not a matter for consideration under s79C of the Environmental Planning and Assessment Act.

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, subject to **Condition 28**, stating that noise generated by the vehicular turntable, must not be audible above the background noise level, when measured at the boundaries of the subject site.

14. CONCLUSION

The amended proposal, as conditioned, is considered to be acceptable under the relevant considerations under s79C of the Act.

15. RECOMMENDATION: Pursuant to Section 80(1) of the Environmental Planning and Assessment Act, 1979

THAT the Council, as the consent authority, grant development consent to Development Application No. 735/2005 for the demolition of an existing triple garage, the provision of 5 hard stand off-street car parking spaces and alterations and additions to an existing residential flat building creating an additional 2 bedroom unit increasing the total number of units from 5 to 6 on land at 224 Old South Head Road, Vaucluse, subject to the following conditions:

1. Approved Plan

This consent relates to the work, shown in colour, on the plan numbered 29-790-DA Sheet 2 of 2 Revision A dated 11/7/06, drawn by AFD, which carries a Council stamp "**Approved DA Plans**" and the signature of a Council officer, except where amended by the following conditions.

2. Stormwater Management Plan

A detailed Stormwater Management Plan must be produced by a suitably qualified civil or hydraulic engineer. The plan must be at a scale of 1:100 and based on drainage calculations prepared in accordance with the Institute of Engineers Australia publication, *Australian Rainfall and Run-off*, 1987 edition or most current version thereof. It must include (as appropriate for the site and determined by the Hydraulic Consultant):

- All pipe layouts, dimensions, grades, lengths and material specifications
- All invert levels reduced to Australian Height Datum (AHD)
- Location and dimensions and of all drainage pits
- Point of connection to Councils drainage infrastructure
- Overland flow paths over impervious areas.
- Copies of certificates of title, showing the creation or existence of private easements to drain water by gravity, if required.
- Subsoil drainage details (layout, grades, material), clean out points and discharge point.

Note: connection of stormwater run-off to the Sydney Water sewer system is not permitted.

3. Compliance with the Stormwater Management Plan

The stormwater drainage system must be constructed in accordance with the Stormwater Management Plan, and incorporate the following:

- Provide an upright kerb between the car parking area and all new lawn / landscaping areas.

4. Connection to existing drainage system

Stormwater run-off from the proposed development must drain to the existing stormwater drainage system. The existing stormwater drainage pipes on the property affected by the development must be checked and certified by a practising hydraulic engineer to ensure that existing stormwater pipes are in good condition and are operating satisfactorily. Certification and a plan showing pipe locations and diameters must be submitted to the Accredited Certifier prior to the issue of the final Occupation Certificate.

If the existing stormwater pipes are not in good condition and/or not operating satisfactorily, the existing drainage system must be upgraded. Certification and a plan showing pipe locations and diameters of the upgraded system must be submitted to the Accredited Certifier prior to the issue of the final Occupation Certificate.

Stormwater disposal is to comply with the requirements and conditions as set out in Council's Draft Stormwater Drainage Management DCP (Draft Version 1, Public Exhibition Copy dated 23/08/2004). This is available from Council's website <http://www.woollahra.nsw.gov.au>. Note: connection of stormwater run-off to the Sydney Water sewer system is not permitted.

5. Erosion and sediment control

Erosion and sediment controls, designed in accordance with the SSROC Soil and Water Management Brochures titled “Do it Right on Site” and the current version of the NSW Landcom publication “Managing Urban Stormwater: Soils and Construction” (*The Blue Book*), must be installed before commencement of demolition, excavation or construction work. All controls must be maintained until completion of outdoor works.

6. Site fencing

The site must be appropriately secured and fenced to the satisfaction of Council during demolition, excavation and construction work to ensure there are no unacceptable impacts on the amenity of adjoining properties. Permits for hoardings and or scaffolding on Council land must be obtained and clearly displayed on site.

7. Stockpiles

Stockpiles of topsoil, sand, aggregate, soil or other material must not be located on any drainage line or easement, natural watercourse, footpath or roadway, or within the dripline of any Street Tree. Stockpiles within the construction site must be protected with adequate sediment controls, in accordance with Council’s Code for Sediment Control.

8. Location of building operations

Building operations such as brick cutting, washing tools or brushes and mixing mortar must not take place on public roadways or footways or in any other location which could lead to the discharge of materials into the stormwater drainage system. Footpaths, gutters and roadways must be swept regularly to keep them free from sediment.

9. Temporary disposal of roof water

Stormwater from any roof areas must be linked, via a temporary downpipe, to a Council approved stormwater disposal system immediately upon completion of the roof installation.

10. Footpath levels

The existing footpath level and grade at the street alignment of the property must be maintained.

11. Road Opening Permit

Prior to the commencement of any excavation in Council controlled roadways or footpath areas, the developer must obtain a road opening permit from Council’s Customer Services Counter. Restoration of roads, footpaths, retaining walls, kerbs and gutters must be carried out in accordance with the relevant clauses of the current edition of AUS-SPEC.

