Agenda:  Development Control Committee
Date:    Monday 6 June 2016
Time:    6.00pm & 8.00pm
Outline of Meeting Protocol & Procedure:

- The Chairperson will call the Meeting to order and ask the Committee/Staff to present apologies or late correspondence.
- The Chairperson will commence the Order of Business as shown in the Index to the Agenda.
- At the beginning of each item the Chairperson will ask whether a member(s) of the public wish to address the Committee.
- If person(s) wish to address the Committee, they are allowed four (4) minutes in which to do so. Please direct comments to the issues at hand.
- If there are persons representing both sides of a matter (eg applicant/objector), the objector speaks first.
- At the conclusion of the allotted four (4) minutes, the speaker resumes his/her seat and takes no further part in the debate unless specifically called to do so by the Chairperson.
- If there is more than one (1) person wishing to address the Committee from the same side of the debate, the Chairperson will request that where possible a spokesperson be nominated to represent the parties.
- The Chairperson has the discretion whether to continue to accept speakers from the floor.
- After considering any submissions the Committee will debate the matter (if necessary), and arrive at a recommendation (R items which proceed to Full Council) or a resolution (D items for which the Committee has delegated authority).

Recommendation only to the Full Council or to the Strategic & Corporate Committee (“R” Items)

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

Delegated Authority (“D” Items)
To determine all development applications and related applications, which are not required to be determined by the Council under Council’s adopted procedures for the call up of applications except:

a) Applications for review of a determination under section 82A of the Environmental Planning and Assessment Act 1979 (“the Act”) where the DCC determined the original application.

b) Development applications for development on community land which may not be delegated for determination under section 47E of the LG Act.

Committee Membership: 7 Councillors

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

Development Control Committee – 6 June 2016

In accordance with the provisions of the Local Government Act 1993, I request your attendance at Council’s Development Control Committee meeting to be held in the Thornton Room (Committee Room), 536 New South Head Road, Double Bay, on Monday 6 June 2016 at 6.00pm.

Gary James
General Manager
## Meeting Agenda
### Session One - Commencing at 6.00pm

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<thead>
<tr>
<th>Item</th>
<th>Subject</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Leave of Absence and Apologies</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Late Correspondence</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Declarations of Interest</td>
<td></td>
</tr>
</tbody>
</table>

### Items to be Decided by this Committee using its Delegated Authority

- **D1** Confirmation of Minutes of Meeting held on 16 May 2016
  - Page 7

- **D2** DA596/2015 - 19 Gladswood Gardens, Double Bay
  - Page 9
  - *See Recommendation Page 29*

- **D3** DA669/2015/1 172 Paddington Street Paddington
  - Page 61
  - *See Recommendation Page 86*

- **D4** DA2015/390 - 20-26 Cross Street Double Bay
  - Page 135
  - *See Recommendation Page 144*

- **D5** DA2014/571 - 16-18 Cross Street Double Bay (Hunters Lodge)
  - Page 233
  - *See Recommendation Page 241*
## Meeting Agenda
### Session Two - Commencing at 8.00pm

<table>
<thead>
<tr>
<th>Item</th>
<th>Subject</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>D6</td>
<td>DA2012/387/5 - 28 Bay Street Double Bay (Royal Oak Hotel)</td>
<td>335</td>
</tr>
<tr>
<td></td>
<td>*See Recommendation Page 356</td>
<td></td>
</tr>
<tr>
<td>D7</td>
<td>DA710/2005/6 - 5 Billong Avenue, Vaucluse (Child Care Centre)</td>
<td>365</td>
</tr>
<tr>
<td></td>
<td>*See Recommendation Page 372</td>
<td></td>
</tr>
<tr>
<td>D8</td>
<td>DA2016/133/1 - 1/75 Birriga Road Bellevue Hill</td>
<td>379</td>
</tr>
<tr>
<td></td>
<td>*See Recommendation Page 394</td>
<td></td>
</tr>
<tr>
<td>D9</td>
<td>DA53/2015/1 - 13 Manning Road, Double Bay</td>
<td>431</td>
</tr>
<tr>
<td></td>
<td>*See Recommendation Page 444</td>
<td></td>
</tr>
<tr>
<td>D10</td>
<td>Register of Current Land and Environment Court Matters and Register for Court Proceedings for Building Control, Environmental Control and Health Control</td>
<td>483</td>
</tr>
</tbody>
</table>

### Items to be Submitted to the Council for Decision with Recommendations from this Committee

- **R1** DA663/2002/4 - 600-612 New South Head Rd Rose Bay               | 501                         |
  *See Recommendation Page 512
Item No: D1  Delegated to Committee

Subject: CONFIRMATION OF MINUTES OF MEETING HELD ON 16 MAY 2016

Author: Sue O'Connor, Secretarial Support - Governance

File No: 16/71629

Reason for Report: The Minutes of the Development Control Committee of 16 May 2016 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 Development Control Committee Meeting of 16 May 2016 be taken as read and confirmed.
MEMO TO ALL COUNCILLORS

Item No: D2  
File No: DA596/2015  
Address: 19 Gladswood Gardens Double Bay  
Proposal: Alterations & additions including a new first floor level  
Author: Eleanor Smith, Acting Team Leader

Please note that Item D2 was called at the Application Assessment Panel meeting held at 31 May 2016 by Councillor Keulemans.

Reason for calling item:

- View loss

The DA report follows on the next page:
DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No. D2
FILE No. DA596/2015/1
ADDRESS 19 Gladswood Gardens DOUBLE BAY
SITE AREA 803m²
ZONING R3 Medium Density Residential
PROPOSAL Alterations and additions including a new first floor level
TYPE OF CONSENT Local development
COST OF WORKS $743,750.00
DATE LODGED 26/11/2015
APPLICANT Dr J Hocking
OWNER Dr J Hocking
AUTHOR Ms L Samuels
TEAM LEADER Ms E Smith
SUBMISSIONS 10
RECOMMENDATION Approval

SUMMARY

1. LOCALITY PLAN

[Map showing the subject site and objectors]
2. LEVEL OF DELEGATION

The application is to be determined by the Application Assessment Panel as there are more than three unresolved objections.

3. PROPOSAL

The proposal, involves the following works:
- Alterations and additions to the existing dwelling, comprising a first floor level addition.

The plans were amended to incorporate the following:
- The southern eave over bedroom 5 has been reduced in depth by 750mm.

PROPERTY DETAILS AND REFERRALS

4. SITE AND LOCALITY

<table>
<thead>
<tr>
<th>Physical features</th>
</tr>
</thead>
<tbody>
<tr>
<td>The foreshore site is located on the western side of Gladwood Gardens at the end of the cul-de-sac. The site is irregular in shape and has an area of 803m².</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Topography</th>
</tr>
</thead>
<tbody>
<tr>
<td>The site slope approximately 5m between the front and rear boundary.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Existing buildings and structures</th>
</tr>
</thead>
<tbody>
<tr>
<td>The site comprises a single storey detached dwelling with a detached double garage.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Environment</th>
</tr>
</thead>
<tbody>
<tr>
<td>The site is located within the Double Bay precinct under the WDCP 2015. The following properties adjoin the subject site:</td>
</tr>
<tr>
<td>To the north is 17 Gladwood Gardens, which is occupied by a 3 – 4 storey residential flat building.</td>
</tr>
<tr>
<td>To the south is 21 Gladwood Gardens, which is occupied by a 2 storey dwelling-house.</td>
</tr>
</tbody>
</table>

The locality is predominantly characterised by a mix of residential flat buildings and dwellings of various architectural styles.
5. RELEVANT PROPERTY HISTORY

<table>
<thead>
<tr>
<th>Current use</th>
<th>Detached dwelling house.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relevant Application History</td>
<td>N/A</td>
</tr>
<tr>
<td>Requests for Additional Information and Replacement Applications</td>
<td>The applicant was requested to provide view loss montages, which have been submitted with the application.</td>
</tr>
</tbody>
</table>

6. REFERRALS

<table>
<thead>
<tr>
<th>Referral</th>
<th>Summary of Referral Response</th>
<th>Annexure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trees and Landscaping</td>
<td>Council’s Trees and Landscaping Officer has determined that the proposal is acceptable, subject to conditions.</td>
<td>2</td>
</tr>
</tbody>
</table>

ENVIRONMENTAL ASSESSMENT UNDER SECTION 79C

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979 include the following:

1. The provisions of any environmental planning instrument
2. The provisions of any proposed instrument that is/has been the subject of public consultation
3. The provisions of any development control plan
4. Any planning agreement that has been entered into
5. Any draft planning agreement that a developer has offered to enter into
6. The regulations
7. Any coastal zone management plan
8. The likely impacts of that development:
   i) Environmental impacts on the natural and built environments
   ii) Social and economic impacts
9. The suitability of the site
10. Any submissions
11. The public interest

7. ADVERTISING AND NOTIFICATION

7.1. Submissions

The application was advertised and notified from 09/12/2015 to 23/12/2015 in accordance with Chapters A2.2.1, A2.3.1 and A2.8 of the Woollahra DCP 2015. Submissions were received from:

1. Fiona Kennedy, 6/2 Gladwood Gardens, Double Bay
2. Judith Barling, 3/534 New South Head Road, Double Bay
3. Farrokh Golshani, 5/534 New South Head Road, Double Bay
4. Boskovitz and Associates, 41 Grosvenor Street, Woollahra
5. Mr and Mrs Bowie Wilson, 2/17 Gladwood Gardens, Double Bay
6. Liz Williams, 3/2 Gladwood Gardens, Double Bay
7. Lynette Chiang, 6/534 New South Head Road, Double Bay
8. Philip Thompson, 2 Gladwood Gardens, Double Bay
9. William and Jaqueline MacMahon, 21 Gladwood Gardens, Double Bay
10. Sydney Water, 1 Smith Street, Paramatta
The submissions raised the following issues:

- **Height**
The proposed first floor addition attains a height of 8m – 9.5m which complies with the maximum building height control and complies with the Exceptions to Building Heights (Clause 4.3A(3)). Furthermore, the height of the addition is considered to be acceptable in the context of the neighbouring properties.

- **Building footprint**
The proposed first floor addition is smaller than the footprint of the existing ground floor level. The proposal does not involve any significant change to the existing building footprint and is therefore considered to be acceptable.

- **Bulk of the addition**
The proposal complies with the floorplate control, which indicates that the bulk and scale of the development is appropriate. The footprint of the first floor addition is smaller than the footprint of the existing ground floor level and is not considered to be excessive in size. The dwelling has been designed with a low profile roof to minimise the bulk and scale of the development.

- **Loss of privacy to 2/17 and 21 Gladswood Gardens**
The proposal is considered to be acceptable with regard to privacy, subject to Condition C.1(a). This is discussed further under Section 11.2 of the report.

- **Solar access to 2/17 and 21 Gladswood Gardens**
The proposal maintains sunlight to more than 50% of the rear yard at 21 Gladswood Gardens and does not have an impact on solar access to the north facing habitable room windows between 9am – 12pm on 21 June, which complies with the control. The proposal does not have an impact on solar access to 17 Gladswood Gardens, which is to the north of the subject site. This is discussed further under Section 11.2 of the report.

- **Bedroom 5 should be further setback from the southern boundary**
Bedroom 5 is setback 4.9m from the southern side boundary which exceeds the requirements of the side setback control. In order to address the neighbours concerns, the plans have been amended to reduce the depth of the eaves from 0.9m to 0.2m in this location.

- **Impact on views**
The proposal will have a negligible/minor impact on the views obtained from 3/2 Gladswood Gardens, 2/17 Gladswood Gardens and Units 3, 4 and 6 at 534 New South Head Road. The proposal will have a severe impact on views from 6/2 Gladswood Gardens, however the impact is a result of a development that complies with the height, number of storeys and floorplate control. This is discussed further under Section 11.2 of the report.

- **The pitched roof should be changed to a flat roof**
The proposal incorporates a very low profile roof (with a pitch of 8°). The architect has submitted plans which indicates that a flat roof with a parapet would have a similar bulk and view impact as the proposed low profile pitched roof.
• The floor to ceiling height of the existing ground floor level should be reduced
The proposal is for a first floor addition to the existing ground level. The proposal does not involve any significant works to the existing ground floor level and it is not considered to be reasonable or within the scope of the proposed works, to reduce the floor to ceiling height of the existing ground floor level.

• Northern side setback
The northern elevation attains a side setback of 1.2m – 2.5m. The northern elevation is setback 3.3m – 5.9m from 2/17 Gladwood Gardens which is considered to provide an adequate separation distance. This is discussed further under Section 11.2 of the report.

• The balcony should be reduced in depth by 0.6m
The proposed balcony is setback 3.5m behind the balcony at 2/17 Gladwood Gardens and is screened on both sides by 1.8m high privacy screens. It is not considered that a reduction to the depth of the balcony will result in any significant privacy benefits for the neighbouring properties.

• The balcony extends beyond the neighbouring properties
If a line is drawn between the rear alignment of 17 and 21 Gladwood Gardens, it is evident that the proposed balcony does not extend beyond the rear setback pattern of the neighbouring properties.

• There should be no new vegetation which affects the neighbouring properties
The proposal does not involve planting any new landscaping.

• External access to the upper level will have privacy impacts to Unit 2, 17 Gladwood
The second bedroom at 2/17 Gardens is setback 3.7m behind the proposed front entrance and access stairs. The proposed stairs are not directly aligned with the neighbouring property and would not result in any adverse privacy impacts.

• Sydney Water concerns
Sydney Water has identified that a concrete lined stormwater tunnel runs under the proposed development. Subject to Condition C.7, requiring approval from Sydney Water, the proposed works are considered to be acceptable.

7.2. Statutory Declaration
The applicant has completed the statutory declaration dated 20/01/2016 declaring that the site notice for DA596/2015/1 was erected and maintained during the notification period in accordance with Chapter A2.3.5 of the Woollahra DCP 2015.

7.3. Renotification
The amended plans were not renotified to surrounding residents and previous objectors under Chapters A2.4 and A2.8 of the Woollahra DCP 2015 because it was considered to have no greater cumulative environmental or amenity impact.

8. STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004
SEPP (Building Sustainability Index: BASIX) 2004 applies to the proposed development. It relates to commitments within the proposed development in relation to thermal comfort, water conservation and energy efficiency sustainability measures.
The development application was accompanied by BASIX Certificate A235568 demonstrating compliance with the SEPP. These requirements are addressed by conditions.

9. SYDNEY REGIONAL ENVIRONMENTAL PLAN (SYDNEY HARBOUR CATCHMENT) 2005

The provisions of Clauses 13, 25 and 26 of SREP (Sydney Harbour Catchment) 2005 and the accompanying DCP for SREP (Sydney Harbour Catchment) 2005 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 subject site has an immediate frontage to Sydney Harbour and the building will be readily visible from Sydney Harbour. The proposal is considered to be acceptable with regard to the SREP for the following reasons:

- The proposed works are separated from the foreshore by 4.5m – 11.5m and therefore will not have a direct impact on the natural shoreline.
- In the context of the surrounding development, the proposed alterations and additions will achieve an acceptable bulk and scale when viewed from the harbour.
- The form and design of the dwelling is considered to be acceptable given the characteristics of the subject site and the adjoining properties.
- The proposed building materials and low profile roof will not detract from the unique visual quality and character of Sydney Harbour.
- The proposed development will not have a significant adverse impact on public and private views to and from Sydney Harbour. This is discussed further under Section 11.2.

10. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

10.1. Part 1.2: Aims of Plan

The proposal is consistent with the aims in Part 1.2(2) of the Woollahra LEP 2014.

10.2. Land Use Table

The proposal is defined as a detached dwelling-house and is permitted and is consistent with the objectives of the R3 Medium Density Residential zone.

10.3. Part 4.3: Height of Buildings

Part 4.3(2) allows development on the site to a maximum height of 13.5m; however Part 4.3(2A) states that despite 4.3(2) the maximum height of a dwelling house on land in Zone R3 Medium Density Residential is 9.5 metres. As such, the maximum permissible height of development on the site is 9.5m.

<table>
<thead>
<tr>
<th>Maximum Building Height</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>7.3m</td>
<td>8m - 9.5m</td>
<td>9.5m</td>
<td>YES</td>
</tr>
</tbody>
</table>

The proposal complies with the maximum building height prescribed by Part 4.3 of Woollahra LEP 2014. It is also acceptable with regard to the relevant objectives under Part 4.3(1) of Woollahra LEP 2014 in the following manner:
• The height of the proposed dwelling is appropriate in the context of the surrounding
development and is consistent with the desired future character for the precinct.
• 17 Gladwood Gardens attains an RL of 23.51 and 21 Gladwood Gardens attains an RL of
16.58. The proposed development attains a height of RL 17.21 which is generally consistent
with the neighbouring dwelling at 21 Gladwood Gardens.
• The dwelling has been designed with a low profile roof to minimise the view impacts upon
the neighbouring properties. This is discussed further under Section 11.2 of the report.
• The proposal will maintain satisfactory levels of sunlight, privacy and amenity to the
neighbouring properties.
• It is noted that residential flat buildings to a height of 13.5m are permissible on the subject
site.

10.4. Part 4.3A: Exceptions to Building Heights

Part 4.3A limits development in Area D to a maximum height of 7.5m measured from the highest
part of the land at the front of the site. The proposed development is below the 7.5m height plane
and complies with the control.

10.5. Part 5.10 Heritage Conservation

Parts 5.10(4) requires Council to consider the effect of works proposed to an adjacent heritage item.
In accordance with Schedule 5 under WLEP 2014, the neighbouring property at 21 Gladwood
Gardens is identified as a heritage item. Council’s Heritage Officer has reviewed the application at
DARC and has not raised any issues in this regard. It is considered that the separation of the
proposed dwelling from 21 Gladwood Gardens ensures that the development will not detract from
the aesthetic of the heritage item. As such, the proposal is considered to be acceptable with regard
to Part 5.10 of WLEP 2014.

10.6. Part 6.1: Acid Sulfate Soils

Part 6.1 requires Council to consider any potential acid sulfate soil affectation so that it does not
disturb, expose or drain acid sulfate soils and cause environmental damage.

The subject site is within a Class 5 area as specified in the Acid Sulfate Soils Map. However, the
subject works are not likely to lower the water table below 1.0m AHD on any land within 500m of a
Class 1, 2 and 3 land classifications. Accordingly, preliminary assessment is not required and there
is unlikely to be any acid sulfate affectation. It is therefore acceptable with regard to Part 6.1.

10.7. Part 6.3: Flood Planning

Part 6.3 seeks to minimise the flood risk to life and property development, allow development on
land that is compatible, consider projected changes as a result of climate change and avoid
significant adverse impacts on flood behaviour and the environment in flood prone areas.

The proposal is acceptable with regard to Part 6.8 of Woollahra LEP 2014.
10.8. Part 6.4: Foreshore Building Line

Part 6.4 limits development within 12m of the mean high watermark. Development consent must not be granted for development on land within the foreshore area unless the development is for the purposes of the extension or alteration of an existing building that is wholly or partly within the foreshore area.

The proposed balcony encroaches within the 12m foreshore building line. However, this is considered to be acceptable for the following reasons:

- The proposed balcony is considered to be an alteration to the existing building and is therefore permitted under Clause 6.4(2a).
- The balcony is separated from the foreshore by 7.8m – 11m and will not have an impact upon the ecology of the foreshore area.
- It is considered that the form and materials of the proposed addition will not have an impact upon the amenity or aesthetic appearance of the foreshore.

11. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

11.1. Chapter B1: Double Bay Residential Precinct

The proposal satisfies the precinct objectives outlined in Part B1.1.3 of the Woollahra DCP 2015.

The proposal meets the streetscape character and key elements of the precinct and desired future character objectives of the Double Bay precinct, as noted in Part B1.3.2 of the Woollahra DCP 2015.

11.2. Chapter B3: General Development Controls

Part B3.2: Building Envelope

<table>
<thead>
<tr>
<th>Site Area: 803m²</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front Setback</td>
<td>8.3m – 12.8m</td>
<td>8.3m – 12.8m</td>
<td>8.5m – 10.5m</td>
<td>NO (partial)</td>
</tr>
<tr>
<td>Rear Setback</td>
<td>4.3m – 4.6m</td>
<td>5m – 11.1m</td>
<td>7.5m – 11.5m</td>
<td>NO (partial)</td>
</tr>
<tr>
<td>Side Boundary Setbacks (north)</td>
<td>1m</td>
<td>1.2m – 2.5m</td>
<td>1.7m – 1.9m</td>
<td>NO</td>
</tr>
<tr>
<td>Side Boundary Setbacks (south)</td>
<td>2.5m</td>
<td>4m – 8m</td>
<td>1.7m – 1.9m</td>
<td>YES</td>
</tr>
<tr>
<td>Maximum Wall Height</td>
<td>5.4m</td>
<td>6m – 8m</td>
<td>7.2m</td>
<td>NO (partial)</td>
</tr>
<tr>
<td>Inclined Plane From Wall Height</td>
<td>20°</td>
<td>8°</td>
<td>45°</td>
<td>YES</td>
</tr>
</tbody>
</table>

Part 3.2.2: Front Setback

The permissible front setback has been determined with regard to the setback of the neighbouring properties. The proposed front setback is considered to be acceptable for the following reasons:

- The front setback of the first floor addition is consistent with the setback of the existing ground floor level (except for the proposed eaves), and is therefore considered to be appropriate.
- The front setback provides an appropriate transition between the front alignment of the dwellings at 17 and 21 Gladswood Gardens.
- Due to the slope of the land and the pattern of development along the cul-de-sac, the proposed development will not be unduly prominent when viewed from the streetscape.
Part 3.2.3: Side Setbacks

C2 requires a minimum side setback of 1.7m – 1.9m. The proposed side setbacks are considered to be acceptable for the following reasons:

- The northern elevation attains a side setback of 1.2m – 2.5m and involves a partial non-compliance with the control. The northern elevation is setback 3.3m – 5.9m from 2/17 Gladwood Gardens which is considered to provide an adequate separation distance. Furthermore, the subject site is to the south of 2/17 Gladwood Gardens and therefore the non-compliance will not result in any overshadowing.
- The southern elevation attains a setback of 4m – 8m from the boundary which significantly exceeds the requirements of the side setback control. Nevertheless, in response to concerns raised by 21 Gladwood Gardens, the eaves to Bedroom 5 have been reduced in depth by 750mm.
- The proposed side setbacks are considered to achieve adequate separation between the buildings and would not result in an unreasonable sense of enclosure.
- The northern side setback allows for the view corridor from 3/2 Gladwood Gardens to be retained.

Part 3.2.4: Rear Setback

A rear setback of 7.5m – 11.5m is permitted on the subject site. The proposed first floor addition is setback 5m – 11.1m from the rear boundary. This is considered to be acceptable for the following reasons:

- The non-compliance relates to a portion of the rear balcony and is due to the irregular rear boundary line.
- The rear setback of the proposed addition is greater than the rear setback of the existing ground floor level.
- The proposed setback does not have an impact on the existing area of private open space at the rear.
- The proposed dwelling is considered to attain adequate separation from the foreshore.

Part 3.2.5: Wall Height and Inclined Plane

C1 specifies a maximum external wall height of 7.2m with an inclined plane of 45 degrees above this height. The proposal has a wall height of 6m – 8m is considered to be acceptable for the following reasons:

- The non-compliance with the wall height control relates to the rear portion of the addition and can be attributed to the slope of the land. The non-compliance is considered to be acceptable given the floor to ceiling heights of 2.7m and the 8° pitch of the roof.
- The proposal attains a maximum height of 8m – 9.5m. The proposal complies with the 9.5m height control and is below the 7.5m height plane (as required under Part 4.3A of WLEP 2014).
- The proposal incorporates a low profile roof, which complies with the incline plane control.

Conclusion

The proposal is acceptable with regard to the building envelope controls in Part B3.2 of the Woollahra DCP 2015.
Part B3.3: Floorplates

<table>
<thead>
<tr>
<th>Site Area</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>803m²</td>
<td>522m²</td>
<td>527.5m²</td>
<td>YES</td>
</tr>
</tbody>
</table>

The proposal complies with the floorplate control and is considered to achieve an appropriate bulk and scale.

Conclusion

The proposal is therefore acceptable with regard to the floorplate controls in Part B3.3 of the Woollahra DCP 2015.

Part B3.5: Built Form and Context

<table>
<thead>
<tr>
<th>Site Area: 803m²</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solar Access to Open Space of Adjacent Properties</td>
<td>&gt;50% for 2 hours</td>
<td>&gt;50% for 2 hours</td>
<td>50% for 2 hours on 21 June</td>
<td>YES</td>
</tr>
<tr>
<td>Solar Access to Nth Facing Living Areas of Adjacent Properties</td>
<td>&gt;3 hours</td>
<td>&gt;3 hours</td>
<td>3 hours on 21 June</td>
<td>YES</td>
</tr>
</tbody>
</table>

Part 3.5.2: Overshadowing

C1(a) stipulates that sunlight is provided to at least 50% of the main ground level private open space to adjoining properties for a minimum of two hours between 9am and 3pm on June 21.

C1 states that north facing windows to upper level habitable rooms of neighbouring dwellings do not have sunlight reduced to less than 3 hours during the same period.

The proposal is considered to be acceptable for the following reasons:

- The proposal maintains sunlight to more than 50% of the rear yard at 21 Gladswood Gardens, between 12pm - 3pm on 21 June, which complies with the control.
- The proposal does not have an impact on solar access to the north facing habitable room windows and first floor windows at 21 Gladwood Gardens between 9am – 12pm on 21 June, which complies with the control.
- The proposal does not have an impact on solar access to 17 Gladwood Gardens, which is to the north of the subject site.

Part 3.5.3: Public and Private Views

The owners of the following property have raised concerns in relation to loss of views:

- 3/2 Gladswood Gardens
- 6/2 Gladswood Gardens
- 3/534 New South Head Road
- 5/534 New South Head Road
- 6/534 New South Head Road
- 2/17 Gladswood Gardens
Private Views

Objective O5.5.2 encourages ‘view sharing as a means of ensuring equitable access to views from dwellings’ and C5.5.6 requires that new ‘building forms enable a sharing of views with surrounding residences, particularly from the main habitable rooms of surrounding residences.’


The steps are as follows:
1. The assessment of the views affected
2. Consideration from what part of the property views are obtained
3. The extent of the impact; and
4. The reasonableness of the proposal that is causing the impact

1. What is the value of the view?

The Court said: "The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured."

3/2 Gladswood Gardens
3/2 Gladswood Gardens benefits from highly filtered water views of Double Bay, which is largely obscured by trees. This property also benefits from a view corridor of the water and swing moorings obtained between 17 and 19 Gladswood Gardens.

6/2 Gladswood Gardens
6/2 Gladswood Gardens benefits from views of the swing moorings, beach and wharf at Double Bay. The view is partly obscured by trees.

3/534 New South Head Road
3/534 New South Head Road benefits from an outlook towards Darling Point. The water views are currently obscured by trees.

5/534 New South Head Road
5/534 New South Head Road benefits from water views and swimming moorings at Double Bay and district views of Darling Point. The water views are partly obscured by trees.

6/534 New South Head Road
6/534 New South Head Road benefits from view of Double Bay Beach and district views towards Darling Point. The water views are partly obscured by trees.

2/17 Gladswood Gardens
2/17 Gladswood Gardens benefits from panoramic water views of Double Bay beach, the swing moorings and district views towards Darling Point.
2. From what part of the property are views obtained?

The Court said: "The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic."

3/2 Gladwood Gardens
The views are obtained from the living and dining room and the master bedroom.

6/2 Gladwood Gardens
The views are obtained from the sunroom, living room and master bedroom.

3/534 New South Head Road
The views are obtained from the living room, balcony and master bedroom.

5/534 New South Head Road
The views are obtained from the living room, balcony and master bedroom.

6/534 New South Head Road
The views are obtained from the living room window.

2/17 Gladwood Gardens
The views are obtained from the rear balcony, living room and master bedroom. A very oblique outlook is obtained from the ensuite and second bedroom.