12. Damage security deposit

A security deposit of **\$5180 (Five thousand one hundred and eighty dollars)**, for the cost of making good any damage to Council property caused as a consequence of the construction work, plus an administration fee of **\$163.00**, must be paid to Council prior to the issue of the Construction Certificate. The security deposit, which may be in the form of a bank guarantee, has been calculated in accordance with the following schedule.

Estimated cost of work	Deposit
Works up to \$50,000	\$2,000
Works in excess of \$50,000 & up to \$100,000	\$4,000
Works in excess of \$100,000	\$4,000 + \$200 / \$10,000 (for the estimated cost > \$100,000)

The security or bank guarantee must not have an expiry date. Council may use all or part of the Damage Security Deposit to complete damage restoration works if they do not meet Council's requirements.

13. Public footpaths

A safe pedestrian circulation route a minimum of 1.5m wide and with a pavement free of trip hazards must be maintained at all times on or adjacent to the public footpaths fronting the construction site. Where the footpath is damaged, repair works must be carried when directed by Council officers and in accordance with the relevant clauses of the current edition of AUS-SPEC. Where circulation is diverted on to the roadway clear directional signage and protective barricades must be installed in accordance with Aust AS1742-3 1996 "*Traffic Control Devices for Work on Roads*".

If pedestrian circulation is not satisfactorily maintained, and action is not taken promptly to rectify the defects, Council may carry out remedial works and deduct the cost from the Damage Security Deposit.

14. Storage of materials and plant on Council's footpath

Building, excavation or demolition materials and plant must not be stored on Council's footpath and/or roadway unless prior written approval has been obtained from Council's Development Engineer.

15. Protection of services

Prior to any excavation works, the location and depth of all services (telephone, cable TV, electricity, gas, water, sewer, drainage, etc.) must be ascertained. The developer must meet all costs of any adjustment, relocation or reinstatement of any services.

16. Driveways and associated works

The following works must be undertaken at the applicant's expense prior to the final building inspection and the issue of the Occupation Certificate.

- Reconstruction of the internal accessway.

17. Driveway Profile – Prevention of vehicle scraping

A longitudinal surface profile for the proposed driveway must be submitted to, and approved by the PCA prior to issue of the Construction Certificate.

The driveway profile is to start from the kerb and be along the worst case edge of the proposed driveway. Gradients and transitions must be in accordance with Clause 2.5.3 of Australian Standard 2890.1 – 2004, Part 1 – Off-street car parking. The driveway profile submitted to Council must be to (1:25) scale (for template checking purposes) and contain all relevant details: reduced levels, proposed grades and distances.

Australian Standard 2890.1 – 2004, Part 1 (Off-street car parking) has a requirement to prevent vehicles scraping or bottoming.

The PCA is to determine before issue of the Construction Certificate whether the proposed driveway in this development meets all the requirements of Australian Standard 2890.1 - 2004 "Off Street car-parking".

18. Repair of Damaged Infrastructure

If Council's infrastructure is damaged during the course of works, Council's Development Engineer must be notified and necessary repairs must be undertaken within the time stipulated by Council, to Council's specifications, and at no cost to Council. Works generally must be in accordance with the relevant clauses of the current edition of AUS-SPEC.

If work is not undertaken to the satisfaction of the Development Engineer with regard to time or quality, Council may carry out remedial works and deduct the cost from the Damage Security Deposit.

19. Dilapidation survey

A dilapidation survey of the following property and infrastructure must be conducted prior to any site work. The extent of the survey must cover the likely "zone of influence" that may arise due to excavation works, including dewatering and/or construction induced vibration. A practicing structural engineer must prepare a full dilapidation report on the structural condition of all existing structures at the following locations:

- 226 New South Head Road.

The Report must be completed and submitted to Council prior to the commencement of **any** demolition, excavation or construction works.

A second dilapidation report, recording structural conditions of all structures originally assessed prior to the commencement of works, must be carried out at the completion of the works and be submitted to Council.

20. Construction Methodology Report

There are built structures deemed to be in the zone of influence of the proposed excavations on this site. A qualified geotechnical engineer must prepare a Construction Methodology report demonstrating that the proposed excavation will have no adverse impact on any surrounding property and infrastructure. The report must be submitted with the application for a Construction Certificate. The report must include an investigation to determine the design parameters appropriate to the specific development and site. This would typically include:

- Location and level of nearby foundations/footings (site and neighbouring)
- Proposed method of excavation
- Permanent and temporary support measures for excavation
- Potential settlements affecting footings/foundations
- Ground-water levels (if any)
- Batter slopes
- Potential vibration caused by method of excavation
- De-watering including seepage and off site disposal rate (if any)

The Report must include recommendations on appropriate construction techniques to ameliorate any potential adverse impacts.

21. Compliance with the Construction Methodology Report

The development works are to be undertaken in accordance with the recommendations of the Construction Methodology report prepared in accordance with requirements of the relevant condition.

22. Geotechnical / Structural Certification of excavation works and associated structures.

The following development works have been identified as possibly affecting the stability of the existing structure and surrounding property and structures during their construction;

- *The proposed excavation for the new unit.*

Due to this, the excavation and construction of these development works must be overseen by an engineer. This is to ensure the stability of the existing and surrounding property / infrastructure is not adversely affected by such works. Excavation, retention, underpinning and construction must be undertaken on-site by an excavation contractor with specialist excavation experience. A suitably qualified geotechnical or structural engineer, specialising in excavation, must supervise the excavation procedure.

This engineer is to provide certification to the Accredited Certifier, prior to issue of Final Building Certificate, that excavation, retention, underpinning and construction of all the excavation works stated above has been conducted:

- a. According to the relevant Australian Standards and Codes of Practice, and
- b. In a manner that does not compromise the structural integrity of all adjacent structures and property.

23. Requirement for a Construction Certificate

In accordance with the provisions of Section 81A of *the Environmental Planning and Assessment Act 1979*, the erection of the building must not be commenced until:

- (a) detailed plans and specifications of the building have been endorsed with a Construction Certificate by:
 - (i) Council; or
 - (ii) an accredited certifier; and
- (b) a principal certifying authority (PCA) has been appointed and the Council has been notified in writing of the appointment, and
- (c) at least two days notice, in writing, has been given to Council of the intention to commence work.

24. Structural adequacy

A statement from a qualified practising Structural Engineer, certifying to the adequacy of the existing structural members, walls and footings to support the additional loads imposed by the proposed development, must be submitted with the Construction Certificate application. This condition is imposed to ensure the structural integrity of the proposed building work.

25. Structural details

Structural engineering details and design calculations, prepared and certified by a qualified practising Structural Engineer, must be submitted with Construction Certificate application, for all reinforced concrete work, structural steel work, retaining walls, brick fences, shoring and underpinning, isolated piers, chimneys, parapets and other structural members. This condition is imposed to ensure the structural integrity of the proposed building work.

26. Layout of buildings

The layout of all external walls, including retaining walls and contiguous piling must be checked and verified by survey prior to the commencement of construction to ensure that building construction complies with the development consent and does not encroach beyond the boundaries of the site.

27. Demolition and construction hours

Demolition and construction work must not take place outside the hours of 7.00am to 5.30pm Monday to Friday and 7.00am to 1.00pm Saturday. No work and no deliveries are to take place on Sundays and public holidays. Noise from construction activities associated with the development must comply with the guidelines contained in the NSW EPA *Environmental Noise Control Manual* Chapter 171.

28. Noise attenuation of vehicular turntable

In order to maintain the amenity of adjoining properties, noise generated by the vehicular turntable, must not be audible above the background noise level, when measured at the boundaries of the subject site.

29. Wet areas

All floors of wet areas are to be constructed and finished so as to be impervious to water and graded to a sufficient number of floor drains.

30. Machine excavation

Excavation or removal of any materials involving the use of machinery of any kind, including compressors and jack hammers, must be limited to between 9.00am and 4.00 pm Mondays to Fridays, with regular breaks of 15 minutes each hour. This condition is imposed to ensure reasonable standards of amenity for occupants of neighbouring properties.

31. Toilet facilities

- (a) Toilet facilities must be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
- (b) Each toilet provided:
 - (a) must be a standard flushing toilet; and
 - (b) must be connected:
 - (i) to a public sewer; or
 - (ii) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council; or
 - (iii) if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.
- (c) The provision of toilet facilities in accordance with this clause must be completed before any other work is commenced.
- (d) In this condition:

accredited sewage management facility means a sewage management facility to which Division 4A of Part 3 of the Local Government (Approvals) Regulation 1993 applies, being a sewage management facility that is installed or constructed to a design or plan the subject of a certificate of accreditation referred to in Clause 95B of the Regulation.

approved by the Council means the subject of an approval in force under Division 1 of Part 3 of the *Local Government (Approvals) Regulation 1993*.

public sewer has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*.

sewage management facility has the same meaning as it has in the Local Government (Approvals) Regulation 1993.

32. Building Inspections

The Applicant, Owner and Builder, jointly and severally, must ensure that they call their Principal Certifying Authority ("the PCA") to carry out such critical phase building inspections required by the PCA, the PCA Service Agreement and that the PCA is satisfied with the level of compliance achieved before the Builder proceeds to the next phase of construction. Ample notice of required inspections must be given to the PCA in accordance with the PCA Service Agreement. The Applicant, Owner and Builder must comply with the PCA Service Agreement (Service Contract) and any lawful direction given by the Principal Certifying Authority.