3. What is the extent of the impact?

The Court said: "The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating."

3/2 Gladwood Gardens
The proposal will not have an impact on the water view corridor (including swing moorings) obtained from the master bedroom, as shown in the montage below.

The district views of Darling Point (obtained from the living room) will be impacted by the proposal. Given the water views are being retained, it is considered that the proposal has a minor impact on 3/2 Gladwood Gardens.
Existing view from the master bedroom at 3/2 Gladswood Gardens

Photomontage indicating the view corridor maintained from the master bedroom at 3/2 Gladswood Gardens
District view from the living room at 3/2 Gladwood Gardens

6/2 Gladwood Gardens
The photomontage demonstrates that the proposed dwelling will obscure the views of the water, swing moorings and Double Bay beach. District views of Darling Point will be maintained. Overall, it is considered that the proposal will have a severe impact on views from the living room and master bedroom at 6/2 Gladwood Gardens.

Existing view from the living room at 6/2 Gladwood Gardens
Montage indicating the impact on the water views from the living room at 6/2 Gladswood Gardens

The proposal will have an impact on the water view from the master bedroom
**3/534 New South Head Road**
The proposal will not have an impact on the district views towards Darling Point. The owner has advised that the trees obstructing the view are sometimes pruned. Even if the trees were pruned, it is considered that the proposal would not result in an adverse impact on the views from this property.

![View from the living room and balcony at 3/534 New South Head Road](image)

**5/534 New South Head Road**
The proposal will not have an impact on the views of the water, swing moorings and the district views towards Darling Point. The owner has advised that the trees obstructing the view are sometimes pruned. Even if the trees were pruned, it is considered that the proposal would not have an adverse impact on the views from this property.

![View from the living room and balcony at 5/534 New South Head Road](image)
6/534 New South Head Road
The proposal will not have an impact on the views towards Double Bay Beach and the district views of Darling Point. The owner has advised that the trees obstructing the view are sometimes pruned. Even if the trees were pruned, it is considered that the proposal would not have an adverse impact on the views from this property.

Montage indicating views from the living room at 6/534 New South Head Road

2/17 Gladswood Gardens
The proposal will not have an impact upon the panoramic water views and district views obtained from the rear balcony, living room and master bedroom. The proposal will have some impact on the oblique side outlook from the ensuite and second bedroom. Overall, the proposed development will have a negligible impact on views to this property.

Panoramic views from the balcony at 2/17 Gladswood Gardens
4. What is the reasonableness of the proposal that is causing the impact?

The Court said: "The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

The Court poses two questions in Tenacity Consulting v Warringah (2004) NSWLEC 140 (paragraphs 23-33). The first question relates to whether a non-compliance with one or more planning controls results in view loss. The second question posed by the Court relates to whether a more skilful design could provide the same development potential whilst reducing the impact on views.

The following comments are made with regard to the reasonableness of the proposal:

- The proposed first floor addition attains a height of 8m – 9.5m, which complies with the maximum height control.
- The height of the addition has been minimised as much as possible, by incorporating a low profile roof (with a pitch of 8°). The architect has submitted plans which indicate that a flat roof with a parapet would have a similar bulk and view impact as the proposed low profile pitched roof.
- The proposed development attains a height of RL 17.21, which is reasonable given that 17 Gladwood Gardens attains an RL of 23.51 and 21 Gladwood Gardens attains an RL of 16.58.
- The proposed dwelling has a height of two storeys which is considered to be reasonable.
- The proposal complies with the maximum floorplate control, which indicates that the bulk of the development is appropriate.
- The proposal will have a negligible/minor impact on the views obtained from 3/2 Gladwood Gardens, 2/17 Gladwood Gardens and Units 3, 4 and 6 at 534 New South Head Road.
- While the proposal has a severe impact on views from 6/2 Gladwood Gardens, the impact is a result of a development that complies with the height, number of storeys and floorplate control.
- Whilst not applicable to this assessment, it is noted that the subject site is located within a R3 zone where RFB’s are permissible. The applicable development standards for an RFB development are a 13.5m height standard with a 7.5m height standard (measured from the highest land on the subject site) and a 1:1 FSR.
The first floor level has floor to ceiling heights of 2.7m which is complies with the control in the DCP and is considered to be reasonable.

Accordingly, the proposal is considered to be satisfactory with regard to the relevant objectives and performance criteria stipulated under Part 5.5 of WRDCP 2003.

Part B3.5.4: Acoustic and Visual Privacy

C1 requires adequate acoustic separation and privacy between dwellings. C4 states that there should not be any sightlines from a habitable room window to a habitable room window in an adjoining property within 9.0m. This can be achieved via window location, layout and separation, screens or translucent glazing to 1.5m sill height. C7 requires that balconies, terraces, decks and roof terraces are suitably screened to prevent direct views into habitable rooms or private open space of adjoining and adjacent dwellings.

The proposal is considered to be acceptable in this regard for the following reasons:

- The southern elevation hall entry windows are separated from 21 Gladwood Gardens by 9m and are therefore acceptable. The southern elevation lounge and bedroom 5 windows are 300mm wide and would not have an adverse impact on the privacy of 21 Gladwood Gardens.
- Condition C.1(a) requires that obscure glazing or privacy louvres to a height of 1.5m to windows W8 and W9 are provided within the northern elevation. The remainder of the northern elevation windows are not aligned with the neighbouring windows at 2/17 Gladwood Gardens and would not result in any adverse privacy impacts.
- A 1.8m high privacy screen is provided along the northern and southern sides of the rear balcony which will prevent any overlooking of the neighbouring properties.
- The proposed balcony is setback 3.5m behind the balcony at 2/17 Gladwood Gardens. Given that the balconies are not aligned and that there is an 8m separation distance between the balconies, the proposed balcony is considered to be acceptable with regard to privacy.

Conclusion

The proposal is therefore considered to be acceptable with regard to the concept of view sharing and Section 5.5 of the Woollahra RDCP 2003.
12. SECTION 94 CONTRIBUTION PLANS

12.1. Section 94A Contributions Plan 2011

In accordance with Schedule 1, a 1% levy applies with the monies being used for a variety of works as outlined in Schedule 2 of the Section 94A Contributions Plan 2011. Refer to Condition C2.

<table>
<thead>
<tr>
<th>Cost of Works</th>
<th>Rate</th>
<th>Contribution Payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>$743,750</td>
<td>1%</td>
<td>$7,437.50</td>
</tr>
</tbody>
</table>

12.2. Application of Contributions

Section 3.5 of the Section 94A Contributions Plan 2005 states:

‘A condition under section 94 of the Act may be imposed on a development consent as an alternative to imposing a condition authorised by this Plan, depending on the nature of the development and the demand for public facilities.’

In this instance, given the increase in the density of the site, Section 94A contributions have been applied. Accordingly, Section 94 contributions are not applicable.

13. APPLICABLE ACTS/REGULATIONS

Not applicable.

14. THE LIKELY IMPACTS OF THE PROPOSAL

All likely impacts have been addressed elsewhere in the report, or are considered to be satisfactory and not warrant further consideration.

15. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

16. THE PUBLIC INTEREST

The proposal is considered to be in the public interest.

17. CONCLUSION

The proposal is acceptable against the relevant considerations under Section 79C.

18. DISCLOSURE STATEMENTS

There have been no disclosure statements regarding political donations or gifts made to any Councillor or to any council employee associated with this development application by the applicant or any person who made a submission.
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. 596/2015/1 for alterations and additions including a new first floor level on land at 19 Gladswood Gardens Double Bay, subject to the following conditions:

A. General Conditions

A.1 Conditions

Consent is granted subject to the following conditions imposed pursuant to section 80 of the Environmental Planning & Assessment Act 1979 (“the Act”) and the provisions of the Environmental Planning and Assessment Regulation 2000 (“the Regulation”) such conditions being reasonable and relevant to the development as assessed pursuant to section 79C of the Act.

Standard Condition: A1 (Autotext AA1)

A.2 Definitions

Unless specified otherwise, words have the same meaning as defined by the Act, the Regulation and the Interpretation Act 1987 as in force at the date of consent.

Applicant means the applicant for this Consent.

Approved Plans mean the plans endorsed by Council referenced by this consent as amended by conditions of this consent.

AS or AS/NZS means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.

BCA means the Building Code of Australia as published by the Australian Building Codes Board as in force at the date of issue of any Construction Certificate.

Council means Woollahra Municipal Council

Court means the Land and Environment Court

Local native plants means species of native plant endemic to Sydney’s eastern suburbs (see the brochure titled “Local Native Plants for Sydney’s Eastern Suburbs published by the Southern Sydney Regional Organisation of Councils).

Stormwater Drainage System means all works, facilities and documentation relating to:

• The collection of stormwater,
• The retention of stormwater,
• The reuse of stormwater,
• The detention of stormwater,
• The controlled release of stormwater; and
• Connections to easements and public stormwater systems.
Owner means the owner of the site and successors in title to the site.

Owner Builder has the same meaning as in the Home Building Act 1989.

PCA means the Principal Certifying Authority under the Act.

Principal Contractor has the same meaning as in the Act or where a principal contractor has not been appointed by the owner of the land being developed Principal Contractor means the owner of the land being developed.

Professional Engineer has the same meaning as in the BCA.

Public Place has the same meaning as in the Local Government Act 1993.

Road has the same meaning as in the Roads Act 1993.

SEE means the final version of the Statement of Environmental Effects lodged by the Applicant.

Site means the land being developed subject to this consent.

WLEP 1995 means Woollahra Local Environmental Plan 1995

WLEP 2014 means Woollahra Local Environmental Plan 2014

Work for the purposes of this consent means:
- the use of land in connection with development,
- the subdivision of land,
- the erection of a building,
- the carrying out of any work,
- the use of any site crane, machine, article, material, or thing,
- the storage of waste, materials, site crane, machine, article, material, or thing,
- the demolition of a building,
- the piling, piering, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- the delivery to or removal from the site of any machine, article, material, or thing, or
- the occupation of the site by any person unless authorised by an occupation certificate.

Note: Interpretation of Conditions - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.

A.3 Approved Plans and supporting documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with the plans and supporting documents listed below as submitted by the Applicant and to which is affixed a Council stamp “Approved DA Plans” unless modified by any following condition. Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.
A.4 Ancillary Aspect of the Development (s80A(2) of the Act)

The owner must procure the repair, replacement or rebuilding of all road pavement, kerb, gutter, footway, footpaths adjoining the site or damaged as a result of work under this consent or as a consequence of work under this consent. Such work must be undertaken to Council's satisfaction in accordance with Council's “Specification for Roadworks, Drainage and Miscellaneous Works” dated February 2012 unless expressly provided otherwise by these conditions at the owner’s expense.

Note: This condition does not affect the principal contractor's or any sub-contractors obligations to protect and preserve public infrastructure from damage or affect their liability for any damage that occurs. Standard Condition: A8 (Autotext AA8)

B. Conditions which must be satisfied prior to the demolition of any building or construction

B.1 Construction Certificate required prior to any demolition

Where demolition is associated with an altered portion of, or an extension to an existing building the demolition of any part of a building is "commencement of erection of building" pursuant to section 81A(2) of the Act. In such circumstance all conditions in Part C and Part D of this consent must be satisfied prior to any demolition work. This includes, but is not limited to, the issue of a Construction Certificate, appointment of a PCA and Notice of Commencement under the Act.


B.2 Identification of Hazardous Material

In accordance with Australian Standard AS2601- ‘The Demolition of Structures’ the owner shall identify all hazardous substances located on the site including asbestos, Polychlorinated biphenyls (PCBs), lead paint, underground storage tanks, chemicals, etc. per Clause 1.6.1 of the Standard. In this regard, prior to the commencement of any work, Council shall be provided with a written report prepared by a suitably qualified competent person detailing;

- all hazardous materials identified on the site;
- the specific location of all hazardous materials identified;
- whether the hazardous materials are to be removed from the site as part of the works to be undertaken; and
safety measures to be put in place.

**Note:** This condition is imposed to protect the health and safety of all persons while works are being undertaken and to ensure all safety measures have been identified and are in place to protect all parties in the immediate vicinity of the site.

Standard Condition: B6

### C. Conditions which must be satisfied prior to the issue of any construction certificate

#### C.1 Modification of details of the development (Section 80A(1)(g) of the Act)

The approved plans and the Construction Certificate plans and specification, required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation, must detail the following amendments:

a) Obscure glazing or privacy louvres must be provided to W8 and W9 (Bedroom 3 and Bedroom 4) to a height of 1.5m above finished floor level.

**Note:** The effect of this condition is that it requires design changes and/or further information to be provided with the Construction Certificate drawings and specifications to address specific issues identified during assessment under section 79C of the Act.

**Note:** Clause 146 of the Regulation prohibits the issue of any Construction Certificate subject to this condition unless the Certifying Authority is satisfied that the condition has been complied with.

**Note:** Clause 145 of the Regulation prohibits the issue of any Construction Certificate that is inconsistent with this consent. Standard Condition: C4 (Autotext CC4)

#### C.2 Payment of Long Service Levy, Security, Contributions 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, subdivision certificate or occupation certificate, as will apply.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Indexed</th>
<th>Council Fee Code</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>LONG SERVICE LEVY</strong> under Building and Construction Industry Long Service Payments Act 1986</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>SECURITY</strong> under section 80A(6) of the Environmental Planning and Assessment Act 1979</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Property Damage Security Deposit -making good any damage caused to any property of the Council</td>
<td>$19,158</td>
<td>No</td>
<td>T115</td>
</tr>
<tr>
<td><strong>DEVELOPMENT LEVY</strong> under Woollahra Section 94A Development Contributions Plan 2011</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Development Levy (Section 94A)</td>
<td>$7,437.50 + Index Amount</td>
<td>Yes, quarterly</td>
<td>T96</td>
</tr>
<tr>
<td><strong>INSPECTION FEES</strong> under Section 608 of the Local Government Act 1993</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Security Administration Fee</td>
<td>$180</td>
<td>No</td>
<td>T16</td>
</tr>
<tr>
<td><strong>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</strong></td>
<td>$26,775.50 plus any relevant indexed amounts and long service levy</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Building and Construction Industry Long Service Payment

The Long Service Levy under Section 34 of the Building and Construction Industry Long Service Payment Act, 1986, must be paid and proof of payment provided to the Certifying Authority prior to the issue of any Construction Certificate. The Levy can be paid directly to the Long Services Payments Corporation or to Council. Further information can be obtained from the Long Service Payments Corporation’s website http://www.lspc.nsw.gov.au/ or the Long Service Payments Corporation on 13 14 41.

How must the payments be made?

Payments must be made by:
- Cash deposit with Council,
- Credit card payment with Council, or
- Bank cheque made payable to Woollahra Municipal Council.

The payment of a security may be made by a bank guarantee where:
- The guarantee is by an Australian bank for the amount of the total outstanding contribution;
- 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 [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable];
- 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;
- The bank guarantee is lodged with the Council prior to the issue of the construction certificate; and
- 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 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 2011 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 adjusted 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 or periodic payment of section 94A levy under the Woollahra Section 94A Development Contributions Plan 2011

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:
- The reasons given;
- Whether any prejudice will be caused to the community deriving benefit from the public facilities;
- Whether any prejudice will be caused to the efficacy and operation of the plan; and
- 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:
- The guarantee is by an Australian bank for the amount of the total outstanding contribution;
- 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 [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable];
- 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;
- The bank guarantee is lodged with the Council prior to the issue of the construction certificate; and
- 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 periodic payment 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.

Standard Condition: C5

C.3 BASIX commitments

The applicant must submit to the Certifying Authority BASIX Certificate No A235568 with any application for a Construction Certificate.

Note: Where there is any proposed change in the BASIX commitments the applicant must submit of a new BASIX Certificate to the Certifying Authority and Council. If any proposed change in the BASIX commitments are inconsistent with development consent (See: Clauses 145 and 146 of the Regulation) the applicant will be required to submit an amended development application to Council pursuant to section 96 of the Act.

All commitments in the BASIX Certificate must be shown on the Construction Certificate plans and specifications prior to the issue of any Construction Certificate.

Note: Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires,"

Standard Condition: C7

C.4 Structural Adequacy of Existing Supporting Structures

A certificate from a professional engineer (Structural Engineer), certifying the adequacy of the existing supporting structure to support the additional loads proposed to be imposed by the development, must be submitted with the Construction Certificate application.

Note: This condition is imposed to ensure that the existing structure is able to support the additional loads proposed.

Standard Condition: C35 (Autotext CC35)

C.5 Professional Engineering Details

The Construction Certificate plans and specifications, required by clause 139 of the Regulation, must include detailed professional engineering plans and/or specifications for all structural, electrical, hydraulic, hydro-geological, geotechnical, mechanical and civil work complying with this consent, approved plans, the statement of environmental effects and supporting documentation.
Detailed professional engineering plans and/or specifications must be submitted to the Certifying Authority with the application for any Construction Certificate.

Note: This does not affect the right of the developer to seek staged Construction Certificates.
Standard Condition: C36

C.6 Stormwater discharge to existing Stormwater Drainage System

The Construction Certificate plans and specifications required by clause 139 of the Regulation, must detail:

a) The location of the existing Stormwater Drainage System including all pipes, inspection openings, surface drains, pits and their discharge location,

b) The state of repair of the existing Stormwater Drainage System,

c) Any remedial works required to upgrade the existing Stormwater Drainage System to comply with the BCA,

d) Any remedial works required to upgrade the existing Stormwater Drainage System crossing the footpath and any new kerb outlets,

e) Any new Stormwater Drainage System complying with the BCA,

f) Interceptor drain(s) at the site boundary to prevent stormwater flows from the site crossing the footpath,

g) Any rainwater tank (See Note Below) required by BASIX commitments including their overflow connection to the Stormwater Drainage System, and

h) General compliance with the Council’s Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management

Where any new Stormwater Drainage System crosses the footpath area within any road, separate approval under section 138 of the Roads Act 1993 must be obtained from Council for those works prior to the issue of any Construction Certificate.

All Stormwater Drainage System work within any road or public place must comply with Woollahra Municipal Council’s Specification for Roadworks, Drainage and Miscellaneous Works dated February 2012.

Note: Clause F1.1 of Volume 1 and Part 3.1.2 of Volume 2 of the BCA provide that stormwater drainage complying with AS/NZS 3500.3 Plumbing and drainage - Part 3: Stormwater drainage is deemed-to-satisfy the BCA. Council’s specifications apply in relation to any works with any road or public place.

Note: The collection, storage and use of rainwater is to be in accordance with Standards Australia HB230-2008 “Rainwater Tank Design and Installation Handbook”.

Note: Stormwater Drainage Systems must not discharge to any Sewer System. It is illegal to connect stormwater pipes and drains to the sewerage system as this can overload the system and cause sewage overflows. See: http://www.sydneywater.com.au/Publications/Factsheets/SewerfixLookingAfterYourSewerPipes


Standard Condition: C49

C.7 Approval from Sydney Water

The building plans must be stamped and approved by Sydney Water before any construction is commenced. Approval is needed because construction/building works may affect Sydney Water’s assets (i.e. Sydney Water has a concrete lined 4572mm (W) x 2438mm (H) stormwater tunnel passing under the proposed development). The following information must be provided to Sydney Water:
• Service Protection Report
• Show the stormwater tunnel alignment on all drawings
• Carry out a dilapidation report of the stormwater tunnel prior to commencement of construction and
• Following completion of the building works to check for potential damage to the tunnel due to the development
• Determine if there is a change in foundation loading associated with the proposed development. If there is no or negligible net change in loading associated with the proposed development then no further work is required.

If there is a change in foundation loading associated with the proposed development then the proponent should provide:
- A Geotechnical Report detailing depth of rock cover over the tunnel
- An assessment of the change in the loading of the proposed development on the tunnel and implications of that change in loading.

D. Conditions which must be satisfied prior to the commencement of any development work

D.1 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

For the purposes of section 80A (11) of the Act, the following conditions are prescribed in relation to a development consent for development that involves any building work:

a) that the work must be carried out in accordance with the requirements of the Building Code of Australia,
b) in the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

a) to the extent to which an exemption is in force under the Home Building Regulation 2004,
b) to the erection of a temporary building.

In this condition, a reference to the BCA is a reference to that code as in force on the date the application for the relevant construction certificate is made.

Note: This condition must be satisfied prior to commencement of any work in relation to the contract of insurance under the Home Building Act 1989. This condition also has effect during the carrying out of all building work with respect to compliance with the Building Code of Australia.

Note: All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.

Standard Condition: D1 (Autotext DD1)

D.2 Security Fencing, Hoarding and Overhead Protection

Security fencing must be provided around the perimeter of the development site, including any additional precautionary measures taken to prevent unauthorised entry to the site at all times during the demolition, excavation and construction period. Security fencing must be the equivalent 1.8m high chain wire as specified in AS 1725.
Where the development site adjoins a public thoroughfare, the common boundary between them must be fenced for its full length with a hoarding, unless the least horizontal distance between the common boundary and the nearest parts of the structure is greater than twice the height of the structure. The hoarding must be constructed of solid materials (chain wire or the like is not acceptable) to a height of not less than 1.8 m adjacent to the thoroughfare.

Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an *overhead protective structure* and the facing facade protected by heavy-duty scaffolding, unless either:

a) The vertical height above footpath level of the structure being demolished is less than 4.0 m; or  
b) The least horizontal distance between footpath and the nearest part of the structure is greater than half the height of the structure.

The overhead structure must consist of a horizontal platform of solid construction and vertical supports, and the platform must:

a) Extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary;  
b) Have a clear height above the footpath of not less than 2.1 m;  
c) Terminate 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than 0.5 m above the platform surface; and  
d) Together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa.
The principal contractor or owner builder must pay all fees associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

The principal contractor or owner builder must ensure that Overhead Protective Structures are installed and maintained in accordance with WorkCover NSW Code of Practice - Overhead Protective Structures, gazetted 16 December 1994, as commenced 20 March 1995. This can be downloaded from: http://www.workcover.nsw.gov.au/formspublications/publications/Pages/WC00017_OverheadProtectiveStructuresCodeofPractice.aspx

Security fencing, hoarding and overhead protective structure must not obstruct access to utilities services including but not limited to man holes, pits, stop valves, fire hydrants or the like.

Note: The principal contractor or owner must allow not less than two (2) weeks from the date of making a hoarding application for determination. Any approval for a hoarding or overhead protection under the Roads Act 1993 will be subject to its own conditions and fees.

Standard Condition: D11 (Autotext DD11)

D.3 Site Signs

The Principal Contractor or owner builder must ensure that the sign/s required by clauses 98A and 227A of the Regulation is/are erected and maintained at all times.

Clause 98A of the Regulation provides:

Erection of signs
• For the purposes of section 80A (11) of the Act, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
• A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  a. showing the name, address and telephone number of the principal certifying authority for the work, and
  b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  c. stating that unauthorised entry to the work site is prohibited.
• Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
• This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
• This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State’s building laws."

Clause 227A of the Regulation provides:

Signs on development sites

If there is a person who is the PCA or the principal contractor for any building work, subdivision work or demolition work authorised to be carried out on a site by a development consent or complying development certificate:

• Each such person MUST ensure that a rigid and durable sign showing the person’s identifying particulars so that they can be read easily by anyone in any public road or other public place adjacent to the site is erected in a prominent position on the site before the commencement of work, and is maintained on the site at all times while this clause applies until the work has been carried out.
**Note:** Clause 227A imposes a penalty exceeding $1,000 if these requirements are not complied with.

**Note:** If Council is appointed as the PCA it will provide the sign to the principal contractor or owner builder who must ensure that the sign is erected and maintained as required by Clause 98A and Clause 227A of the Regulation.

**Standard Condition:** D12 (Autotext DD12)

### D.4 Erosion and Sediment Controls – Installation

The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:

- a) The Soil and Water Management Plan if required under this consent;
- b) “Do it Right On Site, Soil and Water Management for the Construction Industry” published by the Southern Sydney Regional Organisation of Councils, 2001; and

Where there is any conflict The Blue Book takes precedence.


**Note:** The “Do it Right On Site, Soil and Water Management for the Construction Industry” publications can be downloaded free of charge from [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au).

**Note:** A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the Protection of the Environment Operations Act 1997 without any further warning. It is a criminal offence to cause, permit or allow pollution.

**Note:** Section 257 of the Protection of the Environment Operations Act 1997 provides inter alia that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”

**Warning:** Irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of their occupation of the land being developed.

**Standard Condition:** D14 (Autotext DD14)

### D.5 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)

The erection of the building in accordance with this development consent must not be commenced until:

- a) A construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited Certifier, and

- b) The person having the benefit of the development consent has:
  - Appointed a principal certifying authority for the building work, and
  - Notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
c) The principal certifying authority has, no later than 2 days before the building work commences:
   - Notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
   - Notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and

d) The person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
   - Appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
   - Notified the principal certifying authority of any such appointment, and
   - Unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
   - Given at least 2 days’ notice to the council of the person’s intention to commence the erection of the building.

Note: building has the same meaning as in section 4 of the Act and includes part of a building and any structure or part of a structure.

Note: new building has the same meaning as in section 109H of the Act and includes an altered portion of, or an extension to, an existing building.

Note: The commencement of demolition works associated with an altered portion of, or an extension to, an existing building is considered to be the commencement of building work requiring compliance with section 82A(2) of the Act (including the need for a Construction Certificate) prior to any demolition work. See: Over our Dead Body Society Inc v Byron Bay Community Association Inc [2001] NSWLEC 125.

Note: Construction Certificate Application, PCA Service Agreement and Notice of Commencement forms can be downloaded from Council’s website www.woollahra.nsw.gov.au.

Note: It is an offence for any person to carry out the erection of a building in breach of this condition and in breach of section 81A(2) of the Act.

Standard Condition: D15 (Autotext DD15)

D.6 Notification of Home Building Act 1989 requirements

a) For the purposes of section 80A (11) of the Act, the requirements of this condition are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the Home Building Act 1989.

b) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
   - In the case of work for which a principal contractor is required to be appointed:
     - the name and licence number of the principal contractor, and
     - the name of the insurer by which the work is insured under Part 6 of that Act,
   - In the case of work to be done by an owner-builder:
     - the name of the owner-builder, and
     - if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
c) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

d) This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State’s building laws.

Standard Condition: D17 (Autotext DD17)

D.7 Establishment of boundary location, building location and datum

Prior to the commencement of any work the principal contractor or owner builder must ensure that a surveyor registered under the Surveying Act 2002 sets out:

a) The boundaries of the site by permanent marks (including permanent recovery points);

b) The location and level of foundation excavations, footings, walls and slabs by permanent marks, pegs or profiles relative to the boundaries of the land and relative to Australian Height Datum (“AHD”) in compliance with the approved plans;

c) Establishes a permanent datum point (bench mark) within the boundaries of the site relative to AHD; and

d) Provides a copy of a survey report by the registered surveyor detailing, the title boundaries, pegs/profiles, recovery points and bench mark locations as established pursuant to this condition to the PCA.

Note: Where the principal contractor or owner builder notes any discrepancy between the approved development consent and the Construction Certificate, especially in relation to the height, location or external configuration of the building (but not limited to these issues) the principal contractor or owner builder should not proceed until satisfied that the variations as shown are consistent with the consent. Failure to do so may result in a breach of development consent.

Note: On larger developments, or where boundary redefinition is required, the placement of new State Survey Marks as permanent marks should be considered by the registered surveyor.

Standard Condition: D18 (Autotext DD18)

E. Conditions which must be satisfied during any development work

E.1 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

For the purposes of section 80A (11) of the Act, the following condition is prescribed in relation to a development consent for development that involves any building work:

a) That the work must be carried out in accordance with the requirements of the Building Code of Australia,

b) In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:
a) To the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4) of the Regulation, or
b) To the erection of a temporary building.

In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant construction certificate is made.

Note: All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.