Note: It is the responsibility of the PCA to ensure that critical phase building inspections are undertaken in accordance with a PCA Service Agreement and issue to the Applicant, Owner and Builder appropriate Notice under Section 109L of the Environmental Planning & Assessment Act 1979 ("the Act") where any breach of this consent occurs. Failure of the PCA to issue such notice may result in Council taking action under Section 109V of the Act. Failure of the Applicant, Owner and Builder to comply with a PCA Service Agreement and comply with lawful directions of the PCA under this condition may result in Council issuing fines, notices, orders and commencing legal proceedings. Council will only enter into PCA Agreements with the Owner of the land being developed. Council, if appointed as the PCA, will report to the owner of the land being developed.

33. Occupation of premises

A person must not commence occupation or use of the whole or any part of a *new building* (within the meaning of section 109H (4) of the *Act*) unless an occupation certificate has been issued in relation to the building or part.

Note: *new building* includes an altered portion of, or an extension to, an existing building.

Note: In circumstance where the works do not relate to occupation the required *occupation certificate* is essentially a certificate of completion of the approved work.

34. Fire safety

A schedule of all existing and proposed safety measures within the building must be submitted to Council with or before the application for a Construction Certificate.

35. Long Service Levy Payment

A Long Service Levy under Section 34 of the *Building & Construction Industry Long Service Payment Act, 1986*, must be paid and proof of payment provided prior to the issue of a Construction Certificate. The Levy can be paid directly to the Long Services Payments Corporation or to Council.

36. Standard for demolition

All demolition work must be undertaken in accordance with the provisions of *Australian Standard AS2601-2001: The Demolition of Structures*.

37. Compliance with Building Code of Australia

- (a) All building work must be carried out in accordance with the provisions of the *Building Code of Australia*.
- (b) This condition does not apply to the extent to which an exemption is in force under Clause 187 or 188, of the *Environmental Planning and Assessment Regulation 2000*, subject to the terms of any condition or requirement referred to in Clause 187 (6) or 188 (4) of the Regulation.

38. Residential building work

- (a) Building work that involves residential building work (within the meaning of the *Home Building Act 1989*) must not be carried out unless the principal certifying authority (PCA) for the development to which the work relates:
 - in the case of work to be done by a licensee under that Act:
 - (i) has been informed in writing of the licensee's name and contractor license number; and
 - (ii) is satisfied that the licensee has complied with the requirements of Part 6 of that Act; or
 - in the case of work to be done by any other person:
 - (iii) has been informed in writing of the person's name and owner-builder permit number; or
 - (iv) has been given a declaration, signed by the owner of the land, that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of owner-builder work in Section 29 of that Act,

and is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of the work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.

Note: The amount referred to in paragraph (a) (iv) above is prescribed by regulations under the *Home Building Act 1989*. As at the date on which this Regulation was Gazetted, that amount was \$5,000. As those regulations are amended from time to time, so that amount may vary.

- (b) A certificate purporting to be issued by an approved insurer under Part 6 of the *Home Building Act 1989* that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

39. Signs to be erected on building and demolition sites

- (a) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
 - (i) stating that unauthorised entry to the work site is prohibited; and

- (ii) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.
- (b) Any such sign must be removed when the work has been completed.
- (c) This clause does not apply to:
 - (i) building work carried out inside an existing building; or
 - (ii) building work carried out on premises that must be occupied continuously (both during and outside working hours) while the work is being carried out.

40. Residential building work over \$12,000 in value

Council must be provided with the following information prior to the commencement of any works;

- (a) the proposed builder's details (in writing); and
- (b) proof of payment of the required insurance premium pursuant to Part 6 of the *Home Building Act 1989*.

41. Water conservation

Water saving showerheads must be fitted to all showers within the development to reduce water consumption and promote energy efficiency.

42. Excavations and backfilling

- (a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- (b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

43. Protection of public places

- (a) If the work involved in the erection or demolition of a building:
 - (i) is likely to cause pedestrian or vehicular traffic on a public place to be obstructed or rendered inconvenient, or
 - (ii) building involves the enclosure of a public place;a hoarding or fence must be erected between the work site and the public place.
- (b) If necessary, an awning must be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- (c) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- (d) Any such hoarding, fence or awning must be removed when the work has been completed.

Note: Prior to the erection of any hoarding, fence or the like on any footpath or other property owned or controlled by Council, permission must be sought and obtained from Council and the prescribed rental fee paid.

44. Support for neighbouring buildings

- (a) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:
- (i) must preserve and protect the building from damage; and
 - (ii) if necessary, must underpin and support the building in an approved manner; and
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (b) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.
- (c) In this condition, allotment of land includes a public road and any other public place.

45. Section 94 contributions (residential development)

Pursuant to Section 94 of the *Environmental Planning and Assessment Act 1979*, a monetary contribution of –

- \$1312 towards the provision of recreational facilities; and
 - \$19.68 towards the costs for administration of Woollahra Section 94 Contributions Plan 2002;
- Total contribution = **\$1331.68**

must be paid to Council:

- (a) prior to the issue of a construction certificate, where a construction certificate is required; or
- (b) prior to the issue of a subdivision certificate, where only a subdivision certificate is required; or
- (c) prior to the issue of an occupation certificate in any other instance.

This condition is imposed under the Woollahra Section 94 Contributions Plan 2002.

Indexation of Section 94 contributions

To ensure that the value of monetary contributions is not eroded over time by increases in costs, the contribution rates specified in the Plan will be increased annually on the anniversary of the commencement of the Plan based on the formula specified in Clause 3.13 of the Plan.

If the required contribution is not paid before the next anniversary of the commencement of the Plan following the date of this development consent, the payable contribution will be the increased amount calculated by Council in accordance with the indexation formula set out in clause 3.13 of the Plan.

Deferred periodic payment of Section 94 contributions

Any request for deferred or periodic payment of the Section 94 contribution required by this consent must be made in writing by the applicant and must set out the reasons for the request. Council will consider any such request on the basis of the criteria set out in clause 3.8 of the Plan.

Where Council accepts payment by way of instalments, each instalment will be paid before work commences on the corresponding stage of the development and the amount of each instalment will be calculated on a pro-rata basis in proportion to the cost of the development.

Council may, as a condition of accepting deferred or periodic payment, require the applicant to provide a bank guarantee where:

- (a) the guarantee is by an Australian bank for the amount of the total outstanding contribution;
- (b) the bank unconditionally agrees to pay the guaranteed sum to Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first;
- (c) the bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to this development consent or the carrying out of the development in accordance with this development consent; and
- (d) the obligations of the bank are discharged when payment to Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

Any deferred or outstanding component of the contribution will be indexed in accordance with clause 3.13 of the Plan. If a deferred or periodic payment is not made before the next anniversary of the Plan, the amount payable will be the increased amount calculated by Council in accordance with clause 3.13 of the Plan. The applicant will pay any charges associated with establishing or operating the bank guarantee. Council will not cancel the bank guarantee until the outstanding contribution as indexed and any accrued charges are paid.

Mr D Booth
SENIOR ASSESSMENT OFFICER

Mr N Economou
TEAM LEADER

ADVISINGS

1. Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Mr D Booth. However, if you wish to pursue your rights of appeal in the Land & Environment Court you are advised that Council generally seeks resolution of such appeals through a Section 34 Conference, instead of a full Court hearing. This approach is less adversarial, it achieves a quicker decision than would be the case through a full Court hearing and it can give rise to considerable cost and time savings for all parties involved. The use of the Section 34 Conference approach requires the appellant to agree, in writing, to the Court appointed assessor having the full authority to completely determine the matter at the conference.

2. Works and requirements of other authorities

Sydney Water may require the construction of additional works and/or the payment of additional fees. Other *Sydney Water* approvals may also be necessary prior to the commencement of construction work. You should therefore confer with *Sydney Water* concerning all plumbing works, including connections to mains, installation or alteration of systems, and construction over or near existing water and sewerage services.

Contact *Sydney Water*, Rockdale (Urban Development Section) regarding the water and sewerage services to this development.

3. Application for a Construction Certificate

The required Application for a Construction Certificate may be lodged with Council. Alternatively, you may apply to an accredited private certifier for a Construction Certificate.

WARNING: Failure to obtain a Construction Certificate prior to the commencement of any building work is a serious breach of Section 81A(2) of the *Environmental Planning & Assessment Act 1979*. It is also a criminal offence which attracts substantial penalties and may also result in action in the Land and Environment Court and orders for demolition.

4. Occupational Health and Safety

All site works must comply with the occupational health and safety requirements of the NSW WorkCover Authority.

5. Modifications to the consent

Changes to the external configuration of the building, changes to the site layout or any changes to the proposed operation or use *will* require the submission and approval of an application under Section 96 of the *Environmental Planning & Assessment Act 1979* before the issue of a Construction Certificate.

6. Storage bins on footpath and roadway

Approval is required from Council prior to the placement of any storage bin on Council's footpath and/or roadway.

7. Home Building Act insurance

Home Building Act Insurance must be obtained from an insurance company approved by the Department of Fair Trading prior to the commencement of demolition or construction work.

8. Long Service Levy

The current rate of the levy required by this consent is 0.35% of the cost all building and construction work costing \$25,000 or more.

9. Hazardous Material Management (to be included in all Development Consents)

"Builders are advised to obtain a copy of the EPA publication *Solutions to Pollution for Builders* which provides environmental information including hazardous material management. The EPA can be contacted by phone on 131 555 or at www.epa.nsw.gov.au "

10. Hazardous waste removal

Hazardous or intractable wastes arising from the demolition process must be removed and disposed of in accordance with the requirements of WorkCover and the EPA, and in accordance with the provisions of:

- New South Wales *Occupational Health and Safety Act, 1983*;
- New South Wales *Construction Safety Act, 1912*; *Regulation 84A-J Construction Work Involving Asbestos or Asbestos Cement 1983*;
- The *Occupational Health and Safety (Hazardous Substances) Regulation 1996*;
- The *Occupational Health and Safety (Asbestos Removal Work) Regulation 1996*;
- and
- The *Waste Minimisation and Management Act and Regulations*.