Standard Condition: E1 (Autotext EE1)

E.2 Compliance with Australian Standard for Demolition


Standard Condition: E2 (Autotext EE2)

E.3 Requirement to notify about new evidence

Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination, heritage significance, threatened species or other relevant matters must be immediately notified to Council and the Principal Certifying Authority.

Standard Condition: E4 (Autotext EE4)

E.4 Critical Stage Inspections

Critical stage inspections must be called for by the principal contractor or owner builder as required by the PCA, any PCA service agreement, the Act and the Regulation.

Work must not proceed beyond each critical stage until the PCA is satisfied that work is proceeding in accordance with this consent, the Construction Certificate(s) and the Act. Critical stage inspections means the inspections prescribed by the Regulations for the purposes of section 109E(3)(d) of the Act or as required by the PCA and any PCA Service Agreement.

Note: The PCA may require inspections beyond mandatory critical stage inspections in order that the PCA be satisfied that work is proceeding in accordance with this consent.

Note: The PCA may, in addition to inspections, require the submission of Compliance Certificates, survey reports or evidence of suitability in accordance with Part A2.2 of the BCA in relation to any matter relevant to the development.

Standard Condition: E5 (Autotext EE5)

E.5 Hours of Work –Amenity of the neighbourhood

a) No work must take place on any Sunday or public holiday,
b) No work must take place before 7am or after 5pm any weekday,
c) No work must take place before 7am or after 1pm any Saturday,
d) The following work must not take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday;
i) Piling;
ii) Piering;
iii) Rock or concrete cutting, boring or drilling;
iv) Rock breaking;
v) Rock sawing;
vi) Jack hammering; or
vii) Machine excavation,
e) No loading or unloading of material or equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday
f) No operation of any equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday
g) No rock excavation being cutting, boring, drilling, breaking, sawing, jack hammering or bulk excavation of rock, must occur without a 15 minute break every hour.

This condition has been imposed to mitigate the impact of work upon the amenity of the neighbourhood. Impact of work includes, but is not limited to, noise, vibration, dust, odour, traffic and parking impacts.

Note: The use of noise and vibration generating plant and equipment and vehicular traffic, including trucks in particular, significantly degrade the amenity of neighbourhoods and more onerous restrictions apply to these activities. This more invasive work generally occurs during the foundation and bulk excavation stages of development. If you are in doubt as to whether or not a particular activity is considered to be subject to the more onerous requirement (9am to 4pm weekdays and 9am to 1pm Saturdays) please consult with Council.

Note: Each and every breach of this condition by any person may be subject to separate penalty infringement notice or prosecution.

Note: The delivery and removal of plant, equipment and machinery associated with wide loads subject to RTA and Police restrictions on their movement outside the approved hours of work will be considered on a case by case basis.

Note: Compliance with these hours of work does not affect the rights of any person to seek a remedy to offensive noise as defined by the Protection of the Environment Operations Act 1997, the Protection of the Environment Operations (Noise Control) Regulation 2000.


Standard Condition: E6 (Autotext EE6)

E.6 Public Footpaths – Safety, Access and Maintenance

The principal contractor or owner builder and any other person acting with the benefit of this consent must:
a) Not erect or maintain any gate or fence swing out or encroaching upon the road or the footway.
b) Not use the road or footway for the storage of any article, material, matter, waste or thing.
c) Not use the road or footway for any work.
d) Keep the road and footway in good repair free of any trip hazard or obstruction.
e) Not stand any plant and equipment upon the road or footway.
f) Provide a clear safe pedestrian route a minimum of 1.5m wide.
g) Protect street name inlays in the footpath which are not to be removed or damaged during development.
This condition does not apply to the extent that a permit or approval exists under the section 73 of the \textit{Road Transport (Safety and Traffic Management) Act 1999}, section 138 of the \textit{Roads Act 1993} or section 94 of the \textit{Local Government Act 1993} except that at all time compliance is required with:

a) Australian Standard AS 1742 (Set) Manual of uniform traffic control devices and all relevant parts of this set of standards.

b) Australian Road Rules to the extent they are adopted under the \textit{Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999}.

\textbf{Note}: Section 73 of the \textit{Road Transport (Safety and Traffic Management) Act 1999} allows the Police to close any road or road related area to traffic during any temporary obstruction or danger to traffic or for any temporary purpose. Any road closure requires Police approval.

\textbf{Note}: Section 138 of the \textit{Roads Act 1993} provides that a person must not:

\begin{itemize}
  \item erect a structure or carry out a work in, on or over a public road, or
  \item dig up or disturb the surface of a public road, or
  \item remove or interfere with a structure, work or tree on a public road, or
  \item pump water into a public road from any land adjoining the road, or
  \item connect a road (whether public or private) to a classified road, otherwise than with the consent of the appropriate roads authority.
\end{itemize}

\textbf{Note}: Section 68 of the \textit{Local Government Act 1993} provides that a person may carry out certain activities only with the prior approval of the council including:

\begin{itemize}
  \item Part C Management of Waste:
    \begin{itemize}
      \item For fee or reward, transport waste over or under a public place
      \item Place waste in a public place
      \item Place a waste storage container in a public place.”
    \end{itemize}
  \item Part E Public roads:
    \begin{itemize}
      \item Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway
      \item Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.”
      \item Any work in, on or over the Road or Footway requires Council Approval and in the case of classified roads the NSW Roads and Traffic Authority. Road includes that portion of the road uses as a footway.
    \end{itemize}
\end{itemize}

\textbf{Standard Condition: E7 (Autotext EE7)}

\section*{E.7 Maintenance of Environmental Controls}

The \textit{principal contractor} or \textit{owner builder} must ensure that the following monitoring, measures and controls are maintained:

\begin{itemize}
  \item Erosion and sediment controls,
  \item Dust controls,
  \item Dewatering discharges,
  \item Noise controls;
  \item Vibration monitoring and controls;
  \item Ablutions;
\end{itemize}

\textbf{Note}: See \url{http://www.epa.nsw.gov.au/small_business/builders.htm} for additional information.

\textbf{Standard Condition: E11
E.8 Support of adjoining land and buildings

A person must not to do anything on or in relation to the site (the supporting land) that removes the support provided by the supporting land to any other land (the supported land) or building (the supported building).

For the purposes of this condition, supporting land includes the natural surface of the site, the subsoil of the site, any water beneath the site, and any part of the site that has been reclaimed.

**Note:** This condition does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is considered necessary upon any adjoining or supported land by any person the principal contractor or owner builder must obtain:

a. the consent of the owners of such adjoining or supported land to trespass or encroach, or
b. an access order under the Access to Neighbouring Land Act 2000, or
c. an easement under section 88K of the Conveyancing Act 1919, or
d. an easement under section 40 of the Land & Environment Court Act 1979 as appropriate.

**Note:** Section 177 of the Conveyancing Act 1919 creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).

**Note:** Clause 20 of the Roads (General) Regulation 2000 prohibits excavation in the vicinity of roads as follows: “Excavations adjacent to road - A person must not excavate land in the vicinity of a road if the excavation is capable of causing damage to the road (such as by way of subsidence) or to any work or structure on the road.” Separate approval is required under the Roads Act 1993 for any underpinning, shoring, soil anchoring (temporary) or the like within or under any road. Council will not give approval to permanent underpinning, shoring, soil anchoring within or under any road.

**Note:** The encroachment of work or the like is a civil matter of trespass or encroachment and Council does not adjudicate or regulate such trespasses or encroachments except in relation to encroachments upon any road, public place, crown land under Council’s care control or management, or any community or operational land as defined by the Local Government Act 1993.

Standard Condition: E13 (Autotext EE13)

E.9 Placement and use of Skip Bins

The principal contractor or owner builder must ensure that all waste storage containers, including but not limited to skip bins, must be stored within the site unless:

a) Activity Approval has been issued by Council under section 94 of the Local Government Act 1993 to place the waste storage container in a public place, and
b) Where located on the road it is located only in a positions where a vehicle may lawfully park in accordance with the Australian Road Rules to the extent they are adopted under the Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999.

**Note:** Waste storage containers must not be located on the footpath without a site specific activity approval. Where such site specific activity approval is granted a 1.5m wide clear path of travel is maintained free of any trip hazards.

Standard Condition: E21 (Autotext EE21)

E.10 Dust Mitigation

Dust mitigation must be implemented in accordance with “Dust Control - Do it right on site” published by the Southern Sydney Regional Organisation of Councils.

This generally requires:
a) Dust screens to all hoardings and site fences.
b) All stockpiles or loose materials to be covered when not being used.
c) All equipment, where capable, being fitted with dust catchers.
d) All loose materials being placed bags before placing into waste or skip bins.
e) All waste and skip bins being kept covered when not being filled or emptied.
f) The surface of excavation work being kept wet to minimise dust.
g) Landscaping incorporating trees, dense shrubs and grass being implemented as soon as practically possible to minimise dust.

**Note:** “Dust Control - Do it right on site” can be downloaded free of charge from Council’s web site www.woollahra.nsw.gov.au or obtained from Council’s office.

**Note:** Special precautions must be taken when removing asbestos or lead materials from development sites. Additional information can be obtained from www.workcover.nsw.gov.au and www.epa.nsw.gov.au. Other specific conditions and advice may apply.

**Note:** Demolition and construction activities may affect local air quality and contribute to urban air pollution. The causes are dust, smoke and fumes coming from equipment or activities, and airborne chemicals when spraying for pest management. Precautions must be taken to prevent air pollution.

**Standard Condition: E23** (Autotext EE23)

**E.11 Asbestos Removal**

Where hazardous material, including bonded or friable asbestos has been identified in accordance with condition B6 above, and such material must be demolished, disturbed and subsequently removed, all such works must comply with the following criteria:

a) Be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (restricted) Asbestos License,
c) No asbestos products may be reused on the site
d) No asbestos laden skip or bins shall be left in any public place

**Note:** This condition is imposed to protect the health and safety of persons working on the site and the public

**Standard Condition: E39**

**E.12 Classification of Hazardous Waste**

Prior to the exportation of hazardous waste (including hazardous fill or soil) from the site, the waste materials must be classified in accordance with the provision of the Protection of the Environment Operations Act 1997 and the NSW DECC Waste Classification Guidelines, Part1: Classifying Waste (April 2008).

**Note:** This condition is imposed to ensure that where hazardous waste will be removed from a site an Asbestos Licensed contractor can definitively determine where the waste may be legally taken for disposal.

**Standard Condition: E40**

**E.13 Disposal of Asbestos and Hazardous Waste**

Asbestos and hazardous waste, once classified in accordance with condition E 40 above must only be transported to waste facilities licensed to accept asbestos and appropriate classifications of hazardous waste.
Note: This condition is imposed to ensure that asbestos and other Hazardous waste is disposed of lawfully under the Protection of the Environment Operations Act 1997 and relevant EPA requirements.

Standard Condition: E41

E.14 Asbestos Removal Signage

Standard commercially manufactured signs containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm are to be erected in prominent visible positions on the site when asbestos is being removed.

Note: This condition is imposed to ensure awareness of any hazard to the health and safety of persons working on the site and public.

Standard Condition: E42

E.15 Notification of Asbestos Removal

In addition to the requirements for licensed asbestos removalists to give written notice to WorkCover all adjoining properties and those opposite the development site must be notified in writing of the dates and times when asbestos removal is to be conducted. The notification is to identify the licensed asbestos removal contractor and include a contact person for the site together with telephone and facsimile numbers and email addresses.

Note: This condition has been imposed to ensure that local residents are informed and have adequate communication facilitated for incidents of asbestos removal.

Standard Condition: E43

F. Conditions which must be satisfied prior to any occupation or use of the building (Part 4A of the Act and Part 8 Division 3 of the Regulation)

F.1 Occupation Certificate (section 109M of the Act)

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.

Standard Condition: F1 (Autotext FF1)

F.2 Commissioning and Certification of Systems and Works

The principal contractor or owner builder must submit to the satisfaction of the PCA works-as-executed (“WAE”) plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA confirming that the works, as executed and as detailed, comply with the requirement of this consent, the Act, the Regulations, any relevant construction certificate, the BCA and relevant Australian Standards.

Works-as-executed (“WAE”) plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA must include but may not be limited to:

a) Certification from the supervising professional engineer that the requirement of the Geotechnical/Hydrogeological conditions and report recommendations were implemented and satisfied during development work.

b) All flood protection measures.
c) All garage/car park/basement car park, driveways and access ramps comply with Australian Standard AS 2890.1 – “Off-Street car parking.”

d) All stormwater drainage and storage systems.

e) All mechanical ventilation systems.

f) All hydraulic systems.

g) All structural work.

h) All acoustic attenuation work.

i) All waterproofing.

j) Such further matters as the Principal Certifying Authority may require.

**Note:** This condition has been imposed to ensure that systems and works as completed meet development standards as defined by the Act, comply with the BCA, comply with this consent and so that a public record of works as execute is maintained.

**Note:** The PCA may require any number of WAE plans, certificates, or other evidence of suitability as necessary to confirm compliance with the Act, Regulation, Development Standards, BCA, and relevant Australia Standards. As a minimum WAE plans and certification is required for stormwater drainage and detention, mechanical ventilation work, hydraulic services (including but not limited to fire services).

**Note:** The PCA must submit to Council, with any Occupation Certificate, copies of works-as-executed (“WAE”) plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA upon which the PCA has relied in issuing any Occupation Certificate.

Standard Condition: F7 (Autotext FF7)

**G. Conditions which must be satisfied prior to the issue of any Subdivision Certificate**

No applicable conditions.

**H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (s109C(1)(c))**

**H.1 Fulfillment of BASIX commitments – Clause 154B of the Regulation**

All BASIX commitments must be effected in accordance with the BASIX Certificate No. A235568.

**Note:** Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."

Standard Condition: H7 (Autotext HH7)

**H.2 Removal of Ancillary Works and Structures**

The principal contractor or owner must remove from the land and any adjoining public place:

a) The site sign;

b) Ablutions;

c) Hoarding;

d) Scaffolding; and

e) Waste materials, matter, article or thing.

**Note:** This condition has been imposed to ensure that all ancillary matter is removed prior to the issue of the Final Occupation Certificate.

Standard Condition: H12 (Autotext HH12)
I. Conditions which must be satisfied during the ongoing use of the development

I.1 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No. A235568.

Note: This condition affects successors in title with the intent that environmental sustainability measures must be maintained for the life of development under this consent.
Standard Condition: I24

J. Miscellaneous Conditions

No applicable conditions.

K. Advisings

K.1 Criminal Offences – Breach of Development Consent and Environmental laws

Failure to comply with this development consent and any condition of this consent is a criminal offence. Failure to comply with other environmental laws is also a criminal offence.

Where there is any breach Council may without any further warning:

a) Issue Penalty Infringement Notices (On-the-spot fines);
b) Issue notices and orders;
c) Prosecute any person breaching this consent; and/or
d) Seek injunctions/orders before the courts to restrain and remedy any breach.

Warnings as to potential maximum penalties

Maximum Penalties under NSW Environmental Laws include fines up to $1.1 Million and/or custodial sentences for serious offences.

Warning as to enforcement and legal costs

Should Council have to take any action to enforced compliance with this consent or other environmental laws Council’s policy is to seek from the Court appropriate orders requiring the payments of its costs beyond any penalty or remedy the Court may order. This consent and this specific advice will be tendered to the Court when seeking costs orders from the Court where Council is successful in any necessary enforcement action.

Note: The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of the Crimes (Sentencing Procedure) Act 1999, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious. You can obtain further information from the following web sites: [http://www.theshopfront.org/documents/ConvictionsCriminalRecords.pdf](http://www.theshopfront.org/documents/ConvictionsCriminalRecords.pdf) and the Attorney General’s [www.agd.nsw.gov.au](http://www.agd.nsw.gov.au).
Standard Advising: K1 (Autotext KK1)
K.2 Dial before you dig

The principal contractor, owner builder or any person digging may be held financially responsible by the asset owner should they damage underground pipe or cable networks. Minimise your risk and Dial 1100 Before You Dig or visit www.dialbeforeyoudig.com.au.

When you contact Dial Before You Dig you will be sent details of all Dial Before You Dig members who have underground assets in the vicinity of your proposed excavation.

K.3 Commonwealth Disability Discrimination Act 1992 (“DDA”)

The Disability Discrimination Act 1992 (DDA) makes it against the law for public places to be inaccessible to people with a disability. Compliance with this development consent, Council’s Access DCP and the BCA does not necessarily satisfy compliance with the DDA.

The DDA applies to existing places as well as places under construction. Existing places must be modified and be accessible (except where this would involve “unjustifiable hardship”).

Further detailed advice can be obtained from the Human Rights and Equal Opportunity Commission (“HEROC”):


If you have any further questions relating to the application of the DDA you can send an email to HEROC at disabdis@humanrights.gov.au.

K.4 Builder's Licences and Owner Builders Permits

Section 81A of the Act requires among other matters that the person having the benefit of the development consent, if not carrying out the work as an owner-builder, must appointed a principal contractor for residential building work who must be the holder of a contractor licence.

Further information can be obtained from the NSW Office of Fair Trading website about how you obtain an owner builders permit or find a principal contractor (builder): http://www.dft.nsw.gov.au/building.html.

The Owner(s) must appoint the PCA. The PCA must check that Home Building Act insurance is in place before the commencement of building work. The Principal Contractor (Builder) must provide the Owners with a certificate of insurance evidencing the contract of insurance under the Home Building Act 1989 for the residential building work.
K.5 Workcover requirements

The Occupational Health and Safety Act 2000 No 40 and subordinate regulations, codes of practice and guidelines control and regulate the development industry.

Note: Further information can be obtained from Workcover NSW’s website: http://www.workcover.nsw.gov.au/Industry/Construction/default.htm or through their head office:
Location: Workcover NSW, 92-100 Donnison Street, GOSFORD 2250 Postal address: WorkCover NSW, Locked Bag 2906, LISAROW 2252, Phone (02) 4321 5000, Fax (02) 4325 4145.
Standard Condition: K7 (Autotext KK7)

K.6 Lead Paint


Industrial paints may contain lead. Lead is used in some specialised sign-writing and artist paints, and road marking paints, and anti-corrosive paints. Lead was a major ingredient in commercial and residential paints from the late 1800s to 1970. Most Australian commercial buildings and residential homes built before 1970 contain lead paint. These paints were used both inside and outside buildings.

Lead particles are released when old lead paint flakes and peels and collects as dust in ceiling, wall and floor voids. If dust is generated it must be contained. If runoff contains lead particles it must be contained. Lead is extremely hazardous, and stripping of lead-based paint and the disposal of contaminated waste must be carried out with all care. Lead is a cumulative poison and even small levels in the body can have severe effects.

Standard Advising: K9 (Autotext KK9)

K.7 Dividing Fences

The erection of dividing fences under this consent does not affect the provisions of the Dividing Fences Act 1991. Council does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences.

Note: Further information can be obtained from the NSW Department of Lands: http://www.lands.nsw.gov.au/LandManagement/Dividing+Fences.htm. Community Justice Centres provide a free mediation service to the community to help people resolve a wide range of disputes, including dividing fences matters. Their service is free, confidential, voluntary, timely and easy to use. Mediation sessions are conducted by two impartial, trained mediators who help people work together to reach an agreement. Over 85% of mediations result in an agreement being reached. Mediation sessions can be arranged at convenient times during the day, evening or weekends. Contact the Community Justice Centre either by phone on 1800 671 964 or at http://www.cjc.nsw.gov.au/. Standard Advising: K10 (Autotext KK10)

K.8 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 80A of the Act.
The securities will not be released until a Final Occupation Certificate has lodged with Council, Council has inspected the site and Council is satisfied that the public works have been carried out to Council’s requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council’s requirements.

Council will only release the security upon being satisfied that all damage or all works, the purpose for which the security has been held have been remedied or completed to Council’s satisfaction as the case may be.

Council may retain a portion of the security to remedy any defects in any such public work that arise within 6 months after the work is completed.

Upon completion of each section of road, drainage and landscape work to Council's satisfaction, 90% of the Bond monies held by Council for these works will be released upon application. 10% may be retained by Council for a further 6 month period and may be used by Council to repair or rectify any defects or temporary works during the 6 month period.


Standard Condition: K15 (Autotext KK15)

K.9 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Lauren Samuels, Assessment Officer, on (02) 9391 7075.

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, site hearings and the use of Court Appointed Experts, 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 commissioner having the full authority to completely determine the matter at the conference.

Standard Condition: K14 (Autotext KK14)

K.10 Criminal Offences – Breach of Development Consent and Environmental laws

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Standard Advising: K1 (Autotext KK1)

Annexures

1. Plans and Elevations

2. Referral Response - Landscaping
REFERRAL RESPONSE – TREES & LANDSCAPING

FILE NO: DA 596/2015/1
ADDRESS: 19 Gladswood Gardens DOUBLE BAY 2028
PROPOSAL: Alterations and additions including a new first floor level
FROM: Nick Williams - Tree & Landscape Officer
TO: Ms L Samuels

I refer to the following documents received for this report:

- Statement of Environmental Effects, prepared by Boston Blyth Fleming, (not dated).
- Survey Plan No.14984, drafted by Lawrence Group Surveyors, dated 15/7/2015.

A site inspection was carried out on: 1st of April 2016.

Relevant Control:

- Woollahra Local Environment Plan 2014
- Woollahra Residential Development Control Plan 2015
- The comments and recommendations within this Referral Response have taken into consideration the guidelines established within Australian Standard AS 4373 – Pruning of amenity trees and Australian Standard AS 4970 – Protection of trees on development sites

SUMMARY

- Ensure Condition E.1 and Advising K.1 of this referral response forms part of any development consent.
- No impact to existing trees and vegetation envisaged.

RECOMMENDATIONS

Council’s Tree and Landscape Officer has determined that the development proposal is satisfactory in terms of tree preservation and landscaping, subject to compliance with the following Conditions of Consent.

CONDITIONS OF CONSENT

Please note that the standard conditions of consent are generally modified by the Technical Services Department to suit a particular development application. Please ensure all Technical...
Services conditions of consent are cut and pasted from this document only, and not inserted as standard conditions using the automatically generated (F3) function

A. General Conditions

Nil

B. Conditions which must be satisfied prior to the demolition of any building or construction

Nil

C. Conditions which must be satisfied prior to the issue of any construction certificate

Nil

D. Conditions which must be satisfied prior to the commencement of any development work

Nil

E. Conditions which must be satisfied during any development work

E.1 Tree Preservation

All persons must comply with Council’s Development Control Plan (DCP) 2015, Tree Management Chapter E3 other than where varied by this consent. The DCP applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.

General Protection Requirements

a) Excavation must cease where tree roots with a diameter exceeding 30mm are exposed. The principal contractor must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.

b) Where there is damage to any part of a tree the principal contractor must procure an inspection of the tree by a qualified arborist immediately. The principal contractor must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.

Note: Trees must be pruned in accordance with Australian Standard AS 4373 “Pruning of Amenity Trees” and WorkCover NSW Code of Practice Amenity Tree Industry.

F. Conditions which must be satisfied prior to any occupation or use of the building (Part 4A of the Act and Part 8 Division 3 of the Regulation)

Nil

G. Conditions which must be satisfied prior to the issue of any Subdivision Certificate

Nil
H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (s109C(1)(c))

Nil

I. Conditions which must be satisfied during the ongoing use of the development

Nil

J. Miscellaneous Conditions

Nil

K. Advisings

K.1 Pruning or Removing a Tree Growing on Private Property

Woollahra Municipal Council’s Development Control Plan (DCP) 2015, Tree Management Chapter E3 may require that an application be made to Council prior to pruning or removing any tree. The aim is to secure the amenity of trees and preserve the existing landscape within our urban environment.

Before you prune or remove a tree, make sure you read all relevant conditions. You can obtain a copy of the DCP from Council’s website www.woollahra.nsw.gov.au or you may contact Council on 9391-7000 for further advice.

Nick Williams
Tree Management Officer
## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<table>
<thead>
<tr>
<th>ITEM No.</th>
<th>D3</th>
</tr>
</thead>
<tbody>
<tr>
<td>FILE No.</td>
<td>DA669/2015/1</td>
</tr>
<tr>
<td>ADDRESS</td>
<td>172 Paddington Street PADDINGTON</td>
</tr>
<tr>
<td>SITE AREA</td>
<td>150.3m²</td>
</tr>
<tr>
<td>ZONING</td>
<td>R2 Low Density Residential</td>
</tr>
<tr>
<td>PROPOSAL</td>
<td>Alterations &amp; additions to existing dwelling including enlarged basement area; new swimming pool and associated landscaping; new loft over existing garage and new attic level with rear dormer window and skylight</td>
</tr>
<tr>
<td>TYPE OF CONSENT</td>
<td>Local development</td>
</tr>
<tr>
<td>COST OF WORKS</td>
<td>$300,000.00</td>
</tr>
<tr>
<td>DATE LODGED</td>
<td>24/12/2015</td>
</tr>
<tr>
<td>APPLICANT</td>
<td>Mrs K E Cooke &amp; Mr A L Cooke</td>
</tr>
<tr>
<td>OWNER</td>
<td>Mr A L &amp; Mrs K E Cooke</td>
</tr>
<tr>
<td>AUTHOR</td>
<td>Mr T Wong</td>
</tr>
<tr>
<td>TEAM LEADER</td>
<td>George Fotis</td>
</tr>
<tr>
<td>SUBMISSIONS</td>
<td>Two</td>
</tr>
<tr>
<td>RECOMMENDATION</td>
<td>Conditional Approval</td>
</tr>
</tbody>
</table>

### SUMMARY

1. LOCALITY PLAN

![Map of the subject site and objectors with north orientation](image)
2. **LEVEL OF DELEGATION**

The application is referred to the Development Control Committee as it involves a departure of more than 10% with the statutory building height development standard.

*Note:* The existing overall ridge height of the building will remain unchanged (*pre-existing height).*

3. **PROPOSAL**

The proposal involves the following works:

Lower ground floor
- Excavation to the existing lower ground floor level within the existing building footprint
- New laundry, new bathroom and new rumpus with a new internal staircase to the ground floor
- New a/c condenser unit

Ground floor
- Rear ground floor (existing rear wing) boundary-to-boundary extension enclosing the existing side breezeway with a glazed roof
- New external staircase from the rear yard on the lower ground floor to the existing rear roof terrace

First floor
- New internal staircase to the proposed attic

Attic floor (new)
- A new attic floor with a rear facing dormer

External
- A new loft above the existing garage
- A new pool, grass turf and garden planters

On 7th April 2016, details clarifying the species of the proposed replacement tree in the rear yard were submitted to Council.

4. **ISSUES**

4.1. **Exceptions to Development Standards in Woollahra Local Environmental Plan 2014**

<table>
<thead>
<tr>
<th>Clause</th>
<th>Development Standard</th>
<th>Departure from Control</th>
<th>Conclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part 4.3</td>
<td>Height of Buildings</td>
<td>1.9m or 20% departure from the 9.5m control</td>
<td>Acceptable</td>
</tr>
</tbody>
</table>

4.2. **Primary Issues**

<table>
<thead>
<tr>
<th>Issue</th>
<th>Conclusion</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building height non-compliance</td>
<td>Acceptable</td>
<td>11.4</td>
</tr>
<tr>
<td>Excavation setback</td>
<td><strong>Condition C.1(a) has been recommended requiring the proposed excavation under the principal building to be set back 200mm from the front and side boundary walls at the lower ground floor of the building. The extent of excavation for the proposed pool is considered to be acceptable.</strong></td>
<td>12.1.7</td>
</tr>
<tr>
<td>Loft window –</td>
<td>Acceptable, subject to <strong>Condition C.1(c)</strong></td>
<td>12.1.10 &amp;</td>
</tr>
</tbody>
</table>
## 4.3. Summary of Submissions

<table>
<thead>
<tr>
<th>Issue</th>
<th>Conclusion</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>visual privacy</td>
<td>Acceptable, subject to Condition C.1(b)</td>
<td>12.1.16</td>
</tr>
<tr>
<td>Detail of rear dormer</td>
<td>Acceptable, subject to Condition C.1(d)</td>
<td>12.1.17 &amp; 12.1.18</td>
</tr>
<tr>
<td>Material and finishes details</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>4.3. Summary of Submissions</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Issue</strong></td>
<td><strong>Conclusion</strong></td>
<td><strong>Section</strong></td>
</tr>
<tr>
<td>Loft window – visual privacy</td>
<td>Acceptable, subject to Condition C.1(c)</td>
<td>12.1.10 &amp; 12.1.16</td>
</tr>
<tr>
<td>Loss of acoustic privacy due to the noise form the A/C condenser unit and pool equipment</td>
<td>Acceptable, subject to Condition I.3 and I.5</td>
<td>12.1.10</td>
</tr>
<tr>
<td>Dilapidation report and engineering assessment should be required due to the proposed excavation</td>
<td>A Geotechnical Report and detailed structural drawings have been provided in support of the proposed excavation. Council’s Development Engineer considers the proposed excavation acceptable and recommended relevant conditions including Condition D.2 which requires Dilapidation reports for Nos. 170 and 176 Paddington Street</td>
<td>11.8 &amp; 12.1.7</td>
</tr>
<tr>
<td>Inadequate excavation setback</td>
<td>Condition C.1(a) has been recommended requiring the proposed excavation under the principal building to be set back 200mm from the front and side boundary walls at the lower ground floor of the building. The extent of excavation for the proposed pool is considered to be acceptable.</td>
<td>12.1.7</td>
</tr>
<tr>
<td>The proposed pool will require the removal of an existing tree and will result in inadequate deep soil landscaping area</td>
<td>This has been discussed in Sections 12.1.8 and 12.1.19. The proposed tree to be removed will be replaced with a new tree which is considered to be acceptable by Council’s Tree &amp; Landscape Officer. The proposal will provide adequate deep soil landscaping area for the subject site in accordance with the requirements of WDCP 2015.</td>
<td>12.1.8 &amp; 12.1.19</td>
</tr>
<tr>
<td>The subject site is too narrow for the proposed loft and will cause overshadowing</td>
<td>This has been discussed in Section 12.1.16. Notwithstanding the minor non-compliance with the required site width by 0.565m, the height, bulk, scale and form of the proposed loft is modest and compatible with other existing loft structures along Paddington Lane. Furthermore, the proposed loft structure will maintain adequate solar access to the private open space of the adjoining properties in accordance with Council’s solar access requirements.</td>
<td>12.1.15 &amp; 12.1.16</td>
</tr>
<tr>
<td>The proposed double sash window of the loft to the SW gable end does not comply with the DCP’s control</td>
<td>This is acknowledged. Condition C.1(c) has been recommended resulting in compliance with the relevant control in WDCP 2015.</td>
<td>12.1.16</td>
</tr>
<tr>
<td>Visual impact – the large area of glass proposed to the kitchen door opening onto the existing roof terrace.</td>
<td>This has been discussed in Section 12.1.13. The proposed bi-fold doors relate to parts of the building which have been altered and are not visible from the public domain. They will have no adverse impact to the visual appearance of the Victorian terrace.</td>
<td>12.1.13</td>
</tr>
<tr>
<td>Loss of privacy due to the proposed new external stairs between the lower ground floor rear courtyard and the existing ground floor roof terrace</td>
<td>This has been discussed in Section 12.1.10. The proposed stairs are not considered to create unacceptable privacy impact.</td>
<td>12.1.10</td>
</tr>
</tbody>
</table>
PROPERTY DETAILS AND REFERRALS

5. SITE AND LOCALITY

<table>
<thead>
<tr>
<th>Physical features</th>
<th>The subject site is located on the north-eastern side of Paddington Street, Paddington. It has dual frontages upon Paddington Street and Paddington Lane. The site is rectangular in shape and has a site area of 150.3m² with a frontage width of 4.6m and a length of 32.48m respectively.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Topography</td>
<td>The site falls from the front towards the rear.</td>
</tr>
<tr>
<td>Existing buildings and structures</td>
<td>Currently on the site is a two storey (with basement/lower ground floor) terrace house with a rear single storey garage accessible from the rear lane (Paddington Lane).</td>
</tr>
<tr>
<td>Surrounding Environment</td>
<td>The surrounding environment is dominated by traditional Victorian terrace row houses.</td>
</tr>
</tbody>
</table>
6. RELEVANT PROPERTY HISTORY

<table>
<thead>
<tr>
<th>Current use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Relevant Application History</th>
</tr>
</thead>
<tbody>
<tr>
<td>No relevant history</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Relevant Compliance History</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nil</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Pre-DA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nil</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Requests for Additional Information and Replacement Applications</th>
</tr>
</thead>
<tbody>
<tr>
<td>Details clarifying the species of the proposed replacement tree in the rear yard area were submitted to Council on the 7/4/2016.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Land and Environment Court Appeal(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nil</td>
</tr>
</tbody>
</table>

7. REFERRALS

<table>
<thead>
<tr>
<th>Referral</th>
<th>Summary of Referral Response</th>
<th>Annexure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technical Services</td>
<td>Satisfactory subject to Condition A.4, B.3, C.4 – C.8, D.2-D.4, E.8-E.12, F.2 and K.14</td>
<td>2</td>
</tr>
<tr>
<td>Trees and Landscaping</td>
<td>Satisfactory subject to Condition A.3, E.25 and E.26</td>
<td>3</td>
</tr>
<tr>
<td>Heritage</td>
<td>Satisfactory subject to Condition C.1</td>
<td>4</td>
</tr>
</tbody>
</table>

ENVIRONMENTAL ASSESSMENT UNDER SECTION 79C

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979 include the following:

1. The provisions of any environmental planning instrument
2. The provisions of any proposed instrument that is/has been the subject of public consultation
3. The provisions of any development control plan
4. Any planning agreement that has been entered into
5. Any draft planning agreement that a developer has offered to enter into
6. The regulations
7. Any coastal zone management plan
8. The likely impacts of that development:
   i) Environmental impacts on the natural and built environments
   ii) Social and economic impacts
9. The suitability of the site
10. Any submissions
11. The public interest

8. ADVERTISING AND NOTIFICATION

8.1. Submissions

The application was advertised and notified from 13/1/2016 to 27/1/2016 in accordance with Chapters A2.2.1, A2.3.1 and A2.8 of the Woollahra DCP 2015. Submissions were received from:

1. William and Ann Andrews from No. 170 Paddington Street
2. The Paddington Society
The issues raised have been considered under Section 4.3 in this report above and discussed in detail under the relevant headings under Sections 11 and 12 in this report below.

8.2. Statutory Declaration

The applicant has completed the statutory declaration dated 10/2/2016 declaring that the site notice for DA669/2015/1 was erected and maintained during the notification period in accordance with Chapter A2.3.5 of the Woollahra DCP 2015.

9. STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

SEPP (Building Sustainability Index: BASIX) 2004 applies to the proposed development. It relates to commitments within the proposed development in relation to thermal comfort, water conservation and energy efficiency sustainability measures.

The development application was accompanied by BASIX Certificate A238188 demonstrating compliance with the SEPP. These requirements are imposed in Conditions C.3, H.1 and I.1.

10. SYDNEY REGIONAL ENVIRONMENTAL PLAN (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.

11. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

11.1. Part 1.2: Aims of Plan

The proposal is consistent with the aims in Part 1.2(2) of the Woollahra LEP 2014.

11.2. Land Use Table

The proposal is defined as Attached dwelling and is permitted and is consistent with the objectives of the R2 Low Density Residential zone.

11.3. Part 4.3: Height of Buildings

Part 4.3 limits development to a maximum height of 9.5m.

<table>
<thead>
<tr>
<th>Maximum Building Height</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
</table>
|                         | 12m (Chimney)  
11.1m (ridge, RL73.66) | 11.4m (dormer ridge, RL73.36) | 9.5m | NO* |

* The applicant has provided a written request under Part 4.6 of the WLEP 2014 to justify the contravention of the development standard

The proposal does not comply with Part 4.3 of Woollahra LEP 2014 as detailed and assessed in Part 4.6.
11.4. Part 4.6: Exceptions to Development Standards

11.4.1 Departure

The proposal involves a non-compliance with the height of building statutory control under Part 4.3 of the Woollahra LEP 2014, as detailed in Section 11.3.

11.4.2 Purpose

Part 4.6 allows a contravention of a development standard with the objectives being to allow an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

11.4.3 Written Request

Part 4.6(3) stipulates that a written request is required from the applicant that justifies the contravention of the development standard by demonstrating that compliance with is unreasonable or unnecessary and there are sufficient environmental planning grounds to justify the contravention.

The applicant has provided the following written request in relation to the departure:

*The non-compliance occurs within the existing roof space and therefore the proposed attic and rear dormer window; the existing roof ridge height (RL73.66) results in a maximum breach of 1.63 metres to the ridge.*

*Although the existing roof space and proposed attic would technically exceed the maximum Building Height control, the development would satisfy the objectives outlined in the LEP, specifically:*

4.3(1) (a) - The existing terrace roof form and proposed rear dormer window is in keeping with the scale and building heights along the adjoining terrace row. Although the proposed dormer window roof also breaches the height control, it cannot be viewed from Paddington Lane at the rear of the subject site. It is considered that the proposed development height is appropriate to the conditions of the subject site and the desired future character of the local neighbourhood.

4.3(1) (b) - The proposed rear dormer window addition respects the current building scale and height transitions along the terrace row on this side of Paddington Street.

4.3(1) (c) - The proposed development will not reduce solar access to adjoining and neighbouring buildings or their private open spaces.

4.3(1) (d) - The proposed rear dormer window addition would have no adverse impact on existing views from adjoining or neighbouring properties. The proposed development will not alter or adversely impact on the current level of visual and acoustic privacy, nor create adverse overshadowing or visual intrusion to neighbouring properties.
4.3(1) (e) - The current amenity of the adjoining public domain and local streetscape will be preserved and all existing public views of the harbour and surrounding areas will not be altered or adversely impacted by the proposed development. It is recommended that Council support the breach of the maximum building height, as full compliance in this instance would be unreasonable and unnecessary.

11.4.4 Assessment

Part 4.6(4) requires Council to be satisfied that the written request has adequately addressed the relevant matters, the proposed development will be in the public interest because it is consistent with the relevant objectives of the particular standard and zone and the concurrence of the Director-General has been obtained.

The applicant’s written request has adequately addressed the relevant matters.

The departure from the standard is in the public interest in the following manner:

- The objectives of the Clause 4.3 Height of buildings development standard have been satisfied.
- The objectives of the R2 Low Density Residential zone have been satisfied.

The development is consistent with the objectives applying to the Height of buildings development standard as follows:

(a) To establish building heights that are consistent with the desired future character of the neighbourhood

Assessment: The existing terrace house exceeds the building height development standard. The proposed works which will exceed the 9.5m development standard are the proposed dormer to the new attic floor and will not increase the ridge height of the existing building which is consistent with the character of the neighbourhood and achieves consistency with objective (a).

(b) To establish a transition in scale between zones to protect local amenity

Assessment: The subject site is within the R2 Low Density Residential zone and does not adjoin any other zone. There is no impact in terms of transition in scale between zones.

(c) To minimise the loss of solar access to existing buildings and open space

Assessment: The proposal will not result in any loss of solar access to existing buildings and open spaces and will achieve consistency with objective (c).

(d) To minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion

Assessment: The proposal will not result in any adverse amenity impacts to adjoining or nearby properties in terms of views, loss of privacy, overshadowing or visual intrusion and will achieve consistency with objective (d).
(e) To protect the amenity of the public domain by providing public views of the harbour and surrounding areas

Assessment: The proposal will not result in any adverse amenity impacts to the public domain or views from public areas and will achieve consistency with objective (e).

The development is also consistent with the objectives applying to the R2 zone as follows:

- **To provide for the housing needs of the community within a low density residential environment**

  Assessment: The proposal has no impact to the housing need and achieves consistency with this objective.

- **To enable other land uses that provide facilities or services to meet the day to day needs of residents**

  Assessment: The proposal has no impact to other land uses and achieves consistency with this objective.

- **To provide for development that is compatible with the character and amenity of the surrounding neighbourhood**

  Assessment: The proposal is compatible with the character and amenity of the surrounding neighbourhood and achieves consistency with this objective.

- **To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood**

  Assessment: The proposal has no impact to the height and scale of the existing building and achieves consistency with this objective.

The Clause 4.6 variation request is considered to be well founded as the proposal demonstrates the following:

- Compliance with the building height development standard would be unreasonable and unnecessary in the circumstances as the existing building already exceeds the development standard and the proposed works will not further exceed the existing ridge height;
- There are sufficient environmental planning grounds to justify the contravention;
- The development meets the objectives of the development standards and the objectives of the R2 Low Density Residential zone, notwithstanding the variation;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard in this instance;
- The proposed variation will not hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and
- The contravention does not raise any matter of State or Regional Significance.

**11.4.5 Conclusion**

The proposal is in the public interest and consistent with the objectives of the height of building development standard. Departure from the control is supported.
11.5. Part 5.9: Preservation of Trees or Vegetation

Part 5.9(1) seeks to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation where there are works to any tree or other vegetation.

The proposed tree to be removed and its substitution with a replacement tree is considered to be acceptable by Council’s Tree Officer.

The proposal is acceptable with regard to Part 5.9 of the Woollahra LEP 2014.

11.6. Part 5.10: Heritage Conservation

Parts 5.10(2) and 5.10(4) require Council to consider the effect of works proposed to a heritage item, building, work, relic or tree, within a heritage conservation area or new buildings or subdivision in a conservation area or where a heritage item is located.

The proposed development is located in the Paddington Heritage Conservation Area. It is acceptable with regard to the objectives in Parts 5.10 of the Woollahra LEP 2014.

11.7. Part 6.1: Acid Sulfate Soils

Part 6.1 requires Council to consider any potential acid sulfate soil affectation so that it does not disturb, expose or drain acid sulfate soils and cause environmental damage.

The subject site is within a Class 5 area as specified in the Acid Sulfate Soils Map. However, the subject works are not likely to lower the water table below 1.0m AHD on any land within 500m of a Class 1, 2 and 3 land classifications. Accordingly, preliminary assessment is not required and there is unlikely to be any acid sulfate affectation. It is therefore acceptable with regard to Part 6.1.

11.8. Part 6.2: Earthworks

Part 6.2(1) requires Council to ensure that any earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The proposal involves excavation of the existing lower ground floor level (including the sub-floor) to accommodate a new laundry, bathroom and rumpus. The average depth of excavation to this level will be approximately 0.7m. As for the proposed new pool, a maximum depth of 2m is proposed and will be located hard up against the south-eastern side boundary. Overall, a total of approximately 16.65m$^3$ of excavation is proposed.

The geotechnical report indicates the subsurface conditions as:

a) Fill to depth of 0.8m
b) Silty sand to depth of 1m.

In terms of ESD principles, the extent of soil being removed from the site is considered to be acceptable.

The extent and siting of excavation is discussed having regard to the following:
(a) The likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development.

(c) The quality of the fill or the soil to be excavated, or both.

(e) The source of any fill material and the destination of any excavated material.

(g) The proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area.

The extent of the proposed excavation is not considered to be excessive and will not unreasonably impact on the natural drainage patterns and soil stability of the locality. The site is not within a close proximity to an environmentally sensitive area.

Council’s Development Engineer considers the proposed excavation acceptable subject to Conditions A2, C5, C6, C7, D2, D3, D4, E3, E7, E8, E9, E10, E11, E12, F2, and K14. The conditions include requirements for engineering details, structural adequacy and support, geotechnical/hydrogeological design, dilapidation reports and construction management.

(b) The effect of the development on the likely future use or redevelopment of the land.

The proposed excavation will not adversely affect the likely future use or redevelopment of the land.

(d) The effect of the development on the existing and likely amenity of adjoining properties.

(h) Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Detailed section drawings have been provided by ACOR Consultants Pty Ltd showing structural details for the new addition and its relationship to the existing adjoining structures.

The maintenance of the amenity of the adjoining properties terms of minimising noise, vibration and dust is addressed by Conditions A2, C5, C6, C7, D2, D3, D4, E3, E7, E8, E9, E10, E11, E12, F2, and K14 requiring professional engineering details of all geotechnical work, geotechnical and hydrogeological design, certification and monitoring, dilapidation reports for adjoining properties, support for adjoining buildings founded on loose foundations, structural support for adjoining land and buildings, hours of work and maintenance of environmental controls, compliance with geotechnical/hydrogeological monitoring program, vibration monitoring and dust mitigation.

Furthermore, Condition C.1(a) has been recommended requiring the proposed excavation to be set back from the front wall and side boundary walls in order to comply with the WDCP’s controls.

(f) The likelihood of disturbing relics.

Condition E3 is recommended requiring any new evidence which is discovered during the works be immediately notified to Council and the Principal Certifying Authority.

The proposal is therefore acceptable with regard to Part 6.2 of the Woollahra LEP 2014.
12. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

12.1. Chapter C1: Paddington Heritage Conservation Area

12.1.1 Section C1.3.4: Multi-Storey Terrace Style Housing

The proposal will achieve objectives O1, O2, O4, O5 in the following ways:

O1: To retain and conserve the principal building forms of rows and groups of terraces. –

- The proposal involves minor works to the principal building form.

O2: To retain significant rear and side forms. –

O4: To retain the shared distinctive characteristics of groups of buildings. –

O5: To retain, restore and promote the significance, contribution and relationship of a building within the context of a group of buildings. –

- The subject dwelling and its group have been altered at the rear. The proposed alterations retain the distinctive characteristics of the rear elevation at the upper levels. The proposed additions are sympathetic to the relationship of the group.

12.1.2 Section C1.4.1: Principal Building Form and Street Front Zone of Contributory Buildings

The proposal will comply with controls C1, C3, C7, C8, C9 and will achieve the relevant objectives O1, O4, O6, O7, O8, O9:, O10, O11, O12 in the following ways:

O1: To retain and conserve the principal building forms and street front zones. –

- The proposal does not involve any alterations to the street front zone.
- The proposed alterations to the principal building form are minor, with significant building fabric being conserved.

O4: To promote design that conforms to the existing character of the area.

- The alterations to principal building will maintain conformity to the character of the area.

O6: To retain the distinctive shared characteristics of groups of buildings. –

O7: To retain, restore and promote the significance, contribution and relationship of a building within the context of a group of buildings. –

- The alterations to principal building will not adversely impact the contribution and relationship of the building within the group.

O8: To conserve the significant original fabric of terrace houses, terrace groups and free standing buildings of similar age and character. –

O10: To retain and conserve external original fabric and features characteristic to a traditional terrace semi-detached dwellings or dwelling house. –
O11: To retain and conserve internal significant original fabric and features characteristic to a traditional terrace house. –
O12: To retain the historic framework of the building both as essential structure and as evidence of original patterns of construction and use. –

- The significant original internal and extern fabric of the principal building form will be retained and conserved.

O9: To ensure the structural integrity of individual buildings and groups. –

- The proposed excavation below the principal building form is based upon the extent of the existing lower ground floor up to an average depth of 700mm. Council’s Development Engineer considers the proposed excavation satisfactory subject to conditions which include the recommendations of the geotechnical and structural drawings that were submitted with the application.

12.1.3 Section C1.4.3: Rear Elevations, Rear Additions, Significant Outbuildings and Yards

<table>
<thead>
<tr>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>C2 Height of an alteration and addition to the rear of a double storey or higher building</td>
<td>YES</td>
</tr>
<tr>
<td>C3 and C6 Rear setback</td>
<td>YES</td>
</tr>
<tr>
<td>C6 Original chimneys</td>
<td>YES</td>
</tr>
</tbody>
</table>

The proposal will comply with controls C2, C3, C4, C5, C6, C7, C11, and will achieve the relevant objectives O2, O3, O4 in the following ways:

O2: To ensure that rear alterations and additions are of sympathetic design and construction. –
O3: To ensure that the distinctive shared characteristics of groups of contributory buildings are retained and enhanced. –
O4: To enable sympathetic contemporary design and use of contemporary materials in appropriate circumstances. –

- The proposed boundary-to-boundary extension will be limited to the ground floor and lower ground floor. The existing breezeway at the first floor level will be maintained ensuring that the distinctive shared characteristics of group is preserved. The proposed side sloping skillion roof enclosing the ground floor breezeway is an appropriate roof form compatible with the existing rear wing.

12.1.4 Section C1.4.4: Roofs and Roof Forms

<table>
<thead>
<tr>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>C10 Transparent material to rear roof planes</td>
<td>YES</td>
</tr>
</tbody>
</table>

The proposal will comply with controls C6, C8, C10 and will achieve the relevant objectives O1, O3 in the following ways:
O1: To retain and conserve the character of the original roofscape of Paddington.
- The principal roof will be retained and conserved.

O3: To ensure that contemporary roof forms are consistent with the historic roofscape character of Paddington.
- The proposed side sloping skillion roof enclosing the ground floor breezeway is an appropriate roof form compatible with the existing rear wing and the historic roofscape character of Paddington.

### 12.1.5 Section C1.4.5: Building Height, Bulk, Form and Scale

<table>
<thead>
<tr>
<th>Control</th>
<th>Existing</th>
<th>Proposed</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>C1 Height of existing buildings on street frontages</td>
<td>Not increased</td>
<td>Not increased</td>
<td>YES</td>
</tr>
<tr>
<td>C3 The height, bulk, form and scale of infill and new development</td>
<td>Consistent with the predominant height, bulk, form and scale of adjoining buildings</td>
<td>Consistent with the predominant height, bulk, form and scale of adjoining buildings</td>
<td>YES</td>
</tr>
<tr>
<td>C4 Sunlight provided to the main ground level private open space of adjoining properties</td>
<td>&gt;50% (or 35m²) for two hours between 9am and 3pm on 21 June</td>
<td>&gt;50% (or 35m²) for two hours between 9am and 3pm on 21 June</td>
<td>YES</td>
</tr>
</tbody>
</table>

The proposal will comply with controls C1, C3, C5, C6, C7 and will achieve the relevant objectives O1, O3, O4, O5, O6 in the following ways:

O1: To retain the distinctive height, bulk, form and scale of particular building types.
- The proposed works are mainly located to the lower portion of the existing altered rear wing. The proposed rear dormer is modest in form within the rear roof plane of the principal building. The overall development will not alter the distinctive height, bulk, form and scale of the terrace house.

O3: To maintain the visual consistency of established heights in historically significant streetscapes.
- The established height of the terrace house will not be altered. The historically significant streetscape character will be retained.

O4: To ensure that the height of new development conforms to the appropriate heights in the street or lane and the historic character of the street or lane.
- The height of the new development is responsive to the topography of the site. Furthermore, the proposed alterations and additions to the rear wing are considered to be compatible with the height and historic character of development in the street.

O5: To minimise the impact of new development on the access to sunlight for private properties and public places such as neighbourhood parks.
- O6: To protect the amenity of adjoining or adjacent residential uses.
- The proposal will maintain a compliant amount of solar access to adjoining properties and will not result in any unreasonable visual privacy impacts.
12.1.6 Section C1.4.6: Site Coverage, Setbacks and Levels

<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>C1 Proportion of building footprint</td>
<td>Consistent with similar properties</td>
<td>Consistent with similar properties</td>
<td>Consistent with similar properties</td>
<td>YES</td>
</tr>
</tbody>
</table>

The proposal will comply with controls C1, C3, C7 and will achieve the relevant objectives O1, O2, O3, O4, O5, O6 in the following ways:

**O1: To maintain setbacks along the street frontage.** –
- The proposal will maintain the existing setback along the Paddington Street frontage.

**O2: To retain established building alignments, setbacks and levels.** –
**O3: To ensure that new development continues the established alignments and setbacks of the established historic development in the streetscape.** –
**O4: To ensure that the siting of new development responds appropriately to levels established by relevant historic development in the streetscape.** –
- The rear alignment, side setback and level of the first floor will be retained. This is consistent with the established pattern within the group and in the streetscape

**O6: To encourage the retention or creation of useable open space at the rear of sites.** –
- The proposal will maintain the rear of the site as usable open space.

12.1.7 Section C1.4.7: Excavation

<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>C1 General setback of excavation</td>
<td>N/A</td>
<td>Nil from existing footings</td>
<td>0.2m from existing footings</td>
<td>NO</td>
</tr>
<tr>
<td>C7 Excavation for other structures beyond the principal building form or secondary wing (pool)</td>
<td>N/A</td>
<td>Nil (pool)</td>
<td>900mm</td>
<td>NO</td>
</tr>
</tbody>
</table>

The following objectives and controls are relevant:

**O1: To ensure the structural integrity and stability of individual buildings and the terrace of buildings of which they are a part, and neighbouring properties.** –
**O2: To protect the original fabric of the buildings significant to the area both during and after excavation.** –
**O3: To ensure that objectives O1 and O2 are achieved by limiting the circumstances where excavation may occur.** –
**O4: To limit the impact of excavation on the natural landform and vegetation.** –
**O5: To relate development to the existing topography and existing ground levels.** –
**O6: To avoid potential damage to all buildings and structures during and after excavation.** –
**O7: To ensure that any new floor levels resulting from excavation and development do not compromise external heritage features of the building or those of its neighbours.** –
**O9: To maintain natural subsurface ground water flows.** –

**General**

**C1 Excavation will not be permitted if:**
a) it will occur under common walls and footings to common walls, or freestanding boundary walls, or under any other part of adjoining land; and  
b) it will occur under or forward of the front façade; and  
c) the outer edge of the excavation is within 0.2m of the footings of the front wall, party walls, or freestanding boundary walls, where the existing footing has bearing directly on rock foundation; and  
g) habitable rooms formed from the excavation:  
i) do not have at least one external wall fully above existing ground level; and  
ii) will not receive adequate natural light and ventilation; and  
h) a geotechnical and structural report cannot ensure that the works will not have any adverse effect on the neighbouring structures. The report must be prepared in accordance with the Council’s publication ‘Guide for preparing Geotechnical and Hydrogeological Reports’;  
i) the removal of the existing floor structure above the excavation is required in order to carry out the excavation other than the temporary, partial removal of floor boards to allow exploratory investigation of subsurface conditions.

Excavation for other structures beyond the principal building form or secondary wing

C7 Excavation may be permitted for structures such as pools, spas, or other permissible development if:

a) for properties less than 6m in width, the outer edge of excavation is setback from side boundaries by at least 900mm;  
c) the lowest habitable room, if any, of the proposed development has at least one external wall fully above the existing ground level;  
d) no original footings on an adjoining property will be disturbed; and  
e) a geotechnical report ensures that works will not have any adverse effect on the neighbouring structures. The report must be prepared in accordance with Council’s guidelines.

The proposal involves the following excavation:

(i) Excavation of the existing lower ground floor (including the sub-floor) – This is to accommodate a new laundry, bathroom and rumpus. The average depth of excavation to this level will be approximately 0.7m up to the existing footings. This does not comply with the setback control prescribed in Control C1(c).  
(ii) Excavation in the rear yard area (including the pool) – The existing level within the rear yard currently ranges from RL61.45 to RL61.57. This level will be reduced to a uniform level (RL61.04). In addition, a maximum depth of 2m of excavation is proposed for the pool which will be located hard up against the south-eastern side boundary. This does not comply with the setback control prescribed in Control C7(a).

Assessment:

(i) Excavation to the existing lower ground floor level (including the sub-floor) is to comply with the 200mm setback control from the existing footings by Condition C.1(a). As a result, the proposal will achieve consistency with the relevant objectives.  
(ii) Excavation to the rear yard area including the pool is considered to be acceptable and will achieve consistency with the relevant objectives for the following reasons:
A Geotechnical Report, prepared by AW Geotechnical, dated 10/12/2015 was submitted with the development application. Council’s Development Engineer has reviewed the submitted Geotechnical Report and considered the proposed excavation to be acceptable, subject to **Conditions A2, C5, C6, C7, D2, D3, D4, E3, E7, E8, E9, E10, E11, E12, F2, and K14**. This ensures that the proposed excavation will not have any adverse effect on the neighbouring structures and is compliant with Control C7(e).