ANNEXURES

1. Plans and elevations
2. Development Engineer's comments
3. Roads and Traffic Authority comments
4. Department of Planning comments

DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D5
FILE No.	DA 747/2006/1
PROPERTY DETAILS	624-634 New South Head Road, Rose Bay
	Lot & DP No.: Lot A DP 441483
	Side of Street: Northern
	Site Area (m²): 808.15m ²
	Zoning: General Business 3(a)
PROPOSAL	New awning to front facade of building
TYPE OF CONSENT:	Local Development
APPLICANT:	Milstern Retirement Services Pty Ltd
OWNER:	Milstern Retirement Services Pty Ltd
DATE LODGED:	26 October 2006
AUTHOR:	Mr Simon Taylor

1. RECOMMENDATION PRECIS

The application is recommended for conditional approval.

2. LOCALITY PLAN



3. DESCRIPTION OF PROPOSAL

The proposal involves the construction of an awning (1.55m x 21.35m) along the southern (front) facade of the existing building.

4. SUMMARY

Reasons for report	Issues	Submissions
The DA does not satisfy the criteria for determination under staff delegation.	Objectors concerns.	One submission was received.

5. ESTIMATED COST OF WORKS

The applicant's estimated cost of the proposed development is \$11,500. This has been checked using Council's adopted practice and is considered to be accurate.

6. DESCRIPTION OF SITE OF LOCALITY



Physical features	The subject site is on the northern side of New South Head Road, is one property removed of the foreshore of Sydney Harbour and is located in the transition area of the Rose Bay commercial centre. It is relatively square in shape with a total site area of 808.15m ² . A driveway runs along the eastern boundary, which services the residential flat building on the battle-axe allotment to the rear.
Topography	The subject site is flat in nature.
Existing buildings and structures	Currently occupying the subject site is a high rise residential flat building with a restaurant located on the ground floor level and residential aged care apartments located above.
Environment	The subject site is located on the edge of the Rose Bay commercial centre. Accordingly, there is a mix of ground floor retail or commercial premises and low and high rise residential flat buildings on the northern side of New South Head Road and lower scale retail premises and residential dwelling houses/flat buildings on the southern side of New South Head Road.

7. PROPERTY HISTORY

Current use	Retail restaurant (ground floor) and residential (levels above)
Previous relevant applications	<ul style="list-style-type: none"> DA1121/1999 was approved on 27 June 2000 and included the construction of an awning to the front facade of the building DA632/2006 is being assessed concurrently. It involves the establishment of footpath seating in front of the subject building, underneath the proposed awning
Pre-DA	None.
Requests for additional information	None.
Amended plans/ Replacement Application	None.
Land & Environment Court appeal	None.

8. REFERRALS

No internal or external referrals were required.

ENVIRONMENTAL ASSESSMENT UNDER SECTION 79C

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

9. STATE/REGIONAL INSTRUMENTS AND LEGISLATION

9.1 SEPPs

None applicable.

9.2 REPs

SREP (Sydney Harbour Catchment) 2005

The provisions of Clauses 25 and 26 of this instrument require Council to consider the visual impact that a development proposal will have upon Sydney Harbour and adjoining foreshore areas and the likely impact upon available views to and from Sydney Harbour.

The awning is on the southern side of the building where it will not be visible from Sydney Harbour. Furthermore, it will not disrupt any views of Sydney Harbour. It is therefore considered to be satisfactory with regard to the provisions of SREP (Sydney Harbour Catchment) 2005.

9.3 Section 94A contribution

Not applicable.

9.4 Other legislation

None applicable.

10. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

10.1 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 WLEP 1995 and the relevant objectives of the Business 3(a) zone.

10.2 Statutory compliance table

	Existing	Proposed Awning	Control	Complies
Overall Height (metres)	> 12.0m	4.1m	12.0m	YES

10.3 Clause 12 Height

The proposal complies with the maximum building height of 9.5m prescribed by Clause 12 of WLEP 1995.

10.4 Clause 19 HFSPA

Clause 19 requires Council to consider the likely visual impact of a proposed development when viewed from Sydney Harbour. The proposed awning is not be visible from Sydney Harbour and is therefore considered to be acceptable with regard to Clause 19(2) of WLEP 1995.

10.5 Clause 25 Water, wastewater and stormwater

The proposal is acceptable with regard to Clause 25(1) and (2) of WLEP 1995.

10.6 Clauses 27 Heritage provisions

Clause 27 requires Council to consider the likely impact of a proposed development upon the heritage significance of any adjoining heritage item.

The subject site is in close proximity of Royal Sydney Golf Course, which is listed as a heritage item under Schedule 3 of WLEP 1995.

The proposed awning is not excessive in scale and will be appropriate when viewed from the Golf Course. In this regard, the proposal is acceptable with regard to Clause 27 of WLEP 1995.