Detailed section drawings have been provided by ACOR Consultants Pty Ltd showing structural details ensuring the structural integrity of the building. Council’s Development Engineer has reviewed the submitted structural details and considered the proposed excavation to be acceptable, subject to **Conditions A2, C5, C6, C7, D2, D3, D4, E3, E7, E8, E9, E10, E11, E12, F2, and K14**. This ensures that the proposed excavation will not have any adverse effect on the neighbouring structures and is compliant with Control C7(e).

There are no building structures immediately adjacent to the pool. On this basis, notwithstanding the recommendation from Council’s Heritage Officer requiring the excavation of the proposed pool to be set back 900mm from the south-eastern boundary, the proposed excavation will achieve consistency with Objectives O1 and O6 given that no original footings on the adjoining property will be disturbed which is compliant with Control C7(d).

There are existing examples of pool excavation with nil side setbacks in the rear yards of the immediately adjoining properties on both sides (i.e. No. 170 and 176 Paddington Street, refer to aerial photo below). The location of the proposed pool along the side (south-east) boundary in the rear yard is consistent with the established pattern.

![Locations of existing pools in the adjoining properties](image-url)
In view of the above, the proposed excavation is supported notwithstanding the non-compliant setbacks as the proposal will achieve consistency with the relevant objectives of the controls.

12.1.8 Section C1.4.8: Private Open Space, Swimming Pools, Lightwell Courtyards and Landscaping

<table>
<thead>
<tr>
<th>Site Area: 150.3m²</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>C4 Minimum unbuilt upon area for allotments between 100m² and 180m²</td>
<td>Approx. 33% (50m²)</td>
<td>Approx. 24% (36.72m²)</td>
<td>16% (24m²)</td>
<td>YES</td>
</tr>
<tr>
<td>C4 Principal rear area of private open for allotments between 100m² and 180m² – Principal Area</td>
<td>&gt;15m²</td>
<td>&gt;15m²</td>
<td>15m²</td>
<td>YES</td>
</tr>
<tr>
<td>Minimum Area</td>
<td>&gt;3m</td>
<td>&gt;3m</td>
<td>3m</td>
<td>YES</td>
</tr>
<tr>
<td>C4 Minimum deep soil landscape area for dwelling-house</td>
<td>Approx. 4.76% (7.16m²)</td>
<td>Approx. 9.31% (14m²)</td>
<td>8% (12m²)</td>
<td>YES</td>
</tr>
<tr>
<td>C13 Location of swimming pools</td>
<td>N/A</td>
<td>Rear of properties</td>
<td>Rear of properties</td>
<td>YES</td>
</tr>
</tbody>
</table>

The proposal will comply with controls C4, C7, C9, C13, C15, C16, C17 and will achieve the relevant objectives O3, O4, O5, O6, O7, O8, O9 in the following ways:

O3: To maintain an area at the rear of each site which enables planting at natural ground level and assists on-site drainage. –
- The proposal includes a compliant amount of deep soil landscaped area which is capable of supporting planting at the rear of the site.

O4: To ensure that provision is made for accessible and useable private open space at the rear of properties. –
- The proposal includes a compliant amount of private open space at the rear of the property.

O5: To ensure the provision of semi-permeable and permeable areas of open space in rear gardens to assist with on-site drainage. –
- The proposal includes a compliant amount of deep soil landscaped area which is capable of supporting planting at the rear of the site.

O6: To ensure that the design and use of private open space areas has regard to environmental impact, impact on the fabric of adjoining properties, infrastructure, and on the amenity of the occupiers of adjoining properties. –
- The private open space at the rear will not adversely impact adjoining properties.

O7: To ensure that trees and other vegetation do not have an adverse impact on the fabric of buildings, and that works have no or minimal adverse impact on the amenity of the occupiers of properties. –
- The private open space at the rear will not adversely impact adjoining properties.

O8: To ensure adequate and reasonable acoustic and visual privacy for neighbours. –
- The private open space at the rear will not adversely impact adjoining properties.

O9: To ensure provision of adequate deep soil landscaped area capable of sustaining medium to large vegetation. –
- The proposal includes a compliant amount of deep soil landscaped area which is capable of supporting planting at the rear of the site.
12.1.9 Section C1.4.9: Views

The proposal will comply with controls C1 and will achieve the relevant objectives O1, O2.

12.1.10 Section C1.4.10: Acoustic and Visual Privacy

The proposal will comply with controls C4, C5 and will achieve the relevant objectives O1, O2 in the following ways:

O1: To ensure an adequate degree of acoustic and visual privacy in building design. –
O2: To minimise the impact of new development on the acoustic and visual privacy of existing development on neighbouring lands. –

- The proposal will maintain the size and dimensions of the existing rear roof terrace on the ground which will not result in additional overlooking impacts.
- The width of the existing rear ground floor roof terrace will be reduced to allow for a set of new external stairs providing pedestrian access between the lower ground floor rear courtyard and the terrace. The transient movement of people will be infrequent and these new stairs will provide additional separation improving visual privacy between the subject property and the adjoining property on the south-eastern side.
- The proposed ground and lower ground floor levels include large glazed areas. However, there will be no additional overlooking impacts from the kitchen and rumpus located on the ground floor and lower ground floor respectively.
- There will be no overlooking impacts from rear courtyard and pool area. The pool is located at the rear of the site, setback from adjoining bedroom and living areas.
- **Conditions I3 & I5** are recommended to minimise any potential noise impacts from the pool equipment and the A/C condenser unit.
- **Condition C.1(c)** is recommended requiring the loft window to be modified to reduce the size and specially treated so as to protect the visual privacy of the adjoining properties.

12.1.11 Section C1.5.1: Dormers and skylights

<table>
<thead>
<tr>
<th>C10 – C17 Dormer Windows (Victorian Buildings)</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum Width (Buildings ≥4m wide)</td>
<td>1.2m</td>
<td>1.2m</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Maximum Height – Pitched Roof</td>
<td>1.4 x width</td>
<td>1.4 x width</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Roof Pitch</td>
<td>36°</td>
<td>32° - 45°</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Height Below Ridgeline</td>
<td>0.3m Below Ridge</td>
<td>0.3m Below Ridge</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Minimum Sill Height</td>
<td>0.4m Above FFL</td>
<td>0.4m Above FFL</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Maximum Eaves Overhang</td>
<td>0.1m</td>
<td>0.15m</td>
<td>YES</td>
<td>YES</td>
</tr>
</tbody>
</table>

The proposal will comply with controls C1, C2, C3, C5, C6, C7, C8, C9, C10, C12, C14, C15, C16, C24, C28, C29, C30 and will achieve the relevant objectives O1, O2, O3 in the following ways:

O1: To minimise the impact of dormers and skylights on the form, appearance and fabric of the principal roof form. –
O2: To ensure that dormers to Victorian and Federation period terraces and cottages are traditional in form, proportions, scale and materials. –
O3: To ensure that new attic spaces do not unnecessarily impact on original significant fabric, especially original ceilings. –
- The proposed dormer and skylight will comply with the relevant numerical controls.
- Subject to Condition C.1(b), the material details and finishes of the proposed dormer will be compatible with the appearance and fabric of the principal roof form and the Victorian period terrace.

12.1.12 Section C1.5.2: Chimneys

The proposal will comply with controls C1 and will achieve the relevant objectives O1.

12.1.13 Section C1.5.3: Windows, Doors, Shutters and Security

The proposal does not comply with Controls C4, C5 which state:

*C4 which specifies new doors and window openings must be consistent with traditional materials and patterns, use vertically proportioned openings appropriate to the building type and comply with Section C1.4.3 Rear elevations, rear additions, significant outbuildings and yards.*

*C5 which specifies where rear wings are extended boundary to boundary at the ground floor, new doors and windows must be vertically proportioned, but may use contemporary detailing.*

However, the proposal is considered acceptable for the following reasons:

- The proposed bi-fold doors (D3 and D4) on the ground and lower ground floors relate to parts of the building which have been altered.
- The proposed bi-fold doors (D3 and D4) are not visible from the public domain and will have no impact to the visual appearance of the Victorian terrace.
- The proposed rear elevation will achieve an appropriate solid-to-void ratio.

12.1.14 Section C1.5.5 Fences, Walls and Gates

There will be no change to the existing side boundary fences.

12.1.15 Section C1.5.6: On-site Vehicle Parking, Garages, Carports, Driveway Access and Servicing Facilities

<table>
<thead>
<tr>
<th>Control</th>
<th>Control</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>C6 Single Garage, Uncovered Car Space Or Carport Dimensions</td>
<td>&gt; 3.0m x 5.4m</td>
<td>&gt; 3.0m x 5.4m</td>
<td>3.0m x 5.4m</td>
</tr>
<tr>
<td>C6 Carports With Pitched Roofs –</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maximum Width</td>
<td>4.675m</td>
<td>no change</td>
<td>4.34m</td>
</tr>
<tr>
<td>Maximum Door Height</td>
<td>1.8m</td>
<td>no change</td>
<td>2.2m</td>
</tr>
<tr>
<td>Door Width</td>
<td>3.6m</td>
<td>no change</td>
<td>2.4m – 3.4m</td>
</tr>
<tr>
<td>Side Pillar Width</td>
<td>0.47m</td>
<td>no change</td>
<td>0.35m – 0.47m</td>
</tr>
</tbody>
</table>

*Existing non-compliance, no change is proposed

The proposal will comply with controls C1 but does not comply with control C6 in terms of the garage dimensions prescribed in Table 5. However, the proposal will retain the existing garage which contains minor non-compliances with these numerical controls. The new loft structure above the existing garage is assessed in the following section.
### 12.1.16  Section C1.5.7: Lofts over Garages and Studios

<table>
<thead>
<tr>
<th>Control</th>
<th>Existing</th>
<th>Proposed</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>C1 Garage Loft Structures – Minimum Site Dimensions</td>
<td>32.48m x 4.675m</td>
<td>32.48m x 4.675m</td>
<td>NO*</td>
</tr>
<tr>
<td>Maximum Width</td>
<td>4.53m</td>
<td>4.53m</td>
<td>NO*</td>
</tr>
<tr>
<td>Maximum Ridge Height</td>
<td>3.6m</td>
<td>5.5m</td>
<td>YES</td>
</tr>
<tr>
<td>Maximum Wall Height</td>
<td>2.2m</td>
<td>4.083m</td>
<td>NO</td>
</tr>
<tr>
<td>C1 d Garage Loft Structures – Access</td>
<td>N/A</td>
<td>Internal</td>
<td>Internal Only</td>
</tr>
<tr>
<td>C1 e Minimum Distance from Habitable Windows in Lofts to Adjoining Properties</td>
<td>N/A</td>
<td>&gt;9m</td>
<td>9m</td>
</tr>
<tr>
<td>C1 i Garage Loft Structures – Window Location</td>
<td>N/A</td>
<td>Gable Ends</td>
<td>Double Hung Sash</td>
</tr>
<tr>
<td>Window Type</td>
<td>Gable Ends Only</td>
<td>Double Hung Sash</td>
<td>YES</td>
</tr>
<tr>
<td>C1 j Garage Loft Structures – Balconies</td>
<td>N/A</td>
<td>Nil</td>
<td>Not Permitted</td>
</tr>
<tr>
<td>C1 k Garage Loft Structures – Maximum Number of Skylights</td>
<td>N/A</td>
<td>Nil</td>
<td>2</td>
</tr>
<tr>
<td>C2 a Garage Loft Structures – Location</td>
<td>N/A</td>
<td>Rear of Property</td>
<td>Rear of Property Only</td>
</tr>
<tr>
<td>C2 b Garage Loft Structures – Location</td>
<td>N/A</td>
<td>not north facing</td>
<td>Not When Facing North</td>
</tr>
</tbody>
</table>

*Existing non-compliance, no change is proposed

The proposal will comply with control C2 but does not comply with control C1(a), (g), (h) and (i) in terms of the site dimensions, garage width and wall height.

It is acknowledged that the proposed loft structure would not meet the site criteria prescribed in Control C1(a), (g), (h) and (i) in terms of the site dimensions, garage width and wall height. Notwithstanding these non-compliances, the following must be taken into account in assessing the proposed loft structures:

- There are numerous examples of loft structures along Paddington Lane with inadequate site dimensions (refer to the photos below). In this instance, the non-compliant site width is only 0.565m.
- The non-compliance with the garage width is retained from the existing garage structure.
- The non-compliance with the garage wall height by 183mm is insignificant

It is considered that the above non-compliances are minor and insignificant. The proposed loft structure is compatible with the existing landscape and will not result in an adverse environmental impact in terms of solar access, privacy, streetscape, visual appearance or sense of enclosure.
Examples of existing loft over garage structures along Paddington Lane to the northwest of the subject site

Examples of existing loft over garage structures along Paddington Lane to the southeast of the subject site

The proposal will achieve consistency with objectives O1, O2, O3, O4, O5, O6 in the following ways:
O1: To ensure that loft structures over garages or studios are sympathetic in their location, massing, form and scale to the traditional rear elevations, yards, and laneways.

- The setting, form and scale of the proposed loft structure is sympathetic to the rear elevation and the rear laneway.

O2: To ensure that loft structures over garages or studios do not detract from the significance of unaltered groups of buildings.

- The proposed loft structure is within an altered group of buildings.

O3: To ensure that loft structures over garages or studios do not impact on the privacy of adjoining properties.

- Condition C.1(c) is recommended to reduce the size (width) of the window to the south-western gable end to a single width, double hung window. This will ensure the visual privacy of the adjoining properties.

O4: To ensure that loft structures do not result in a non-compliance with the private open space and deep soil landscaped area requirements.

- The proposal will comply with the private open space and deep soil landscape area requirements prescribed in Control C1.4.8.

O5: To ensure that loft structures are appropriately orientated to minimise overshadowing on adjoining/adjacent open space.

- The subject site is not orientated towards the north complying with Control C2(c) and will minimise overshadowing on adjoining open space.

O6: To minimise the visual impact of loft structures when viewed from public areas and private land.

- The proposed loft is of a scale that is compatible with the existing lanescape which contains a number of existing loft structure of similar type.

12.1.17 Section C1.5.8: Materials, Finishes and Details

The proposal will comply with controls C4, C5 subject to Condition C.1(d) and will achieve the relevant objectives O1, O2, O3.

12.1.18 Section C1.5.9: Exterior Colours

The proposal will comply with controls C1, C3, C4, subject to Condition C.1(d) and will achieve the relevant objective O1.

12.1.19 Section C1.5.10: Gardens and Trees

The proposal will comply with controls C4, C5 and will achieve the relevant objectives O2, O4. Council’s Tree and Landscape officer has no objection to the proposed removal of existing tree and the replacement tree in the rear yard area.
12.1.20 Section C1.5.11: Satellite Dishes, Aerials, Air Conditioning Units and Other Site Facilities

<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>C2 Air Conditioning Units –</td>
<td>N/A</td>
<td>Behind Front</td>
<td>Behind Front</td>
<td>YES</td>
</tr>
<tr>
<td>Location:</td>
<td></td>
<td>Building Line</td>
<td>Building Line</td>
<td></td>
</tr>
<tr>
<td>C2 Air Conditioning Units –</td>
<td>N/A</td>
<td>Not Visible</td>
<td>Not Visible</td>
<td>YES</td>
</tr>
<tr>
<td>Visibility from Public Domain</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>C2 Air Conditioning Units –</td>
<td>N/A</td>
<td>0.5m</td>
<td>3.0m</td>
<td>NO</td>
</tr>
<tr>
<td>Setback From Site Boundaries</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>C3 Air Conditioning Units –</td>
<td>N/A</td>
<td>Not Visible</td>
<td>Not Visible</td>
<td>YES</td>
</tr>
<tr>
<td>Visibility from Adjoining</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Properties</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The proposal will comply with controls C1, C2 (except part (b) related to the setback requirement), C3, C6, and will achieve the relevant objectives O3.

However, the proposal will achieve objective O3 in the following ways:

O3: To ensure that satellite dishes, air handling systems, external hot water heaters, air conditioning units, aerials and other site facilities do not detrimentally impact on the character and significance of individual buildings and the streetscape. –

- The proposed A/C condenser unit will be located on the lower ground floor and will not have an impact upon the character and significance of the building or streetscape.
- The proposed A/C condenser unit will be separated from the side boundary by a new masonry wall which is considered to be good noise shield to ensure acoustic privacy.
- **Condition I.5** has been recommended to ensure acoustic privacy.

12.2. Chapter E1: Parking and Access

The proposal is acceptable with regard to Part E1 of the Woollahra DCP 2015.

12.3. Chapter E2: Stormwater and Flood Risk Management

The proposal is acceptable with regard to Part E2 of the Woollahra DCP 2015.

12.4. Chapter E3: Tree Management

The proposal is acceptable with regard to Part E3 of the Woollahra DCP 2015.

12.5. Chapter E5: Waste Management

The applicant provided a Waste Management Plan with the development application and it was found to be satisfactory.

The proposal is acceptable with regard to Part E5 of the Woollahra DCP 2015.

13. SECTION 94 CONTRIBUTION PLANS

13.1. Section 94A Contributions Plan 2011

In accordance with Schedule 1, a 1% levy applies with the monies being used for a variety of works as outlined in Schedule 2 of the Section 94A Contributions Plan 2011. Refer to **Condition C.2.**
14. APPLICABLE ACTS/REGULATIONS

14.1. Environmental Planning and Assessment Regulation 2000

Clause 92: What Additional Matters Must a Consent Authority Take Into Consideration in Determining a Development Application?

Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires Council to consider Australian Standard AS 2601-2004: The demolition of structures. The proposal is considered to be acceptable, subject to Condition E.2.


A swimming pool is at all times to be surrounded by a child-resistant barrier that separates the swimming pool from any residential building and that is designed, constructed, installed and maintained in accordance with the standards prescribed by the regulations. Additional provisions relate to:

a) The swimming pool must be registered in accordance with Section 30B of the Swimming Pools Act 1992
b) A Certificate of Compliance issued pursuant to Section 22D of the Swimming Pools Act 1992
c) Water recirculation and filtration systems
d) Backwash must be discharged to the sewer

These form Conditions C.9, C.10, F.3 and I.3.

15. THE LIKELY IMPACTS OF THE PROPOSAL

All likely impacts have been addressed elsewhere in the report, or are considered to be satisfactory and not warrant further consideration.

16. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

17. THE PUBLIC INTEREST

The proposal is considered to be in the public interest.

18. CONCLUSION

The proposal is acceptable against the relevant considerations.
19. DISCLOSURE STATEMENTS

There have been no disclosure statements regarding political donations or gifts made to any Councillor or to any council employee associated with this development application by the applicant or any person who made a submission.

RECOMMENDATION: PURSUANT TO SECTION 80(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

THAT Council, as the consent authority, is of the opinion that the written request from the applicant under Part 4.6 of the Woollahra Local Environmental Plan 2014 to the building height development standard under Clause 4.3 of Woollahra LEP 2014 has adequately addressed the relevant matters and the proposed development will be in the public interest because it is consistent with the relevant objectives of the particular standard.

AND

That Council, as the consent authority, having considered the application for review of its determination, resolve to approve DA669/2015/1 for alterations and additions to existing dwelling including enlarged basement area; new swimming pool and associated landscaping; new loft over existing garage and new attic level with rear dormer window and skylight on land at 172 Paddington Street PADDINGTON, subject to the following conditions:

A. General Conditions

A.1 Conditions

Consent is granted subject to the following conditions imposed pursuant to section 80 of the Environmental Planning & Assessment Act 1979 (“the Act”) and the provisions of the Environmental Planning and Assessment Regulation 2000 (“the Regulation”) such conditions being reasonable and relevant to the development as assessed pursuant to section 79C of the Act. Standard Condition: A1 (Autotext AA1)

A.2 Approved Plans and supporting documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with the plans and supporting documents listed below as submitted by the Applicant and to which is affixed a Council stamp “Approved DA Plans” unless modified by any following condition. Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
<th>Author/Drawn</th>
<th>Date(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A238188</td>
<td>BASIX Certificate</td>
<td>NSW Department of Planning and Infrastructure</td>
<td>16/12/2015</td>
</tr>
<tr>
<td>AWG40771</td>
<td>Geotechnical Investigation</td>
<td>AW Geotechnical</td>
<td>10/12/2015</td>
</tr>
<tr>
<td>S1.01 (Issue P1)</td>
<td>Structural details</td>
<td>ACOR Consultant</td>
<td>22/12/2015</td>
</tr>
<tr>
<td>S2.01 (Issue P1)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S2.02 (Issue P1)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No reference</td>
<td>Waste Management Plan</td>
<td>ARK Design Studio Pty Ltd</td>
<td>Undated</td>
</tr>
</tbody>
</table>
A.3 Tree Preservation & Approved Landscaping Works

All landscape works shall be undertaken in accordance with the approved landscape plan, arborist report, tree management plan and transplant method statement as applicable.

a) The following trees may be removed:

<table>
<thead>
<tr>
<th>Council Ref No.</th>
<th>Species</th>
<th>Location</th>
<th>Dimension (metres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Camellia japonica (Camellia)</td>
<td>Rear – East boundary</td>
<td>5 x 4</td>
</tr>
</tbody>
</table>

Note: Tree/s to be removed shall appear coloured red on the construction certificate plans.

A.4 Ancillary Aspect of the Development (s80A(2) of the Act)

The owner must procure the repair, replacement or rebuilding of all road pavement, kerb, gutter, footway, footpaths adjoining the site or damaged as a result of work under this consent or as a consequence of work under this consent. Such work must be undertaken to Council's satisfaction in accordance with Council’s “Specification for Roadworks, Drainage and Miscellaneous Works” dated February 2012 unless expressly provided otherwise by these conditions at the owner’s expense.

Note: This condition does not affect the principal contractor's or any sub-contractors obligations to protect and preserve public infrastructure from damage or affect their liability for any damage that occurs.

B. Conditions which must be satisfied prior to the demolition of any building or construction

B.1 Construction Certificate required prior to any demolition

Where demolition is associated with an altered portion of, or an extension to an existing building the demolition of any part of a building is “commencement of erection of building” pursuant to section 81A(2) of the Act. In such circumstance all conditions in Part C and Part D of this consent must be satisfied prior to any demolition work. This includes, but is not limited to, the issue of a Construction Certificate, appointment of a PCA and Notice of Commencement under the Act.

Note: See Over our Dead Body Society Inc v Byron Bay Community Association Inc [2001] NSWLEC 125.
B.2 Identification of Hazardous Material

In accordance with Australian Standard AS2601- ‘The Demolition of Structures’ the owner shall identify all hazardous substances located on the site including asbestos, Polychlorinated biphenyls (PCBs), lead paint, underground storage tanks, chemicals, etc. per Clause 1.6.1 of the Standard. In this regard, prior to the commencement of any work, Council shall be provided with a written report prepared by a suitably qualified competent person detailing:

- all hazardous materials identified on the site;
- the specific location of all hazardous materials identified;
- whether the hazardous materials are to be removed from the site as part of the works to be undertaken; and
- safety measures to be put in place.

Note: This condition is imposed to protect the health and safety of all persons while works are being undertaken and to ensure all safety measures have been identified and are in place to protect all parties in the immediate vicinity of the site.

Standard Condition: B6

B.3 Public Road Assets prior to any work/demolition

To clarify the condition of the existing public infrastructure prior to the commencement of any development (including prior to any demolition), the Applicant or Owner must submit to Council a full record of the condition of the Public Road infrastructure adjacent to the development site.

The report must be submitted to Council prior to the commencement of any work and include photographs showing current condition and any existing damage fronting and adjoining the site to the:

- road pavement,
- kerb and gutter,
- footway including footpath pavement and driveways,
- retaining walls within the footway or road, and
- drainage structures/pits.

The reports are to be supplied in both paper copy and electronic format in Word. Photographs are to be in colour, digital and date stamped.

If the required report is not submitted then Council will assume there was no damage to any infrastructure in the immediate vicinity of the site prior to the commencement of any work under this consent.

Note: If the Applicant or Owner fails to submit the Asset condition report required by this condition and damage is occasioned to public assets adjoining the site, Council will deduct from security any costs associated with remedying, repairing or replacing damaged public infrastructure. Nothing in this condition prevents Council making any claim against security held for this purpose.

Standard Condition: B7

C. Conditions which must be satisfied prior to the issue of any construction certificate
C.1 Modification of details of the development (Section 80A(1)(g) of the Act)

The approved plans and the Construction Certificate plans and specification, required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation, must detail the following amendments:

a. Excavation setback – Front wall and boundary walls

In order to comply with Objectives O1, O2, O6 and Control C1 prescribed in Part C1.4.7 of Chapter C1 – Paddington Heritage Conservation Area of the Woollahra Development Control Plan 2015, the outer edge of the excavation is to be set back 200mm from the front boundary (south-west) wall and side boundary (north-west and south-east) walls to the lower ground floor level of the building.

b. Rear Dormer

In order to comply with Objectives O1, O2 and Control C16 prescribed in Part C1.5.1 of Chapter C1 – Paddington Heritage Conservation Area of the Woollahra Development Control Plan 2015, -

(i) the new roof sheeting to the dormer window must be corrugated steel with a profile and with a colour finish to match the existing roof sheeting to the principal building form;
(ii) the new flashing to the dormer is to be colour finished to match the existing roof of the principal building form;
(iii) the window frame and pilaster facing of the dormer are to be timber with a paint finish to match the existing external colour scheme.

c. Loft window (W3)

In order to comply with Objective O6 and Control C1(i) prescribed in Part C1.5.7 of Chapter C1 – Paddington Heritage Conservation Area of the Woollahra Development Control Plan 2015, the width of the proposed Window W3 to the south-western gable end of the loft must be reduced to a single double hung window identical to Window W2 to the north-eastern gable end.

d. Materials and finishes

In order to comply with Objectives O1, O3 and Controls C4, C5 prescribed in Part C1.5.8, and Objective O1 and Controls C1, C3, C4 prescribed in Part C1.5.9 of Chapter C1 – Paddington Heritage Conservation Area of the Woollahra Development Control Plan 2015, the materials, finishes paint colours for the additions to the house and garage are to match the existing colour.

Note: The effect of this condition is that it requires design changes and/or further information to be provided with the Construction Certificate drawings and specifications to address specific issues identified during assessment under section 79C of the Act.

Note: Clause 146 of the Regulation prohibits the issue of any Construction Certificate subject to this condition unless the Certifying Authority is satisfied that the condition has been complied with.

Note: Clause 145 of the Regulation prohibits the issue of any Construction Certificate that is inconsistent with this consent.

Standard Condition: C4 (Autotext CC4)
C.2 Payment of Long Service Levy, Security, Contributions 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, subdivision certificate or occupation certificate*, as will apply.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Indexed</th>
<th>Council Fee Code</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>LONG SERVICE LEVY</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>under <strong>Building and Construction Industry</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Long Service Levy</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>SECURITY</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>under section 80A(6) of the <strong>Environmental Planning and Assessment Act 1979</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Property Damage Security Deposit - making good any damage caused to any property of the Council</td>
<td>$9,041</td>
<td>No</td>
<td>T115</td>
</tr>
<tr>
<td><strong>DEVELOPMENT LEVY</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>under Woollahra Section 94A Development Contributions Plan 2011</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>This plan may be inspected at Woollahra Council or downloaded at <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Development Levy (Section 94A)</td>
<td>$3,000</td>
<td>Yes, quarterly</td>
<td>T96</td>
</tr>
<tr>
<td>+ Index Amount</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Security Administration Fee</td>
<td>$185</td>
<td>No</td>
<td>T16</td>
</tr>
<tr>
<td><strong>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</strong></td>
<td>$12,226 plus any relevant indexed amounts and long service levy</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Building and Construction Industry Long Service Payment**

The Long Service Levy under Section 34 of the *Building and Construction Industry Long Service Payment Act, 1986*, must be paid and proof of payment provided to the *Certifying Authority* prior to the issue of any *Construction Certificate*. The Levy can be paid directly to the Long Services Payments Corporation or to Council. Further information can be obtained from the Long Service Payments Corporation’s website [http://www.lspc.nsw.gov.au/](http://www.lspc.nsw.gov.au/) or the Long Service Payments Corporation on 13 14 41.

**How must the payments be made?**

Payments must be made by:
- Cash deposit with Council,
- Credit card payment with Council, or
- Bank cheque made payable to Woollahra Municipal Council.

The payment of a security may be made by a bank guarantee where:
- The guarantee is by an Australian bank for the amount of the total outstanding contribution;
- 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 [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable];
- 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;
- The bank guarantee is lodged with the Council prior to the issue of the construction certificate; and
- 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 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 2011 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 adjusted 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 or periodic payment of section 94A levy under the Woollahra Section 94A Development Contributions Plan 2011

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:

- The reasons given;
- Whether any prejudice will be caused to the community deriving benefit from the public facilities;
- Whether any prejudice will be caused to the efficacy and operation of the plan; and
- 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:

- The guarantee is by an Australian bank for the amount of the total outstanding contribution;
- 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 [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable];
- 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;
- The bank guarantee is lodged with the Council prior to the issue of the construction certificate; and
- 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 periodic payment 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.

Standard Condition: C5

C.3 BASIX commitments

The applicant must submit to the Certifying Authority BASIX Certificate No. A238188 with any application for a Construction Certificate.

Note: Where there is any proposed change in the BASIX commitments the applicant must submit of a new BASIX Certificate to the Certifying Authority and Council. If any proposed change in the BASIX commitments are inconsistent with development consent (See: Clauses 145 and 146 of the Regulation) the applicant will be required to submit an amended development application to Council pursuant to section 96 of the Act.

All commitments in the BASIX Certificate must be shown on the Construction Certificate plans and specifications prior to the issue of any Construction Certificate.
Note: Clause 145(1)(a1) of the *Environmental Planning & Assessment Regulation* 2000 provides: "A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires."

Standard Condition: C7

C.4 Soil and Water Management Plan – Submission & Approval

The *principal contractor* or *owner builder* must submit to the *Certifying Authority* a soil and water management plan complying with:

a) “*Do it Right On Site, Soil and Water Management for the Construction Industry*” published by the Southern Sydney Regional Organisation of Councils, 2001; and

b) “*Managing Urban Stormwater - Soils and Construction*” published by the NSW Department of Housing 4th Edition" (*The Blue Book*).

Where there is any conflict *The Blue Book* takes precedence. The *Certifying Authority* must be satisfied that the soil and water management plan complies with the publications above prior to issuing any *Construction Certificate*.

Note: This condition has been imposed to eliminate potential water pollution and dust nuisance.

Note: The International Erosion Control Association – Australasia [http://www.austieca.com.au/](http://www.austieca.com.au/) lists consultant experts who can assist in ensuring compliance with this condition. Where erosion and sedimentation plans are required for larger projects it is recommended that expert consultants produce these plans.


Note: Pursuant to clause 161(1)(a)(5) of the *Regulation* an *Accredited Certifier* may satisfied as to this matter.

Standard Condition: C25

C.5 Structural Adequacy of Existing Supporting Structures

A certificate from a *professional engineer* (Structural Engineer), certifying the adequacy of the existing supporting structure to support the additional loads proposed to be imposed by the development, must be submitted with the *Construction Certificate* application.

Note: This condition is imposed to ensure that the existing structure is able to support the additional loads proposed.

Standard Condition: C35 (Autotext CC35)

C.6 Professional Engineering Details

The *Construction Certificate* plans and specifications, required by clause 139 of the Regulation, must include detailed *professional engineering* plans and/or specifications for all structural, electrical, hydraulic, hydro-geological, geotechnical, mechanical and civil work complying with this consent, approved plans, the statement of environmental effects and supporting documentation.

Detailed professional engineering plans and/or specifications must be submitted to the *Certifying Authority* with the application for any *Construction Certificate*.

Note: This does not affect the right of the developer to seek staged Construction Certificates.

Standard Condition: C36
C.7 Geotechnical and Hydrogeological Design, Certification & Monitoring

The Construction Certificate plans and specification required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation must be accompanied by a Geotechnical / Hydrogeological Monitoring Program together with civil and structural engineering details for foundation retaining walls, footings, basement tanking, and subsoil drainage systems, as applicable, prepared by a professional engineer, who is suitably qualified and experienced in geotechnical and hydrogeological engineering. These details must be certified by the professional engineer to:

a) Provide appropriate support and retention to ensure there will be no ground settlement or movement, during excavation or after construction, sufficient to cause an adverse impact on adjoining property or public infrastructure.

b) Provide appropriate support and retention to ensure there will be no adverse impact on surrounding property or infrastructure as a result of changes in local hydrogeology (behaviour of groundwater).

c) Provide foundation tanking prior to excavation such that any temporary changes to the groundwater level, during construction, will be kept within the historical range of natural groundwater fluctuations. Where the historical range of natural groundwater fluctuations is unknown, the design must demonstrate that changes in the level of the natural water table, due to construction, will not exceed 0.3m at any time.

d) Provide tanking of all below ground structures to prevent the entry of all ground water such that they are fully tanked and no on-going dewatering of the site is required.

e) Provide a Geotechnical and Hydrogeological Monitoring Program that:
   - Will detect any settlement associated with temporary and permanent works and structures;
   - Will detect deflection or movement of temporary and permanent retaining structures (foundation walls, shoring bracing or the like);
   - Will detect vibration in accordance with AS 2187.2-1993 Appendix J including acceptable velocity of vibration (peak particle velocity);
   - Will detect groundwater changes calibrated against natural groundwater variations;
   - Details the location and type of monitoring systems to be utilised;
   - Details the pre-set acceptable limits for peak particle velocity and ground water fluctuations;
   - Details recommended hold points to allow for the inspection and certification of geotechnical and hydro-geological measures by the professional engineer; and;
   - Details a contingency plan.

Standard Condition: C40 (Autotext: CC40)

C.8 Stormwater discharge to existing Stormwater Drainage System

The Construction Certificate plans and specifications required by clause 139 of the Regulation, must detail:

a) The location of the existing Stormwater Drainage System including all pipes, inspection openings, surface drains, pits and their discharge location,

b) The state of repair of the existing Stormwater Drainage System,

c) Any remedial works required to upgrade the existing Stormwater Drainage System to comply with the BCA,
d) Any remedial works required to upgrade the existing Stormwater Drainage System crossing the footpath and any new kerb outlets,

e) Any new Stormwater Drainage System complying with the BCA,

f) Interceptor drain(s) at the site boundary to prevent stormwater flows from the site crossing the footpath,

g) Any rainwater tank (See Note Below) required by BASIX commitments including their overflow connection to the Stormwater Drainage System, and

h) General compliance with the Council’s Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management

Where any new Stormwater Drainage System crosses the footpath area within any road, separate approval under section 138 of the Roads Act 1993 must be obtained from Council for those works prior to the issue of any Construction Certificate.

All Stormwater Drainage System work within any road or public place must comply with Woollahra Municipal Council’s Specification for Roadworks, Drainage and Miscellaneous Works dated February 2012.

Note: Clause F1.1 of Volume 1 and Part 3.1.2 of Volume 2 of the BCA provide that stormwater drainage complying with AS/NZS 3500.3 Plumbing and drainage - Part 3: Stormwater drainage is deemed-to-satisfy the BCA. Council’s specifications apply in relation to any works with any road or public place.

Note: The collection, storage and use of rainwater is to be in accordance with Standards Australia HB230-2008 “Rainwater Tank Design and Installation Handbook”.

Note: Stormwater Drainage Systems must not discharge to any Sewer System. It is illegal to connect stormwater pipes and drains to the sewerage system as this can overload the system and cause sewage overflows. See: http://www.sydneywater.com.au/Publications/Factsheets/SewerfixLookingAfterYourSewerPipes


Standard Condition: C49

C.9 Swimming and Spa Pools – Child Resistant Barriers

The Construction Certificate plans and specifications required by Clause 139 of the Regulation must demonstrate compliance (by showing the proposed location of all child-resistant barriers and the resuscitation sign) with the provisions of the Swimming Pools Act 1992 and the Building Code of Australia.

Approval is not granted for the modification of any boundary fencing beyond what is authorised by the stamped approved plans, as modified by any condition of consent or what is permitted to be carried out as ‘exempt development’ pursuant to State Environmental Planning Policy (Exempt & Complying Development Codes) 2008.

Note: A statement to the effect that isolation swimming pool fencing complying with AS1926 will be installed does not satisfy this condition. The location of the required barriers and the sign must be detailed upon the Construction Certificate plans.

Standard Condition: C55 (Autotext CC55)

C.10 Swimming and Spa Pools – Backwash

The Construction Certificate plans and specification required to be submitted pursuant to clause 139 of the Regulation must detail the connection of backwash to Sydney Waters sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.
Note: The plans must show the location of Sydney Waters sewer, the yard gully or any new connection to the sewer system including a detailed cross section of the connection complying with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

Note: The discharge of backwash water to any stormwater system is water pollution and an offence under the Protection of the Environment Operations Act 1997. The connection of any backwash pipe to any stormwater system is an offence under the Protection of the Environment Operations Act 1997.

Standard Condition: C56 (Autotext CC56)

D. Conditions which must be satisfied prior to the commencement of any development work

D.1 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

For the purposes of section 80A (11) of the Act, the following conditions are prescribed in relation to a development consent for development that involves any building work:

a) that the work must be carried out in accordance with the requirements of the Building Code of Australia,

b) in the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

a) to the extent to which an exemption is in force under the Home Building Regulation 2004,

b) to the erection of a temporary building.

In this condition, a reference to the BCA is a reference to that code as in force on the date the application for the relevant construction certificate is made.

Note: This condition must be satisfied prior to commencement of any work in relation to the contract of insurance under the Home Building Act 1989. This condition also has effect during the carrying out of all building work with respect to compliance with the Building Code of Australia.

Note: All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.

Standard Condition: D1 (Autotext DD1)

D.2 Dilapidation Reports for existing buildings

Dilapidation surveys must be conducted and dilapidation reports prepared by a professional engineer (structural) of all buildings on land whose title boundary abuts the site and of such further buildings located within the likely “zone of influence” of any excavation, dewatering and/or construction induced vibration.

These properties must include (but is not limited to):
- 170 Paddington Street
- 176 Paddington Street

The dilapidation reports must be completed and submitted to Council with the Notice of Commencement prior to the commencement of any development work.
Where excavation of the site will extend below the level of any immediately adjoining building the principal contractor or owner builder must give the adjoining building owner(s) a copy of the dilapidation report for their building(s) and a copy of the notice of commencement required by s81A(2) of the Act not less than two (2) days prior to the commencement of any work.

**Note:** The reasons for this condition are:
- To provide a record of the condition of buildings prior to development being carried out
- To encourage developers and its contractors to use construction techniques that will minimise the risk of damage to buildings on neighbouring land

Also refer to the Dilapidation Report Advising for more information regarding this condition

**Standard Condition: D4**

### D.3 Adjoining buildings founded on loose foundation materials

The principal contractor must ensure that a professional engineer determines the possibility of any adjoining buildings founded on loose foundation materials being affected by piling, piers or excavation. The professional engineer (geotechnical consultant) must assess the requirements for underpinning any adjoining or adjacent buildings founded on such soil on a case by case basis and the principal contractor must comply with any reasonable direction of the professional engineer.

**Note:** A failure by contractors to adequately assess and seek professional engineering (geotechnical) advice to ensure that appropriate underpinning and support to adjoining land is maintained prior to commencement may result in damage to adjoining land and buildings. Such contractors are likely to be held responsible for any damages arising from the removal of any support to supported land as defined by section 177 of the Conveyancing Act 1919.

**Standard Condition: D6 (Autotext DD6)**

### D.4 Works (Construction) Zone – Approval & Implementation

A works zone is required for this development. The principal contractor or owner must apply for a works zone. If the works zone is approved the principal contractor or owner must pay all fees for and implement the required works zone before commencement of any work.

The principal contractor must pay all fees associated with the application and occupation and use of the road as a works zone. All works zone signs must have been erected by Council to permit enforcement of the works zone by Rangers and Police before commencement of any work. Signs are not erected until full payment of works zone fees.

**Note:** The principal contractor or owner must allow not less than four to six weeks (for routine applications) from the date of making an application to the Traffic Committee (Woollahra Local Traffic Committee) constituted under the Clause 22 of the Transport Administration (General) Regulation 2000 to exercise those functions delegated by the Roads and Traffic Authority under Section 50 of the Transport Administration Act 1988.

**Note:** The enforcement of the works zone is at the discretion of Council’s Rangers and the NSW Police Service. The principal contractor must report any breach of the works zone to either Council or the NSW Police Service.

**Standard Condition: D10 (Autotext DD10)**
D.5  Security Fencing, Hoarding and Overhead Protection

Security fencing must be provided around the perimeter of the development site, including any additional precautionary measures taken to prevent unauthorised entry to the site at all times during the demolition, excavation and construction period. Security fencing must be the equivalent 1.8m high chain wire as specified in AS 1725.

Where the development site adjoins a public thoroughfare, the common boundary between them must be fenced for its full length with a hoarding, unless the least horizontal distance between the common boundary and the nearest parts of the structure is greater than twice the height of the structure. The hoarding must be constructed of solid materials (chain wire or the like is not acceptable) to a height of not less than 1.8 m adjacent to the thoroughfare.

Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure and the facing facade protected by heavy-duty scaffolding, unless either:

a) The vertical height above footpath level of the structure being demolished is less than 4.0 m; or
b) The least horizontal distance between footpath and the nearest part of the structure is greater than half the height of the structure.

The overhead structure must consist of a horizontal platform of solid construction and vertical supports, and the platform must:

a) Extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary;
b) Have a clear height above the footpath of not less than 2.1 m;
c) Terminate 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than 0.5 m above the platform surface; and
d) Together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa.
The principal contractor or owner builder must pay all fees associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

The principal contractor or owner builder must ensure that Overhead Protective Structures are installed and maintained in accordance with WorkCover NSW Code of Practice - Overhead Protective Structures, gazetted 16 December 1994, as commenced 20 March 1995. This can be downloaded from: http://www.workcover.nsw.gov.au/formspublications/publications/Pages/WC00017_OverheadProtectiveStructuresCodeofPractice.aspx

Security fencing, hoarding and overhead protective structure must not obstruct access to utilities services including but not limited to man holes, pits, stop valves, fire hydrants or the like.

Note: The principal contractor or owner must allow not less than two (2) weeks from the date of making a hoarding application for determination. Any approval for a hoarding or overhead protection under the Roads Act 1993 will be subject to its own conditions and fees.

D.6 Site Signs

The Principal Contractor or owner builder must ensure that the sign/s required by clauses 98A and 227A of the Regulation is/are erected and maintained at all times.

Clause 98A of the Regulation provides:

\textit{Erection of signs}

\begin{itemize}
\item For the purposes of section 80A (11) of the Act, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
\item A sign must be erected in a prominent position on any site on which building work, subdivision `work or demolition work is being carried out:
  \begin{itemize}
  \item showing the name, address and telephone number of the principal certifying authority for the work, and
  \item showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  \item stating that unauthorised entry to the work site is prohibited.
  \end{itemize}
\item Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
\item This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
\item This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State’s building laws.”
\end{itemize}

Clause 227A of the Regulation provides:
Signs on development sites

If there is a person who is the PCA or the principal contractor for any building work, subdivision work or demolition work authorised to be carried out on a site by a development consent or complying development certificate:

- Each such person MUST ensure that a rigid and durable sign showing the person’s identifying particulars so that they can be read easily by anyone in any public road or other public place adjacent to the site is erected in a prominent position on the site before the commencement of work, and is maintained on the site at all times while this clause applies until the work has been carried out.

Note: Clause 227A imposes a penalty exceeding $1,000 if these requirements are not complied with.

Note: If Council is appointed as the PCA it will provide the sign to the principal contractor or owner builder who must ensure that the sign is erected and maintained as required by Clause 98A and Clause 227A of the Regulation.

D.7 Toilet Facilities

Toilet facilities are to 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. Each toilet provided:

a) Must be a standard flushing toilet, and
b) Must be connected to a public sewer, or
c) If connection to a public sewer is not practicable, to an accredited sewage management facility approved by the council, or
d) 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.

The provision of toilet facilities in accordance with this condition must be completed before any other work is commenced.

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 *Local Government (Approvals) Regulation 1993*.

*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*.

Note: This condition does not set aside the requirement to comply with Workcover NSW requirements.
D.8 Erosion and Sediment Controls – Installation

The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:

a) The Soil and Water Management Plan if required under this consent;
b) “Do it Right On Site, Soil and Water Management for the Construction Industry” published by the Southern Sydney Regional Organisation of Councils, 2001; and
c) “Managing Urban Stormwater - Soils and Construction” published by the NSW Department of Housing 4th Edition” (‘The Blue Book’).

Where there is any conflict The Blue Book takes precedence.

Note: The International Erosion Control Association – Australasia (http://www.austieca.com.au/) lists consultant experts who can assist in ensuring compliance with this condition. Where Soil and Water Management Plan is required for larger projects it is recommended that this be produced by a member of the International Erosion Control Association – Australasia.

Note: The “Do it Right On Site, Soil and Water Management for the Construction Industry” publications can be downloaded free of charge from www.woollahra.nsw.gov.au.

Note: A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the Protection of the Environment Operations Act 1997 without any further warning. It is a criminal offence to cause, permit or allow pollution.

Note: Section 257 of the Protection of the Environment Operations Act 1997 provides inter alia that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”

Warning: Irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of their occupation of the land being developed.

Standard Condition: D14 (Autotext DD14)

D.9 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)

The erection of the building in accordance with this development consent must not be commenced until:

a) A construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited Certifier, and

b) The person having the benefit of the development consent has:
   • Appointed a principal certifying authority for the building work, and
   • Notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and

c) The principal certifying authority has, no later than 2 days before the building work commences:
   • Notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
   • Notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
d) The person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
  - Appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
  - Notified the principal certifying authority of any such appointment, and
  - Unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
  - Given at least 2 days’ notice to the council of the person’s intention to commence the erection of the building.

Note: building has the same meaning as in section 4 of the Act and includes part of a building and any structure or part of a structure.

Note: new building has the same meaning as in section 109H of the Act and includes an altered portion of, or an extension to, an existing building.

Note: The commencement of demolition works associated with an altered portion of, or an extension to, an existing building is considered to be the commencement of building work requiring compliance with section 82A(2) of the Act (including the need for a Construction Certificate) prior to any demolition work. See: Over our Dead Body Society Inc v Byron Bay Community Association Inc [2001] NSWLEC 125.

Note: Construction Certificate Application, PCA Service Agreement and Notice of Commencement forms can be downloaded from Council’s website www.woollahra.nsw.gov.au.

Note: It is an offence for any person to carry out the erection of a building in breach of this condition and in breach of section 81A(2) of the Act.

Standard Condition: D15 (Autotext DD15)

D.10 Notification of Home Building Act 1989 requirements

a) For the purposes of section 80A (11) of the Act, the requirements of this condition are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the Home Building Act 1989.

b) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
  - In the case of work for which a principal contractor is required to be appointed:
    - the name and licence number of the principal contractor, and
    - the name of the insurer by which the work is insured under Part 6 of that Act,
  - In the case of work to be done by an owner-builder:
    - the name of the owner-builder, and
    - if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

c) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

d) This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State’s building laws.

Standard Condition: D17 (Autotext DD17)
E. Conditions which must be satisfied during any development work

E.1 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

For the purposes of section 80A (11) of the Act, the following condition is prescribed in relation to a development consent for development that involves any building work:

a) That the work must be carried out in accordance with the requirements of the Building Code of Australia,

b) In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

a) To the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4) of the Regulation, or

b) To the erection of a temporary building.

In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant construction certificate is made.

Note: All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.

Standard Condition: E1 (Autotext EE1)

E.2 Compliance with Australian Standard for Demolition


Standard Condition: E2 (Autotext EE2)

E.3 Requirement to notify about new evidence

Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination, heritage significance, threatened species or other relevant matters must be immediately notified to Council and the Principal Certifying Authority.

Standard Condition: E4 (Autotext EE4)

E.4 Critical Stage Inspections

Critical stage inspections must be called for by the principal contractor or owner builder as required by the PCA, any PCA service agreement, the Act and the Regulation.
Work must not proceed beyond each critical stage until the PCA is satisfied that work is proceeding in accordance with this consent, the Construction Certificate(s) and the Act. Critical stage inspections means the inspections prescribed by the Regulations for the purposes of section 109E(3)(d) of the Act or as required by the PCA and any PCA Service Agreement.

**Note:** The PCA may require inspections beyond mandatory critical stage inspections in order that the PCA be satisfied that work is proceeding in accordance with this consent.

**Note:** The PCA may, in addition to inspections, require the submission of Compliance Certificates, survey reports or evidence of suitability in accordance with Part A2.2 of the BCA in relation to any matter relevant to the development.

Standard Condition: E5 (Autotext EE5)

### E.5 Hours of Work –Amenity of the neighbourhood

a) No work must take place on any Sunday or public holiday,

b) No work must take place before 7am or after 5pm any weekday,

b) No work must take place before 7am or after 1pm any Saturday,

d) The following work must not take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday:

i) Piling;

ii) Piering;

iii) Rock or concrete cutting, boring or drilling;

iv) Rock breaking;

v) Rock sawing;

vi) Jack hammering; or

vii) Machine excavation,

e) No loading or unloading of material or equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.

f) No operation of any equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.

g) No rock excavation being cutting, boring, drilling, breaking, sawing, jack hammering or bulk excavation of rock, must occur without a 15 minute break every hour.

This condition has been imposed to mitigate the impact of work upon the amenity of the neighbourhood. Impact of work includes, but is not limited to, noise, vibration, dust, odour, traffic and parking impacts.

**Note:** The use of noise and vibration generating plant and equipment and vehicular traffic, including trucks in particular, significantly degrade the amenity of neighbours and more onerous restrictions apply to these activities. This more invasive work generally occurs during the foundation and bulk excavation stages of development. If you are in doubt as to whether or not a particular activity is considered to be subject to the more onerous requirement (9am to 4pm weekdays and 9am to 1pm Saturdays) please consult with Council.

**Note:** Each and every breach of this condition by any person may be subject to separate penalty infringement notice or prosecution.

**Note:** The delivery and removal of plant, equipment and machinery associated with wide loads subject to RTA and Police restrictions on their movement outside the approved hours of work will be considered on a case by case basis.

**Note:** Compliance with these hours of work does not affect the rights of any person to seek a remedy to offensive noise as defined by the Protection of the Environment Operations Act 1997, the Protection of the Environment Operations (Noise Control) Regulation 2000.
E.6 Public Footpaths – Safety, Access and Maintenance

The principal contractor or owner builder and any other person acting with the benefit of this consent must:

a) Not erect or maintain any gate or fence swing out or encroaching upon the road or the footway.
b) Not use the road or footway for the storage of any article, material, matter, waste or thing.
c) Not use the road or footway for any work.
d) Keep the road and footway in good repair free of any trip hazard or obstruction.
e) Not stand any plant and equipment upon the road or footway.
f) Provide a clear safe pedestrian route a minimum of 1.5m wide.
g) Protect street name inlays in the footpath which are not to be removed or damaged during development.

This condition does not apply to the extent that a permit or approval exists under the section 73 of the Road Transport (Safety and Traffic Management) Act 1999, section 138 of the Roads Act 1993 or section 94 of the Local Government Act 1993 except that at all time compliance is required with:

a) Australian Standard AS 1742 (Set) Manual of uniform traffic control devices and all relevant parts of this set of standards.
b) Australian Road Rules to the extent they are adopted under the Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999.

Note: Section 73 of the Road Transport (Safety and Traffic Management) Act 1999 allows the Police to close any road or road related area to traffic during any temporary obstruction or danger to traffic or for any temporary purpose. Any road closure requires Police approval.

Note: Section 138 of the Roads Act 1993 provides that a person must not:
- erect a structure or carry out a work in, on or over a public road, or
- dig up or disturb the surface of a public road, or
- remove or interfere with a structure, work or tree on a public road, or
- pump water into a public road from any land adjoining the road, or
- connect a road (whether public or private) to a classified road, otherwise than with the consent of the appropriate roads authority.

Note: Section 68 of the Local Government Act 1993 provides that a person may carry out certain activities only with the prior approval of the council including:
- Part C Management of Waste:
  a. For fee or reward, transport waste over or under a public place
  b. Place waste in a public place
  c. Place a waste storage container in a public place.”
- Part E Public roads:
  a. Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway
  b. Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.”
  c. Any work in, on or over the Road or Footway requires Council Approval and in the case of classified roads the NSW Roads and Traffic Authority. Road includes that portion of the road uses as a footway.

Standard Condition: E6 (Autotext EE6)
E.7 Maintenance of Environmental Controls

The principal contractor or owner builder must ensure that the following monitoring, measures and controls are maintained:

a) Erosion and sediment controls,
b) Dust controls,
c) Dewatering discharges,
d) Noise controls;
e) Vibration monitoring and controls;
f) Ablutions;


Standard Condition: E11

E.8 Compliance with Geotechnical / Hydrogeological Monitoring Program

Excavation must be undertaken in accordance with the recommendations of the Geotechnical / Hydrogeological Monitoring Program and any oral or written direction of the supervising professional engineer.

The principal contractor and any sub-contractor must strictly follow the Geotechnical / Hydrogeological Monitoring Program for the development including, but not limited to;

a) the location and type of monitoring systems to be utilised;
b) recommended hold points to allow for inspection and certification of geotechnical and hydrogeological measures by the professional engineer; and
c) the contingency plan.

Note: The consent authority cannot require that the author of the geotechnical/hydrogeological report submitted with the Development Application to be appointed as the professional engineer supervising the work however, it is the Council’s recommendation that the author of the report be retained during the construction stage.

Standard Condition: E12 (Autotext EE12)

E.9 Support of adjoining land and buildings

A person must not to do anything on or in relation to the site (the supporting land) that removes the support provided by the supporting land to any other land (the supported land) or building (the supported building).

For the purposes of this condition, supporting land includes the natural surface of the site, the subsoil of the site, any water beneath the site, and any part of the site that has been reclaimed.

Note: This condition does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is considered necessary upon any adjoining or supported land by any person the principal contractor or owner builder must obtain:

a. the consent of the owners of such adjoining or supported land to trespass or encroach, or
b. an access order under the Access to Neighbouring Land Act 2000, or
c. an easement under section 88K of the Conveyancing Act 1919, or
d. an easement under section 40 of the Land & Environment Court Act 1979 as appropriate.
Note: Section 177 of the Conveyancing Act 1919 creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).

Note: Clause 20 of the Roads (General) Regulation 2000 prohibits excavation in the vicinity of roads as follows: “Excavations adjacent to road - A person must not excavate land in the vicinity of a road if the excavation is capable of causing damage to the road (such as by way of subsidence) or to any work or structure on the road.” Separate approval is required under the Roads Act 1993 for any underpinning, shoring, soil anchoring (temporary) or the like within or under any road. Council will not give approval to permanent underpinning, shoring, soil anchoring within or under any road.

Note: The encroachment of work or the like is a civil matter of trespass or encroachment and Council does not adjudicate or regulate such trespasses or encroachments except in relation to encroachments upon any road, public place, crown land under Council’s care control or management, or any community or operational land as defined by the Local Government Act 1993.

Standard Condition: E13 (Autotext EE13)

E.10 Vibration Monitoring

Vibration monitoring equipment must be installed and maintained, under the supervision of a professional engineer with expertise and experience in geotechnical engineering, between any potential source of vibration and any building identified by the professional engineer as being potentially at risk of movement or damage from settlement and/or vibration during the excavation and during the removal of any excavated material from the land being developed.