11. DRAFT AMENDMENTS TO STATUTORY CONTROLS

None applicable.

12. DEVELOPMENT CONTROL PLANS

12.1 Rose Bay Centre DCP

Urban structure – objectives

The proposed awning is acceptable with regard to the objectives for the Rose Bay Centre, as outlined in Section 3.2 of the Rose Bay DCP.

Street character strategies

The proposed awning is acceptable with regard to the street character strategy for New South Head Road (transition area), as outlined in Section 4.2 of the Rose Bay DCP.

Architectural resolution

The proposal is acceptable with regard to the architectural resolution controls contained in Section 6.3.5 of the Rose Bay DCP.

Awnings

Section 6.3.7 recommends discontinuous awnings that provide cover to building entrances. The proposal is considered to be acceptable in this regard.

12.3 Woollahra Access DCP

Not applicable.

13. APPLICABLE REGULATIONS

None applicable.

14. THE LIKELY IMPACTS OF THE PROPOSAL

All likely impacts have been addressed elsewhere in the report.

15. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

16. SUBMISSIONS

The proposal was advertised and notified in accordance with Council's Advertising and Notifications DCP. One submission was received from JL Stitt, Chairman of the Executive Committee of The Wintergarden, 614 New South Head Road, Rose Bay.

The objection raised the following issue: -

- allows an increase in intensity and capacity of the restaurant, and the associated amenity issues

The construction of the awning, when considered separately, does not allow for an increase in the intensity or capacity of the restaurant. Accordingly, there are no associated impacts upon the amenity of the streetscape or dwellings in the immediate vicinity.

- is linked to, and allows, the provision of outdoor seating associated with DA 632/2006

The outdoor seating is unrelated to the subject development application.

17. CONCLUSION - THE PUBLIC INTEREST

The proposal is acceptable against the relevant considerations under Section 79C of the EP&A Act 1979.

18. RECOMMENDATION: Pursuant to Section 80(1) of the Environmental Planning and Assessment Act, 1979

THAT the Council, as the consent authority, grant development consent to Development Application No. 747/2006 for a new awning to the front facade of the building at 624-634 New South Head Road, Rose Bay, subject to the following conditions: -

1. **Approved Plans**

This consent relates to the work, shown in colour, on plans numbered 06810-1 1 and 06810-1 2, dated 8 October 2005 and drawn by Got You Covered Pty Ltd, both of which carry a Council stamp “**Approved DA Plans**” and the signature of a Council officer, except where amended by the following conditions. -

2. **Requirement for a Construction Certificate**

In accordance with the provisions of Section 81A of the *Environmental Planning and Assessment Act 1979*, the erection of the building must not be commenced until: -

- detailed plans and specifications of the building have been endorsed with a Construction Certificate by Council or an accredited certifier
- a principal certifying authority (PCA) has been appointed and the Council has been notified in writing of the appointment
- at least two days notice, in writing, has been given to Council of the intention to commence work

3. **Structural adequacy**

A statement from a qualified practising Structural Engineer, certifying to the adequacy of the existing structural members, walls and footings to support the additional loads imposed by the proposed development, must be submitted with the Construction Certificate application. This condition is imposed to ensure the structural integrity of the proposed building work.

4. **Structural details**

Structural engineering details and design calculations, prepared and certified by a qualified practising Structural Engineer, must be submitted with Construction Certificate application, for all reinforced concrete work, structural steel work, retaining walls, brick fences, shoring and underpinning, isolated piers, chimneys, parapets and other structural members. This condition is imposed to ensure the structural integrity of the proposed building work.

5. **Demolition and construction hours**

Demolition and construction work must not take place outside the hours of 7.00am to 5.30pm Monday to Friday and 7.00am to 1.00pm Saturday. No work and no deliveries are to take place on Sundays and public holidays. Noise from construction activities associated with the development must comply with the guidelines contained in the NSW EPA *Environmental Noise Control Manual* Chapter 171.

6. **Occupation**

A person must not commence occupation or use of the whole or any part of a *new building* (within the meaning of section 109H (4) of the *Act*) unless an occupation certificate has been issued in relation to the building or part.

Note: *new building* includes an altered portion of, or an extension to, an existing building.

Note: In circumstance where the works do not relate to occupation the required *occupation certificate* is essentially a certificate of completion of the approved work.

7. Location of building operations

Building operations such as washing tools or brushes must not take place on public roadways or footways or in any other location which could lead to the discharge of materials into the stormwater drainage system. Footpaths, gutters and roadways must be swept regularly to keep them free from sediment.

8. Storage of materials and plant on Council's footpath

Building, excavation or demolition materials and plant must not be stored on Council's footpath and/or roadway unless prior written approval has been obtained from Council's Development Engineer.

9. Repair of Damaged Infrastructure

If Council's infrastructure is damaged during the course of works, Council's Development Engineer must be notified and necessary repairs must be undertaken within the time stipulated by Council, to Council's specifications, and at no cost to Council. Works generally must be in accordance with the relevant clauses of the current edition of AUS-SPEC.

If work is not undertaken to the satisfaction of the Development Engineer with regard to time or quality, Council may carry out remedial works and deduct the cost from the Damage Security Deposit.

10. Payment of Security and Fees

The certifying authority must not issue any Part 4A Certificate until provided with the original receipt(s) for the payment of all of the following levy, security, contributions, and fees prior to the issue of a construction certificate.

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Long Service Levy http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm	Contact LSL Corporation	No	
SECURITY under section 80A(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit - making good damage caused to any property of the <i>Council</i> as a consequence of the doing of anything to which the consent relates	\$2,000	No	T600
INSPECTION FEES under section 608 of the Local Government Act 1993			
Security Administration Fee	\$163	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$2,163 plus any relevant indexed amounts and long service levy		

How must the payments be made?

Payments must be made by:

1. Cash deposit with Council,
2. Credit card payment with Council, or
3. Bank cheque made payable to Woollahra Municipal Council.

The payment of a security may be made by a bank guarantee where:

- a) the guarantee is by an Australian bank for the amount of the total outstanding contribution;
- b) the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first;
- c) the bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent; and
- d) the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

11. Covenant for private works on Council property

A positive covenant, pursuant to Section 88E of the *Conveyancing Act*, must be created on the title of the subject property, providing for the indemnification of Council from any claims or actions, and the on-going maintenance of any private structures on Council property for which consent has been given, such as steps, retaining walls, access ways.

The wording of the Instrument must be in accordance with Council's standard format (available from Councils web-site <http://www.woollahra.nsw.gov.au>) and the Instrument must be registered at the Land Property Information Office prior to the Final Building Inspection and issuance of the Certificate of Occupation.

12. Compliance with Building Code of Australia

- (a) All building work must be carried out in accordance with the provisions of the *Building Code of Australia*.
- (b) This condition does not apply to the extent to which an exemption is in force under Clause 187 or 188, of the *Environmental Planning and Assessment Regulation 2000*, subject to the terms of any condition or requirement referred to in Clause 187 (6) or 188 (4) of the Regulation.

13. Signs to be erected on building and demolition sites

- (a) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out: -
 - (i) stating that unauthorised entry to the work site is prohibited; and
 - (ii) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.
- (b) Any such sign must be removed when the work has been completed.
- (c) This clause does not apply to: -
 - (i) building work carried out inside an existing building; or
 - (ii) building work carried out on premises that must be occupied continuously (both during and outside working hours) while the work is being carried out.

Mr Simon Taylor
ASSESSMENT OFFICER

Mr David Waghorn
ACTING TEAM LEADER

ADVISINGS

1. Other approvals

This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, including an application for an Occupation Certificate under Section 109(C)(2) of the *Environmental Planning and Assessment Act 1979*. An application for an Occupation Certificate may be lodged with Council if the applicant has nominated Council as the Principal Certifying Authority.

2. Works and requirements of other authorities

Sydney Electricity has a requirement for the approval of any encroachments including awnings, signs etc, over a public roadway or footway. The Engineer Mains Overhead Eastern Area should be contacted on 9663 9408 to ascertain what action, if any, is necessary.

3. Application for a Construction Certificate

The required Application for a Construction Certificate may be lodged with Council. Alternatively, you may apply to an accredited private certifier for a Construction Certificate.

<p>WARNING: Failure to obtain a Construction Certificate prior to the commencement of any building work is a serious breach of Section 81A(2) of the <i>Environmental Planning & Assessment Act 1979</i>. It is also a criminal offence which attracts substantial penalties and may also result in action in the Land and Environment Court and orders for demolition.</p>
--

4. Occupational Health and Safety

All site works must comply with the occupational health and safety requirements of the NSW WorkCover Authority.

5. Modifications to the consent

Changes to the external configuration of the building, changes to the site layout or any changes to the proposed operation or use *will* require the submission and approval of an application under Section 96 of the *Environmental Planning & Assessment Act 1979* before the issue of a Construction Certificate.

6. Storage bins on footpath and roadway

Approval is required from Council prior to the placement of any storage bin on Council's footpath and/or roadway.

7. Home Building Act insurance

Home Building Act Insurance must be obtained from an insurance company approved by the Department of Fair Trading prior to the commencement of demolition or construction work.

8. Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Simon Taylor. However, if you wish to pursue your rights of appeal in the Land & Environment Court you are advised that Council generally seeks resolution of such appeals through a Section 34 Conference, instead of a full Court hearing.

This approach is less adversarial, it achieves a quicker decision than would be the case through a full Court hearing and it can give rise to considerable cost and time savings for all parties involved. The use of the Section 34 Conference approach requires the appellant to agree, in writing, to the Court appointed assessor having the full authority to completely determine the matter at the conference.

ANNEXURES

1. Plans and elevations