If vibration monitoring equipment detects any vibration at the level of the footings of any adjacent building exceeding the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity an audible alarm must activate such that the principal contractor and any sub-contractor are easily alerted to the event.

Where any such alarm triggers all excavation works must cease immediately. Prior to the vibration monitoring equipment being reset by the professional engineer and any further work recommencing the event must be recorded and the cause of the event identified and documented by the professional engineer.

Where the event requires, in the opinion of the professional engineer, any change in work practices to ensure that vibration at the level of the footings of any adjacent building does not exceed the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity these changes in work practices must be documented and a written direction given by the professional engineer to the principal contractor and any sub-contractor clearly setting out required work practice.

The principal contractor and any sub-contractor must comply with all work directions, verbal or written, given by the professional engineer.

A copy of any written direction required by this condition must be provided to the Principal Certifying Authority within 24 hours of any event.

Where there is any movement in foundations such that damaged is occasioned to any adjoining building or such that there is any removal of support to supported land the professional engineer, principal contractor and any sub-contractor responsible for such work must immediately cease all work, inform the owner of that supported land and take immediate action under the direction of the professional engineer to prevent any further damage and restore support to the supported land.
**E.11 Erosion and Sediment Controls – Maintenance**

The *principal contractor* or *owner builder* must maintain water pollution, erosion and sedimentation controls in accordance with:

a) The Soil and Water Management Plan required under this consent;

b) “Do it Right On Site, Soil and Water Management for the Construction Industry” published by the Southern Sydney Regional Organisation of Councils, 2001; and


Where there is any conflict *The Blue Book* takes precedence.

**Note:** A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the Protection of the Environment Operations Act 1997 without any further warning. It is a criminal offence to cause, permit or allow pollution.

**Note:** Section 257 of the Protection of the Environment Operations Act 1997 provides that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”.

**Warning:** Irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of the occupation of the land being developed whether or not they actually cause the pollution.

**Standard Condition:** E15 (Autotext EE15)

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**E.12 Disposal of site water during construction**

The principal contractor or owner builder must ensure:

a) Prior to pumping any water into the road or public stormwater system that approval is obtained from Council under section 138(1)(d) of the Roads Act 1993;

b) That *water pollution*, as defined by the *Protection of the Environment Operations Act 1997*, does not occur as the result of the discharge to the road, public stormwater system or other place or any site water;

c) That stormwater from any roof or other impervious areas is linked, via temporary downpipes and stormwater pipes, to a Council approved stormwater disposal system immediately upon completion of the roof installation or work creating other impervious areas.
Note: This condition has been imposed to ensure that adjoining and neighbouring land is not adversely affected by unreasonable overland flows of stormwater and that site water does not concentrate water such that they cause erosion and water pollution.
Standard Condition: E17 (Autotext EE17)

E.13 Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum

The Principal Contractor or Owner Builder must ensure that a surveyor registered under the Surveying Act 2002 carries out check surveys and provides survey certificates confirming the location of the building(s), ancillary works, flood protection works and the stormwater drainage system relative to the boundaries of the site and that the height of buildings, ancillary works, flood protection works and the stormwater drainage system relative to Australian Height Datum complies with this consent at the following critical stages.

The Principal Contractor or Owner Builder must ensure that work must not proceed beyond each of the following critical stages until compliance has been demonstrated to the PCA’s satisfaction:

a) Upon the completion of foundation walls prior to the laying of any floor or the pouring of any floor slab and generally at damp proof course level;
b) Upon the completion of formwork for floor slabs prior to the laying of any floor or the pouring of any concrete and generally at each storey;
c) Upon the completion of formwork or framework for the roof(s) prior to the laying of any roofing or the pouring of any concrete roof;
d) Upon the completion of formwork and steel fixing prior to pouring of any concrete for any ancillary structure, flood protection work, swimming pool or spa pool or the like;
e) Upon the completion of formwork and steel fixing prior to pouring of any concrete for driveways showing transitions and crest thresholds confirming that driveway levels match Council approved driveway crossing levels and minimum flood levels.;
f) Stormwater Drainage Systems prior to back filling over pipes confirming location, height and capacity of works.
g) Flood protection measures are in place confirming location, height and capacity.

Note: This condition has been imposed to ensure that development occurs in the location and at the height approved under this consent. This is critical to ensure that building are constructed to minimum heights for flood protection and maximum heights to protect views and the amenity of neighbours.
Standard Condition: E20 (Autotext EE20)

E.14 Placement and use of Skip Bins

The principal contractor or owner builder must ensure that all waste storage containers, including but not limited to skip bins, must be stored within the site unless:

a) Activity Approval has been issued by Council under section 94 of the Local Government Act 1993 to place the waste storage container in a public place, and
b) Where located on the road it is located only in a positions where a vehicle may lawfully park in accordance with the Australian Road Rules to the extent they are adopted under the Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999.

Note: Waste storage containers must not be located on the footpath without a site specific activity approval. Where such site specific activity approval is granted a 1.5m wide clear path of travel is maintained free of any trip hazards.
Standard Condition: E21 (Autotext EE21)
E.15 Prohibition of burning

There must be no burning of any waste or other materials. The burning of CCA (copper chrome arsenate) or PCP (pentachlorophenol) treated timber is prohibited in all parts of NSW.

All burning is prohibited in the Woollahra local government area.

Note: Pursuant to the Protection of the Environment Operations (Control of Burning) Regulation 2000 all burning (including burning of vegetation and domestic waste) is prohibited except with approval. No approval is granted under this consent for any burning.

Standard Condition: E22 (Autotext EE22)

E.16 Dust Mitigation

Dust mitigation must be implemented in accordance with “Dust Control - Do it right on site” published by the Southern Sydney Regional Organisation of Councils.

This generally requires:

a) Dust screens to all hoardings and site fences.

b) All stockpiles or loose materials to be covered when not being used.

c) All equipment, where capable, being fitted with dust catchers.

d) All loose materials being placed bags before placing into waste or skip bins.

e) All waste and skip bins being kept covered when not being filled or emptied.

f) The surface of excavation work being kept wet to minimise dust.

g) Landscaping incorporating trees, dense shrubs and grass being implemented as soon as practically possible to minimise dust.

Note: “Dust Control - Do it right on site” can be downloaded free of charge from Council’s web site www.woollahra.nsw.gov.au or obtained from Council’s office.

Note: Special precautions must be taken when removing asbestos or lead materials from development sites.

Additional information can be obtained from www.workcover.nsw.gov.au and www.epa.nsw.gov.au. Other specific condition and advice may apply.

Note: Demolition and construction activities may affect local air quality and contribute to urban air pollution. The causes are dust, smoke and fumes coming from equipment or activities, and airborne chemicals when spraying for pest management. Precautions must be taken to prevent air pollution.

Standard Condition: E23 (Autotext EE23)

E.17 Swimming and Spa Pools – Temporary Child Resistant Barriers and other matters

Temporary child-resistant barriers must be installed in compliance with the Swimming Pools Act 1992 and Building Code of Australia where any swimming pool or spa pool, as defined by the Swimming Pools Act 1992, contains more than 300mm in depth of water at any time.

Permanent child-resistant barriers must be installed in compliance with the Swimming Pools Act 1992 and the Building Code of Australia as soon as practical.

Backwash and any temporary dewatering from any swimming pool or spa pool as defined by the Swimming Pools Act 1992 must be discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

Note: This condition does not prevent Council from issuing an order pursuant to section 23 of the Swimming Pool Act 1992 or taking such further action as necessary for a breach of this condition or the Swimming Pools Act 1992.

Standard Condition: E26
E.18 Site waste minimisation and management – Demolition

In order to maximise resource recovery and minimise residual waste from demolition activities:

a) The provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work
b) An area is to be allocated for the storage of materials for use, recycling and disposal (giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation and access and handling requirements)
c) Provide separate collection bins and/or areas for the storage of residual waste
d) Clearly ‘signpost’ the purpose and content of the bins and/or storage areas
e) Implement measures to prevent damage by the elements, odour, health risks and windborne litter
f) Minimise site disturbance, limiting unnecessary excavation

When implementing the SWMMP the applicant must ensure:

a) Footpaths, public reserves and street gutters are not used as places to store demolition waste or materials of any kind without Council approval
b) Any material moved offsite is transported in accordance with the requirements of the Protection of the Environment Operations Act (1997)
c) Waste is only transported to a place that can lawfully be used as a waste facility
d) Generation, storage, treatment and disposal of hazardous waste and special waste (including asbestos) is conducted in accordance with relevant waste legislation administered by the EPA and relevant Occupational Health and Safety legislation administered by Workcover NSW
e) Evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained

Note: Materials that have an existing reuse or recycling market should not be disposed of in a land fill. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.

Standard Condition: E31 (Autotext EE31)

E.19 Site waste minimisation and management – Construction

In order to maximise resource recovery and minimise residual waste from construction activities:

a) The provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work
b) Arrange for the delivery of materials so that materials are delivered ‘as needed’ to prevent the degradation of materials through weathering and moisture damage
c) Consider organising to return excess materials to the supplier or manufacturer
d) Allocate an area for the storage of materials for use, recycling and disposal (considering slope, drainage, location of waterways, stormwater outlets and vegetation)
e) Clearly ‘signpost’ the purpose and content of the storage areas
f) Arrange contractors for the transport, processing and disposal of waste and recycling. Ensure that all contractors are aware of the legal requirements for disposing of waste.
g) Promote separate collection bins or areas for the storage of residual waste
h) implement measures to prevent damage by the elements, odour and health risks, and windborne litter

i) Minimise site disturbance and limit unnecessary excavation

j) Ensure that all waste is transported to a place that can lawfully be used as a waste facility

k) Retain all records demonstrating lawful disposal of waste and keep them readily accessible for inspection by regulatory authorities such as council, Department of Environment and Climate Change (DECC) or WorkCover NSW

Standard Condition: E32 (Autotext EE32)

E.20 Asbestos Removal

Where hazardous material, including bonded or friable asbestos has been identified in accordance with condition B2 above, and such material must be demolished, disturbed and subsequently removed, all such works must comply with the following criteria:

a) Be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (restricted) Asbestos License,


c) No asbestos products may be reused on the site

d) No asbestos laden skip or bins shall be left in any public place

Note: This condition is imposed to protect the health and safety of persons working on the site and the public

Standard Condition: E39

E.21 Classification of Hazardous Waste

Prior to the exportation of hazardous waste (including hazardous fill or soil) from the site, the waste materials must be classified in accordance with the provision of the Protection of the Environment Operations Act 1997 and the NSW DECC Waste Classification Guidelines, Part1: Classifying Waste (April 2008).

Note: This condition is imposed to ensure that where hazardous waste will be removed from a site an Asbestos Licensed contractor can definitively determine where the waste may be legally taken for disposal.

Standard Condition: E40

E.22 Disposal of Asbestos and Hazardous Waste

Asbestos and hazardous waste, once classified in accordance with condition E 21 above must only be transported to waste facilities licensed to accept asbestos and appropriate classifications of hazardous waste.

Note: This condition is imposed to ensure that asbestos and other Hazardous waste is disposed of lawfully under the Protection of the Environment Operations Act 1997 and relevant EPA requirements.

Standard Condition: E41

E.23 Asbestos Removal Signage

Standard commercially manufactured signs containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm are to be erected in prominent visible positions on the site when asbestos is being removed.
Note: This condition is imposed to ensure awareness of any hazard to the health and safety of persons working on the site and public.
Standard Condition: E42

E.24 Notification of Asbestos Removal

In addition to the requirements for licensed asbestos removalists to give written notice to WorkCover all adjoining properties and those opposite the development site must be notified in writing of the dates and times when asbestos removal is to be conducted. The notification is to identify the licensed asbestos removal contractor and include a contact person for the site together with telephone and facsimile numbers and email addresses.

Note: This condition has been imposed to ensure that local residents are informed and have adequate communication facilitated for incidents of asbestos removal.
Standard Condition: E43

E.25 Tree Preservation

All persons must comply with Council’s Development Control Plan (DCP) 2015, Tree Management Chapter E3 other than where varied by this consent. The DCP applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.

General Protection Requirements

a) Excavation must cease where tree roots with a diameter exceeding 30mm are exposed. The principal contractor must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.

b) Where there is damage to any part of a tree the principal contractor must procure an inspection of the tree by a qualified arborist immediately. The principal contractor must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.

Note: Trees must be pruned in accordance with Australian Standard AS 4373 “Pruning of Amenity Trees” and WorkCover NSW Code of Practice Amenity Tree Industry.

E.26 Replacement/Supplementary trees which must be planted

Any replacement or supplementary tree shall be grown in accordance with NATSPEC Specifying Trees. The replacement tree shall be maintained in a healthy and vigorous condition. If the replacement tree is found to be faulty, damaged, dying or dead before it attains a size whereby it is protected by Council’s Development Control Plan (DCP) 2015, Tree Management Chapter E3, it must be replaced with another of the same species which complies with the criteria outlined below.

<table>
<thead>
<tr>
<th>Species/Type</th>
<th>Planting/Location</th>
<th>Container Size/Size of Tree (at planting)</th>
<th>Minimum Dimensions at Maturity (metres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 x <em>Sapium sebiferum</em></td>
<td>Rear</td>
<td>45 litre</td>
<td>5m x 3m</td>
</tr>
<tr>
<td><em>(Chinese Tallow tree)</em> OR</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 x <em>Corymbia ficifolia</em></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>(Summer Beauty)</em></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The project arborist shall document compliance with the above condition.

F. Conditions which must be satisfied prior to any occupation or use of the building (Part 4A of the Act and Part 8 Division 3 of the Regulation)

F.1 Occupation Certificate (section 109M of the Act)

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.

Standard Condition: F1 (Autotext FF1)

F.2 Commissioning and Certification of Systems and Works

The principal contractor or owner builder must submit to the satisfaction of the PCA works-as-executed (“WAE”) plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA confirming that the works, as executed and as detailed, comply with the requirement of this consent, the Act, the Regulations, any relevant construction certificate, the BCA and relevant Australian Standards.

Works-as-executed (“WAE”) plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA must include but may not be limited to:

a) Certification from the supervising professional engineer that the requirement of the Geotechnical/Hydrogeological conditions and report recommendations were implemented and satisfied during development work.

b) All flood protection measures.

c) All garage/car park/basement car park, driveways and access ramps comply with Australian Standard AS 2890.1 – “Off-Street car parking.”

d) All stormwater drainage and storage systems.

e) All mechanical ventilation systems.

f) All hydraulic systems.

g) All structural work.

h) All acoustic attenuation work.

i) All waterproofing.

j) Such further matters as the Principal Certifying Authority may require.

Note: This condition has been imposed to ensure that systems and works as completed meet development standards as defined by the Act, comply with the BCA, comply with this consent and so that a public record of works as execute is maintained.

Note: The PCA may require any number of WAE plans, certificates, or other evidence of suitability as necessary to confirm compliance with the Act, Regulation, Development Standards, BCA, and relevant Australia Standards. As a minimum WAE plans and certification is required for stormwater drainage and detention, mechanical ventilation work, hydraulic services (including but not limited to fire services).

Note: The PCA must submit to Council, with any Occupation Certificate, copies of works-as-executed (“WAE”) plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA upon which the PCA has relied in issuing any Occupation Certificate.

Standard Condition: F7 (Autotext FF7)

F.3 Swimming and Spa Pools – Permanent Child Resistant Barriers and other matters

Prior to filling any swimming pool, as defined by the Swimming Pools Act 1992:


c) The Principal Contractor or owner must either obtain a ‘Certificate of Compliance’ issued pursuant to Section 22D of the *Swimming Pools Act* 1992 or an appropriate Occupation Certificate authorising use of the swimming pool.

d) Public Pools must comply with the NSW Health Public Swimming Pool and Spa Pool Guidelines in force at that time and private pools are encouraged to comply with the same standards as applicable.

e) Water recirculation and filtration systems must be installed in compliance with AS 1926.3-2003:*Swimming pool safety - Water recirculation and filtration systems.*

Backwash must be discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996:

a) Water recirculation and filtration systems must be connected to the electricity supply by a timer that limits the systems operation such that it does not operate:

b) Before 8 am or after 8 pm on any Sunday or public holiday or before 7 am or after 8 pm on any other day.


Standard Condition: F13 (Autotext FF13)

G. Conditions which must be satisfied prior to the issue of any Subdivision Certificate

No conditions

H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (s109C(1)(c))

H.1 Fulfillment of BASIX commitments – Clause 154B of the Regulation

All BASIX commitments must be effected in accordance with the BASIX Certificate No. A238188.

Note: Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."

Standard Condition: H7 (Autotext HH7)

H.2 Removal of Ancillary Works and Structures

The principal contractor or owner must remove from the land and any adjoining public place:

a) The site sign;

b) Ablutions;

c) Hoarding;

d) Scaffolding; and
e) Waste materials, matter, article or thing.

Note: This condition has been imposed to ensure that all ancillary matter is removed prior to the issue of the *Final Occupation Certificate*.

Standard Condition: H12 (Autotext HH12)

I. Conditions which must be satisfied during the ongoing use of the development

1.1 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No. A238188.

Note: This condition affects successors in title with the intent that environmental sustainability measures must be maintained for the life of development under this consent.

Standard Condition: I24

1.2 Maintenance of Landscaping

All landscaping must be maintained in general accordance with this consent.

This condition does not prohibit the planting of additional trees or shrubs subject that they are native species endemic to the immediate locality.

Note: This condition has been imposed to ensure that the landscaping design intent is not eroded over time by the removal of landscaping or inappropriate exotic planting.

Note: This condition also acknowledges that development consent is not required to plant vegetation and that over time additional vegetation may be planted to replace vegetation or enhance the amenity of the locality. Owners should have regard to the amenity impact of trees upon the site and neighbouring land. Further, drought proof vegetation being native species endemic to the immediate locality is encouraged. Suggested native species endemic to the immediate locality are listed in the Brochure Titled “Local Native Plants for Sydney’s Eastern Suburbs” published by Woollahra, Waverley, Randwick and Botany Bay Councils.

Standard Condition: I25

1.3 Swimming and Spa Pools – Maintenance

Swimming and Spa Pools must be maintained:

a) In compliance with the *Swimming Pools Act* 1992 and the Building Code of Australia with regard to the provision of child-resistant barriers and resuscitation signs;

b) In compliance with the NSW Health “*Public Swimming Pool and Spa Pool Guidelines*” in force at that time. Private pools are encouraged to comply with the same standards as applicable;

c) In compliance with AS 1926.3-2003:Swimming pool safety - Water recirculation and filtration systems ;

d) With backwash being discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996, and

e) With a timer that limits the recirculation and filtration systems operation such that it does not emit noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
   - Before 8 am or after 8 pm on any Sunday or public holiday, or
   - Before 7 am or after 8 pm on any other day.
Note: Child-resistant barriers, resuscitation signs, recirculation and filtration systems and controls systems require regular maintenance to ensure that life safety, health and amenity standards are maintained.

Note: The NSW Health Public Swimming Pool and Spa Pool Guidelines can be downloaded free from:

Standard Condition: I30

1.4 Outdoor lighting – Residential

Outdoor lighting must comply with AS 4282-1997: Control of the obtrusive effects of outdoor lighting. The maximum luminous intensity from each luminare must not exceed the level 1 control relevant under table 2.2 of AS 4282. The maximum illuminance and the threshold limits must be in accordance with Table 2.1 of AS 4282.

Note: This condition has been imposed to protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting in public places.

Note: This condition has been imposed to control the obtrusive effects of outdoor lighting

Standard Condition: I49

1.5 Noise from mechanical plant and equipment (including the a/c unit, pool equipment and garage door)

The noise level measured at any boundary of the site at any time while the mechanical plant and equipment is operating must not exceed the background noise level. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed background noise level at any time.

The background noise level is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the $L_{A90, 15	ext{ minute}}$ level measured by a sound level meter.

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


Standard Condition: I59

J. Miscellaneous Conditions

No conditions

K. Advisings

K.1 Criminal Offences – Breach of Development Consent and Environmental laws

Failure to comply with this development consent and any condition of this consent is a criminal offence. Failure to comply with other environmental laws is also a criminal offence.

Where there is any breach Council may without any further warning:

a) Issue Penalty Infringement Notices (On-the-spot fines);
b) Issue notices and orders;
c) Prosecute any person breaching this consent; and/or  
d) Seek injunctions/orders before the courts to restrain and remedy any breach.

Warnings as to potential maximum penalties

Maximum Penalties under NSW Environmental Laws include fines up to $1.1 Million and/or custodial sentences for serious offences.

Warning as to enforcement and legal costs

Should Council have to take any action to enforced compliance with this consent or other environmental laws Council’s policy is to seek from the Court appropriate orders requiring the payments of its costs beyond any penalty or remedy the Court may order. This consent and this specific advice will be tendered to the Court when seeking costs orders from the Court where Council is successful in any necessary enforcement action.

Note: The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of the Crimes (Sentencing Procedure) Act 1999, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious. You can obtain further information from the following web sites:


Standard Advising: K1 (Autotext KK1)

K.2 Dial before you dig

The principal contractor, owner builder or any person digging may be held financially responsible by the asset owner should they damage underground pipe or cable networks. Minimise your risk and Dial 1100 Before You Dig or visit www.dialbeforeyoudig.com.au.

When you contact Dial Before You Dig you will be sent details of all Dial Before You Dig members who have underground assets in the vicinity of your proposed excavation.

Standard Advising: K2 (Autotext KK2)

K.3 Builder’s Licences and Owner Builders Permits

Section 81A of the Act requires among other matters that the person having the benefit of the development consent, if not carrying out the work as an owner-builder, must appointed a principal contractor for residential building work who must be the holder of a contractor licence.

Further information can be obtained from the NSW Office of Fair Trading website about how you obtain an owner builders permit or find a principal contractor (builder):

The Owner(s) must appoint the PCA. The PCA must check that Home Building Act insurance is in place before the commencement of building work. The Principal Contractor (Builder) must provide the Owners with a certificate of insurance evidencing the contract of insurance under the Home Building Act 1989 for the residential building work.

**Standard Condition: K5 (Autotext KK5)**

**K.4 Building Standards - Guide to Standards and Tolerances**

The PCA does not undertake detailed quality control inspections and the role of the PCA is primarily to ensure that the development proceeds in accordance with this consent, Construction Certificates and that the development is fit for occupation in accordance with its classification under the Building Code of Australia. Critical Stage Inspections do not provide the level of supervision required to ensure that the minimum standards and tolerances specified by the “Guide to Standards and Tolerances©” ISBN 0 7347 6010 8 are achieved.

The quality of any development is a function of the quality of the principal contractor’s or owner builder’s supervision of individual contractors and trades on a daily basis during the development. The PCA does not undertake this role.

The NSW Office of Fair Trading have published a “Guide to Standards and Tolerances©” ISBN 0 7347 6010 8. The guide can be obtained from the Office of Fair Trading by calling 13 32 20 or by Fax: 9619 8618 or by post to: Marketing Branch, PO Box 972, Parramatta NSW 2124.

The Guide can be downloaded from: 

Council, as the PCA or otherwise, does not adjudicate building contract disputes between the principal contractor, contractors and the owner.

**Standard Condition: K6 (Autotext KK6)**

**K.5 Workcover requirements**

The Occupational Health and Safety Act 2000 No 40 and subordinate regulations, codes of practice and guidelines control and regulate the development industry.

**Note:** Further information can be obtained from Workcover NSW’s website: http://www.workcover.nsw.gov.au/Industry/Construction/default.htm or through their head office: Location: Workcover NSW, 92-100 Donnison Street, GOSFORD 2250 Postal address: WorkCover NSW, Locked Bag 2906, LISAROW 2252, Phone (02) 4321 5000, Fax (02) 4325 4145.

**Standard Condition: K7 (Autotext KK7)**

**K.6 Asbestos Removal, Repair or Disturbance**

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Workcover NSW.

Before starting work, a work site-specific permit approving each asbestos project must be obtained from Workcover NSW. A permit will not be granted without a current Workcover licence.

All removal, repair or disturbance of or to asbestos material must comply with:
Item No. D3

K.7 Lead Paint


Industrial paints may contain lead. Lead is used in some specialised sign-writing and artist paints, and road marking paints, and anti-corrosive paints. Lead was a major ingredient in commercial and residential paints from the late 1800s to 1970. Most Australian commercial buildings and residential homes built before 1970 contain lead paint. These paints were used both inside and outside buildings.

Lead particles are released when old lead paint flakes and peels and collects as dust in ceiling, wall and floor voids. If dust is generated it must be contained. If runoff contains lead particles it must be contained. Lead is extremely hazardous, and stripping of lead-based paint and the disposal of contaminated waste must be carried out with all care. Lead is a cumulative poison and even small levels in the body can have severe effects.

K.8 Dividing Fences

The erection of dividing fences under this consent does not affect the provisions of the Dividing Fences Act 1991. Council does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences.

Note: Further information can be obtained from the NSW Department of Lands: http://www.lands.nsw.gov.au/LandManagement/Dividing+Fences.htm. Community Justice Centres provide a free mediation service to the community to help people resolve a wide range of disputes, including dividing fences matters. Their service is free, confidential, voluntary, timely and easy to use. Mediation sessions are conducted by two impartial, trained mediators who help people work together to reach an agreement. Over 85% of mediations result in an agreement being reached. Mediation sessions can be arranged at convenient times during the day, evening or weekends. Contact the Community Justice Centre either by phone on 1800 671 964 or at http://www.cjc.nsw.gov.au/.

Standard Advising: K8 (Autotext KK8)
K.9 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Mr T Wong, Senior Assessment Officer, on (02) 9391 7158.

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, site hearings and the use of Court Appointed Experts, 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 commissioner having the full authority to completely determine the matter at the conference.

Standard Condition: K14 (Autotext KK14)

K.10 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 80A of the Act.

The securities will not be released until a Final Occupation Certificate has lodged with Council, Council has inspected the site and Council is satisfied that the public works have been carried out to Council’s requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council’s requirements.

Council will only release the security upon being satisfied that all damage or all works, the purpose for which the security has been held have been remedied or completed to Council’s satisfaction as the case may be.

Council may retain a portion of the security to remedy any defects in any such public work that arise within 6 months after the work is completed.

Upon completion of each section of road, drainage and landscape work to Council’s satisfaction, 90% of the Bond monies held by Council for these works will be released upon application. 10% may be retained by Council for a further 6 month period and may be used by Council to repair or rectify any defects or temporary works during the 6 month period.


Standard Condition: K15 (Autotext KK15)

K.11 Recycling of Demolition and Building Material

It is estimated that building waste, including disposable materials, resulting from demolition, excavation, construction and renovation, accounts for almost 70% of landfill. Such waste is also a problem in the generation of dust and the pollution of stormwater. Council encourages the recycling of demolition and building materials.

Standard Condition: K17 (Autotext KK17)
K.12 Owner Builders

Under the *Home Building Act 1989* any property owner who intends undertaking construction work to a dwelling house or dual occupancy to the value of $12,000 or over must complete an approved education course and obtain an owner-builder permit from the Office of Fair Trading (see [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au).)

Standard Condition: K18 (Autotext KK18)

K.13 Pruning or Removing a Tree Growing on Private Property

Woollahra Municipal Council's *Tree Preservation Order 2006* (TPO) may require that an application be made to Council prior to pruning or removing any tree. The aim is to secure the amenity of trees and preserve the existing landscape within our urban environment.

Before you prune or remove a tree, make sure you read all relevant conditions. You can obtain a copy of the TPO from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or you may contact Council on 9391-7000 for further advice.

Standard Condition: K19 (Autotext KK19)

K.14 Dilapidation Report

Please note the following in relation to the condition for a dilapidation report:

a) The dilapidation report will be made available to affected property owners on requested and may be used by them in the event of a dispute relating to damage allegedly due to the carrying out of the development.

b) This condition cannot prevent neighbouring buildings being damaged by the carrying out of the development.

c) Council will not be held responsible for any damage which may be caused to adjoining buildings as a consequence of the development being carried out.

d) Council will not become directly involved in disputes between the Developer, its contractors and the owners of neighbouring buildings.

e) In the event that access for undertaking the dilapidation survey is denied the applicant is to demonstrate in writing to the satisfaction of the PCA that all reasonable steps were taken to obtain access to the adjoining property. The dilapidation report will need to be based on a survey of what can be observed externally.

Standard Advising: K23 (Autotext KK23)

Annexures

1. Plans and elevations
2. Referral response - Technical services
3. Referral response - Trees & Landscaping
4. Referral response - Heritage
REFERRAL RESPONSE – TECHNICAL SERVICES

FILE NO: Development Applications/ 669/2015/1
ADDRESS: 172 Paddington Street PADDINGTON 2021
PROPOSAL: Alterations & additions to existing dwelling including enlarged basement area; new swimming pool and associated landscaping; new loft over existing garage and new attic level with rear dormer window and skylight
FROM: Mehrnaz Jamali - Development Engineer
TO: Mr T Wong

1. ISSUES

- None. Refer to comments and conditions.

2. DOCUMENTATION

I refer to the following documents received for this report:


3. ASSESSMENT

Comments have been prepared on the following. Where Approval is recommended, Conditions of Consent follow at the end of the comments.

a. Site Drainage comments

There are no objections to connecting the drainage from the proposed works to the existing stormwater system.

Council’s Technical Services Division is satisfied that adequate provision has been made for the disposal of stormwater from the land it is proposed to develop and complies with Chapter E2 “Stormwater and Flood Risk Management” DCP.

b. Flooding & Overland Flow comments
Not affected

c. Impacts on Council Infrastructure comments

No works proposed to the existing garage and access. Stormwater connection to existing outlets on Paddington Lane.

The remainder of Council's assets are in serviceable condition - conditions applied.

d. Traffic comments

The expected traffic generation from the proposed development is typical for the zoning of the site.

e. Vehicle Access & Accommodation comments

The access and parking layout is satisfactory complies with AS 2890.1 – No specific conditions required

f. Geotechnical, Hydrogeological and/or Structural comments

A Geotechnical Report, referenced AW40771, prepared by AW Geotechnical, dated 10 December 2015 has been submitted in support of the application. The proposal involves excavation for extension to the laundry area and a new swimming pool to a depth of about 2m and positioned within 1.5m of property boundary.

The report identified that the subsurface conditions as:
   a) Fill to depth of 0.8m
   b) Silty sand to depth of 1m.

Groundwater appeared not to be an issue.

The report made comments and recommendations on the following:
   • Excavation
   • Bearing pressures

Conditions covering these matters as well as others identified by Council have been added to the Referral.

Council’s Technical Services has no objection to the proposed excavation on technical grounds. Notwithstanding this, Council’s Planning Officer is also to undertake an assessment of the proposed excavation against the relevant excavation objectives and controls prescribed under the LEP and RDCP.

4. RECOMMENDATION
Council’s Development Engineer has determined that the proposal is satisfactory, subject to the following conditions:

**Conditions of Consent**

*Please note that the standard conditions of consent are generally modified by the Technical Services Division to suit a particular development application. Please ensure all Technical Services conditions of consent are cut and pasted from this document only, and not inserted as standard conditions using the automatically generated (F3) function.*

**A. General Conditions**

<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
<th>Author/Drawn</th>
<th>Date(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>AW40771</td>
<td>Geotechnical Report</td>
<td>AW Geotechnical</td>
<td>10 December 2015</td>
</tr>
</tbody>
</table>

**A.8 Ancillary Aspect of the Development (Repair Damaged Infrastructure)**

**B. Conditions which must be satisfied PRIOR TO THE DEMOLITION of any building or construction**

**B.7 Public Road Assets Survey prior to any work/demolition**

**C. Conditions which must be satisfied PRIOR TO THE ISSUE OF ANY CONSTRUCTION CERTIFICATE**

**C.5 Payment of Security, Levies and Fees**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Security</th>
<th>Security Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property Damage Security Deposit (S138)</td>
<td>$9,041</td>
<td>No</td>
<td>T113</td>
</tr>
</tbody>
</table>

**C.25 Soil and Water Management Plan – Submissions & Approval**

**C.35 Structural Adequacy of Existing Supporting Structures**

**C.40 Geotechnical and Hydrogeological Design, Certification & Monitoring**

**C.49 Stormwater discharge to existing Stormwater Drainage System**

**D. Conditions which must be satisfied PRIOR TO THE COMMENCEMENT OF ANY DEVELOPMENT WORK**
D.4 Dilapidation Reports for existing buildings

Dilapidation surveys must be conducted and dilapidation reports prepared by a professional engineer (structural) of all buildings on land whose title boundary abuts the site and of such further buildings located within the likely “zone of influence” of any excavation, dewatering and/or construction induced vibration.

These properties must include (but is not limited to)
- 170 Paddington Street
- 176 Paddington Street

The dilapidation reports must be completed and submitted to Council with the Notice of Commencement prior to the commencement of any development work.

Where excavation of the site will extend below the level of any immediately adjoining building the principal contractor or owner builder must give the adjoining building owner(s) a copy of the dilapidation report for their building(s) and a copy of the notice of commencement required by s81A(2) of the Act not less than two (2) days prior to the commencement of any work.

Note: The reasons for this condition are:
- To provide a record of the condition of buildings prior to development being carried out
- To encourage developers and its contractors to use construction techniques that will minimise the risk of damage to buildings on neighbouring land

Also refer to the Dilapidation Report Advising for more information regarding this condition

Standard Condition: D4

D6 Adjoining buildings founded on loose foundation materials

D.10 Works (Construction) Zone – Approval & Implementation

D.14 Erosion & Sediment Control Installation

E. Conditions which must be SATISFIED DURING ANY DEVELOPMENT WORK

E.7 Public Footpaths – safety, access and maintenance

E.11 Maintenance of Environmental Controls,

E.12 Compliance with Geotechnical / Hydrogeological Monitoring Program

E.13 Support of adjoining land and buildings

E.14 Vibration Monitoring

E.15 Erosion & Sediment Controls - Maintenance
E.17 Disposal of Site water during construction,

F. Conditions which must be satisfied PRIOR TO ANY OCCUPATION or use of the building (Part 4A of the Act and Part 8 Division 3 of the Regulation)

F.7 Commissioning & Certification of Systems & Works

G. Conditions which must be satisfied PRIOR TO THE ISSUE OF ANY SUBDIVISION CERTIFICATE

Nil

H. Conditions which must be satisfied prior to the issue of a FINAL OCCUPATION CERTIFICATE (s109C(1)(c))

Nil

I. Conditions which must be satisfied during the ONGOING USE OF THE DEVELOPMENT

Nil

K. Advisings

K.23 Dilapidation Report Condition
REFERRAL RESPONSE – TREES & LANDSCAPING

FILE NO: DA 669/2015/1

ADDRESS: 172 Paddington Street PADDINGTON 2021

PROPOSAL: Alterations & additions to existing dwelling including enlarged basement area; new swimming pool and associated landscaping; new loft over existing garage and new attic level with rear dormer window and skylight

FROM: David Grey - Tree & Landscape Officer

TO: Mr T Wong

I refer to the following documents received for this report:

- Statement of Environmental Effects, prepared by Ark Design Studio, dated December 2015
- Survey Plan No.30922-2-1, drafted by John B Stephens, dated 24 August 2015
- Architectural Drawing No. ARK861-1-2 , drawn by Ark Design Studios, dated 7 April 2016 (Rev C)

Supplied materials reviewed 8 April 2016

Relevant Control:

- Woollahra Local Environment Plan 2014
- Woollahra Residential Development Control Plan 2015

The comments and recommendations within this Referral Response have taken into consideration the guidelines established within Australian Standard AS 4373 – Pruning of amenity trees and Australian Standard AS 4970 – Protection of trees on development sites

SUMMARY

Proffered replacement trees are acceptable to Tree & Landscape section

COMMENTS
The supplied modified drawing indicates the planting of a Chinese Tallow tree or a Corymbia ‘Summer Beauty’ as a replacement tree for the Camellia proposed for removal. Either of these trees is acceptable to Tree & Landscape section as a replacement.

RECOMMENDATIONS

Council’s Tree and Landscape Officer has determined that the development proposal is satisfactory in terms of tree preservation and landscaping, subject to compliance with the following Conditions of Consent.

CONDITIONS OF CONSENT

Please note that the standard conditions of consent are generally modified by the Technical Services Department to suit a particular development application. Please ensure all Technical Services conditions of consent are cut and pasted from this document only, and not inserted as standard conditions using the automatically generated (F3) function.

A. General Conditions

A.1 Tree Preservation & Approved Landscaping Works

All landscape works shall be undertaken in accordance with the approved landscape plan, arborist report, tree management plan and transplant method statement as applicable.

a) The following trees may be removed:

<table>
<thead>
<tr>
<th>Council Ref No.</th>
<th>Species</th>
<th>Location</th>
<th>Dimension (metres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Camellia japonica (Camellia)</td>
<td>Rear – East boundary</td>
<td>5 x 4</td>
</tr>
</tbody>
</table>

Note: Tree/s to be removed shall appear coloured red on the construction certificate plans.

B. Conditions which must be satisfied prior to the demolition of any building or construction

NIL

C. Conditions which must be satisfied prior to the issue of any construction certificate

NIL

D. Conditions which must be satisfied prior to the commencement of any development work

NIL

E. Conditions which must be satisfied during any development work

E.1 Tree Preservation
All persons must comply with Council’s Development Control Plan (DCP) 2015, Tree Management Chapter E3 other than where varied by this consent. The DCP applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.

General Protection Requirements

a) Excavation must cease where tree roots with a diameter exceeding 30mm are exposed. The principal contractor must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.

b) Where there is damage to any part of a tree the principal contractor must procure an inspection of the tree by a qualified arborist immediately. The principal contractor must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.

Note: Trees must be pruned in accordance with Australian Standard AS 4373 “Pruning of Amenity Trees” and WorkCover NSW Code of Practice Amenity Tree Industry.

E.2 Replacement/Supplementary trees which must be planted

Any replacement or supplementary tree shall be grown in accordance with NATSPEC Specifying Trees. The replacement tree shall be maintained in a healthy and vigorous condition. If the replacement tree is found to be faulty, damaged, dying or dead before it attains a size whereby it is protected by Council’s Development Control Plan (DCP) 2015, Tree Management Chapter E3, it must be replaced with another of the same species which complies with the criteria outlined below.

<table>
<thead>
<tr>
<th>Species/Type</th>
<th>Planting/Location</th>
<th>Container Size/Size of Tree (at planting)</th>
<th>Minimum Dimensions at Maturity (metres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 x Sapium sebiferum (Chinese Tallow tree) OR 1 x Corymbia ficifolia (Summer Beauty)</td>
<td>Rear</td>
<td>45 litre</td>
<td>5m x 3m</td>
</tr>
</tbody>
</table>

The project arborist shall document compliance with the above condition.

Tree Officer
12 February 2016

REFERRAL RESPONSE - HERITAGE

FILE NO: Development Applications/ 669/2015/1
ADDRESS: 172 Paddington Street PADDINGTON 2021
PROPOSAL: Alterations & additions to existing dwelling including enlarged basement area; new swimming pool and associated landscaping; new loft over existing garage and new attic level with rear dormer window and skylight
FROM: Sally Charalambides
TO: Mr T Wong

ISSUES

- Details of excavation setbacks have not been provided;
- Details of the side setbacks to the proposed pool have not been provided;
- Details of the materiality of the dormer windows have not been provided;
- The finishes to the house additions and garage/loft have not been provided;
- Retention of original/early doors are to be clearly annotated.

DOCUMENTATION

The following documentation provided by the applicant has been examined for this referral response:

- Drawing set by Ark Design Studio, dated 30.11.15, and numbered ARK861-1-1 and ARK861-1-2
- Heritage Impact Statement by Ark Design Studio, dated December 2015
- Statement of Environmental Effects by Ark Design Studio, dated December 2015
- Survey plan by JBS Surveying Services, ref 30922-2, dated 24.8.2015

SITE INSPECTION / RESEARCH

The following research was undertaken in the preparation of this assessment:

- The site was inspected from the public domain on the 12.2.2016, including the general locality.

Review of the following documents and photographic evidence:

- Council’s photography files relevant to the immediate area
- Council’s heritage inventory sheets
- Council’s aerial photography and mapping database
- Google Maps – street view

STATUTORY AND POLICY DOCUMENTS

The following statutory and policy documents are relevant to the application:
HERITAGE FRAMEWORK

- The subject building is within the Paddington Heritage Conservation Area, and is considered a contributory item and a significant item.

SIGNIFICANCE OF SUBJECT PROPERTY/TO THE CONSERVATION AREA

The subject building is one of a group of two storey terrace houses on the northern side of Paddington Street. The majority of the terrace houses in the group including the subject site have intact building forms with decorative cast iron filigree balconies, frieze and fringe, stucco facades with corbelled architraves and colonette and vermiculated party walls. This demonstrates the key characteristics of the transition between the late Victorian and Federation Filigree architectural styles which of aesthetic significance.

The form and detailing of the terrace houses provide physical evidence of the speculative development of Paddington for working and professional class housing, and as such are of historical significance to the local area.

SIGNIFICANCE OF ITEMS IN THE VICINITY

The following heritage item is in the vicinity of the subject site:

Paddington Street, Within Road Reserve and include the London Pine Trees (31), Hill's Weeping Figs (17), Red Apples (3).

There will be no heritage impact to the above items as all works are proposed within the boundaries of the subject site and mostly to the rear.

DESCRIPTION OF PROPOSAL

The following works are proposed:

- Rear and lower ground level alterations and addition to the existing terrace;
- Alterations to the existing courtyard with new in-ground pool;
- Alterations to the existing roof space to provide a new attic with rear dormer window;
- New loft addition above the existing garage structure.

ASSESSMENT OF HERITAGE IMPACT

Compliance with the relevant planning controls

The assessment is made using the following statutory and policy heritage conservation provisions:

Woollahra LEP 2014 Part 5.10 Clauses 1(a), 1(b), 4

- Clause 1(a) The development does conserve the heritage of Woollahra.
- Clause 1(b) The impact upon the heritage significance of the conservation area will be neutral.
- Clause 4 This referral constitutes an assessment under this clause.
Woollahra DCP 2015

C1.4.3 Rear elevations, additions and significant outbuildings…
Objectives: 02, 04
Controls: C2, C6, C11

- The proposed rear addition would not be visible from the public domain. Whilst the proposal will have a contemporary character with large areas of glazing, the contemporary character would be concealed from the view from the public domain and would not adversely affect appreciation of historic building form.

C1.4.7 Excavation
Objectives: 01, 02, 06, 09
Controls: C1, C7

- The submitted documentation for the excavation of the lower ground level does not detail the offsets of the new walls insufficient to ensure the structural integrity of the building and its neighbours is maintained. These details are to be provided to ensure the integrity of the building and its neighbours are retained. (01, 02, 06, 09, C1)
- The proposed swimming pool is located in the rear yard of the property and is located away from the main house and reasonably located away from the garage. Setback dimensions from boundaries however have not been provided and the proposed pool appears to be within 900mm of the SE boundary. The proposed pool should be located 900mm from this boundary. (01, 02, 06, 09, C7)

C1.5.1 Dormers and skylights
Objectives: 01, 02, 03
Controls: C16

- The proposed dormer window appears to be generally consistent with traditional Victorian period dormers. Details of the materiality of the dormer however have not been provided. In order to ensure the new dormer window appears a consistent part of the terrace group rooftopscape details of the dormer in accordance with C16 are to be provided.

C1.5.7 Lofts over garages and studios
Objectives: 01, 03, 06
Controls: C1, C2

- The proposed loft is located over the existing garage and is located in a rear lane where a number of loft over garages are located. The proposal is sympathetic to the established pattern and location of existing garages and lofts. The proposal is also consistent in form, scale, massing and character with the established loft over garages in the laneway with a proposed overall height of 5.5m. The proposal does not appear to meet some numerical controls in C1.5.7 however for reasons discussed above the proposal would not appear to have an adverse impact on the laneway and the heritage value of the property or the conservation area as a whole.
C1.5.8 Materials, finishes and details
Objectives: 01, 02, 03
Controls: C1, C2, C4, C5

- The proposed external materials and paint colours have not been specified. (01, 03, C2, C4, C5)
- The drawings do not clearly indicate if original or early doors addressing Paddington Street will be retained. This should be clearly noted and detailed on the drawings. (01, 03, C1)

RECOMMENDATION

The application is generally acceptable, would comply with the relevant statutory and policy documents and would have a satisfactory impact.

Consent subject to the following conditions:

1. In order to comply with WDCP 2015 Part C1.4.7 01, 02, 06, 09, C7, the pool is to be setback at least 900mm from the SE boundary.

2. In order to comply with WDCP 2015 Part C1.4.7 01, 02, 06, C1, the outer edge of the excavation is to be a minimum of 200mm from the footings of the front walls and boundary walls.

3. In order to comply with WDCP 2015 Part C1.5.1 01, 02, C16:
   a. New roof sheeting to the dormer window be corrugated steel with a profile and colour finish to match the existing roof sheeting to the principal building form;
   b. New flashings to the dormer are to be colour finished to match the existing roof of the principal building form;
   c. The window frame and pilaster facing of the dormer are to be timber with a paint finish to match the existing external colour scheme.

4. In order to comply with WDCP 2015 Part C1.5.8 01, 03, C2, C4, C5 materials, finishes paint colours for the additions to the house and garage are to match existing.

Prior to consent the following is to be provided:

5. In order to comply with WDCP 2015 Part C1.5.8 01, 03, C1, drawings are to clearly indicate original/early doors to be retained.

Sally Charalambides
Heritage Officer
DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No. D4
FILE No. DA390/2015/1
ADDRESS 20-26 Cross Street DOUBLE BAY
PROPOSAL Demolition of existing buildings and the construction of a new 6 storey mixed development comprising two (2) levels of basement car parking with access from Knox Lane, six (6) commercial / retail units and a cafe / restaurant (indicative design only - no approval is sought for the use) on the ground floor level and five (5) levels of residential development above comprising of 34 units

TYPE OF CONSENT Integrated development
COST OF WORKS $21,195,129.00
DATE LODGED 31/07/2015 – Original Submission
05/04/2016 – Replacement Application I
APPLICANT/OWNER Roche Group Pty Ltd
AUTHOR Mr D Lukas
TEAM LEADER Mr D Waghorn
SUBMISSIONS 121 (original proposal)
RECOMMENDATION Refusal

PREAMBLE

The subject application was originally presented to the Development Control Committee of Council on 7 December 2015 with a recommendation for refusal for the following reasons:

1. The proposal at 21.21m in height exceeds the maximum Height of Building control of 14.7m which is a development standard prescribed by Clause 4.3 of Woollahra Local Environmental Plan 2014. This results in a building form that does not achieve the desired future character objectives prescribed by Woollahra Development Control Plan 2015 for Double Bay. The proposal would be detrimental to the spatial amenity of Knox Lane. It would also be detrimental to the amenity of adjoining property with respect to privacy, scale, bulk and solar access and compromises their potential future redevelopment.

In this regard, the applicant has not adequately demonstrated that the contravention of the Height of Buildings development standard prescribed by Clause 4.3 is justified pursuant to the relevant matters for consideration prescribed by Clause 4.6 of WLEP 2014.

2. The proposal has a floor space ratio of 3.5:1 and exceeds the maximum Floor Space Ratio of 2.5:1 which is a development standards prescribed by Clause 4.4 of Woollahra Local Environmental Plan 2014. This results in a building form that does not achieve the desired future character objectives prescribed by Woollahra Development Control Plan 2015 for Double Bay. The proposal is detrimental to the spatial amenity of Knox Lane. It is also detrimental to the amenity of adjoining property with respect to privacy, scale, bulk and solar access and compromises their potential future redevelopment.
In this regard, the applicant has not adequately demonstrated that the contravention of the Floor Space Ratio development standard prescribed by Clause 4.4 is justified pursuant to the relevant matters for consideration prescribed by Clause 4.6 of WLEP 2014

3. In relation to the provisions prescribed by Woollahra Local Environmental Plan 2014:
   a) The buildings height, bulk and scale are excessive and do not relate to the existing character of the surrounding built environment or achieve the desired future character objectives of the area.
   b) The building is insufficiently setback from Knox Lane and does not protect the amenity of the public domain with respect to scale, bulk and sense of enclosure.
   c) The building provides insufficient separation between buildings and therefore does not protect the amenity of the subject residents and adjoining properties with respect to scale, bulk, sense of enclosure, privacy and solar access.

For these reasons, the proposal fails to satisfy the following provisions:

- Part 1 – Clause 1.2, Sub-clause (2)(g) and (l).
- Zone B4 Mixed Use – Sub-clause 1.
- Part 4 – Clause 4.3, (1)(a), (c), (d) and (e); and (2).
- Part 4 – Clause 4.4, (1)(b) and (2).

4. In relation to the Design Quality Principles contained in State Environmental Planning Policy 65 – Design Quality of Residential Flat Development:
   a) The building is excessive in height and insufficiently setback from the Cross Street and Knox Lane boundaries resulting in a building that fails to achieve the desired future character objectives of the area.
   b) The building form is excessive in relation to the prescribed envelope controls and results in a density that exceeds the sites capabilities to provide adequate waste and storage facilities.
   c) The building form does not provide adequate solar access to the subject residents or those adjoining.

For these reasons, the proposal fails to satisfy the following Planning Principles:

- Principle 1 - Context and neighbourhood character.
- Principle 2 - Built from and Scale.
- Principle 3 - Density.
- Principle 4 - Sustainability.

5. In relation to the State Environmental Planning Policy 65 – Design Quality of Residential Flat Development Apartment Design Guide:
   a) The building is inappropriately sited and scaled and causes excessive overshadowing of properties on the opposite side of Knox Lane.
   b) Inadequate separation or screening is provided between dwellings within the complex and from properties adjoining to the south which will compromise the privacy of the residents.
   c) Insufficient parking is provided including spaces for bicycles.
   d) Inadequate solar access is provided for the dwellings within the complex.
e) Inadequate storage facilities are provided for the dwellings within the complex.
f) Inadequate waste storage facilities are provided for the complex.

For these reasons, the proposal fails to satisfy the following objectives and design criteria:

- Part 3B-1 & 2.
- Part 3F-1.
- Part 3J-1 & 4.
- Part 4A-1.
- Part 4G-1.

6. In relation to the provisions of Woollahra Development Control Plan 2015:

a) The building is excessive in height and insufficiently setback from the Cross Street and Knox Lane boundaries resulting in a building that fails to achieve the desired future character objectives of the area.
b) The buildings height, bulk and scale are excessive and are incompatible with the existing built form, streetscape, village character and the future character of the centre.
c) Insufficient setbacks are provided in the laneways and thereby resulting in a detrimental impact on the pedestrian amenity.
d) The built form will result in an incoherent street scale and street definition particularly to the laneway.
e) The proposal provides insufficient separation to Knox Lane and therefore does not minimise adverse impacts on adjoining properties with respect to scale, bulk, sense of enclosure, privacy and solar access.
f) The proposal does not provide adequate waste storage facilities.
g) The basement car park layout, access and turning areas are inadequate.

For these reasons, the proposal fails to satisfy the following provisions:

- Part D5.1.3 – Objectives O7 and O8
- Part D5.3.2
- Part D5.4.7 – Objective c)
- Part D5.4.9 – Objective a)
- Part 5.5.1
- Part 5.6.3.1 – Objectives O1 and Controls C1, C2 b), C3 and C4
- Part 5.6.3.2 – Objectives O1 and Controls C1, C2 and C3
- Part 5.6.3.4 – Objectives O1 and O3 and Controls C1, C2 and C 4b)
- Part 5.6.4.1 – Objective O2 and Control C2
- Part 5.6.5.1 – Objectives O1 and O2 and Controls C2, C3, C4 and C5
- Part 5.6.5.2 – Objective O1 and Control C1
- Part 5.6.6.1 – Objectives O1 and O2 and Controls C2 and C4
- Part 5.6.8 – Objective O2 and Control C1
- Part 5.6.8.4 – Objectives O1 and O2 and Control C1
- Part E1.8.2
- Part E1.8.4
- Part E1.8.5
- Part E1.8.6
- Part E5.1.4 – Objectives O2 and O3
- Part E5.5 – Objectives O1 and O2 and Controls C4, C7 and C12
7. The submitted information is inconsistent and insufficient in detail to enable an accurate assessment of the proposal. The following issues are raised:

   a) The drawings do not clearly depict the works (insufficient measurements provided for storage or waste facilities).
   b) Insufficient details with regards to geotechnical and hydrogeological impacts.
   c) Insufficient details in relation to contamination and acid sulfate soils.
   d) Insufficient details in relation to flooding and the impact of sea level rise.

8. The proposal is not in the public interest.

At that meeting, the Development Control Committee resolved as follows:

THAT Council, defer Development Application No. 390/2015/1 for demolition of existing buildings and the construction of a new 6 storey mixed development comprising two (2) levels of basement car parking with access from Knox Lane, six (6) commercial/retail units and a cafe/restaurant (indicative design only - no approval is sought for the use) on the ground floor level and five (5) levels of residential development above comprising of 34 units on land at 20-26 Cross Street Double Bay, at the Applicant’s request to a Development Control Committee Meeting in March 2016.

In response, the applicant has submitted supplementary details and modified plans identified as Replacement Application I on 5 April 2016.

This report is an addendum to, and is to be read in conjunction with, the original assessment report that is attached as Annexure 1. This addendum provides an assessment of the supplementary details identified as Replacement Application I.

CONSIDERATION

1. SUPPLEMENTARY DETAILS SUMMARY

The essence of the original proposal is retained. The key changes to the design are:

   • Ground floor amended to increase waste storage facilities and reduce retail area (10m²).
   • Details of storage provided internally for residential apartments and within the basement levels.
   • Additional driveway and access details for the basement car park.

In addition, addendums to the Geotechnical Engineers and Traffic Consultants reports and SEPP 65 assessment were submitted for consideration.

2. ADVERTISING AND NOTIFICATION

These supplementary details, identified as Replacement Application I (as defined by Clause 90 of the Environmental Planning and Assessment Regulation 2000) were lodged on 5 April 2016 and were not renotified. The reason being, and pursuant to Chapter 2 of the Woollahra DCP, Council’s delegate considers that the amendments proposed are substantially the same to those originally advertised and have no greater impact upon neighbours amenity or the environment.
Notwithstanding, the submissions received in relation to the original proposal continue to apply and have been taken into consideration in this assessment (see Annexure 1 for details of submissions and issues raised).

3. REFERRALS

Council’s Development Engineer has reviewed the supplementary information submitted with their full comments attached as Annexure 2. A summary is provided below:

- **Site Drainage**
  The Stormwater Disposal Concept Plan is considered unsatisfactory as it provides no details for the collection and management of stormwater from the development site.

- **Flooding and Overland Flow**
  If approval was recommended, appropriate conditions can be imposed to ensure that flooding will not inundate the basement car park levels or ground floor levels.

- **Impacts on Council Infrastructure**
  The plans shall clearly indicate the location and width of the proposed vehicular crossing on Council’s road reserve. The vehicular crossing shall be perpendicular to the road carriageway from property boundary.

- **Traffic, Vehicle Access and Accommodation**
  The following issues need to be addressed:
  
  1. The ramps connecting the ground floor level and both basement levels appear to be non-compliant with AS/NZS 2890.1:2004 Clause 2.5.2
  2. Allocation of staff parking associated with the retail use fully or partially in lieu of visitor parking
  3. The dimensions of the proposed parking spaces are to be in accordance with AS2890.1.
  4. Vehicle turning paths shall be provided showing how car spaces No.23, 24, 26 and 27 on Basement Level 02 and car spaces No. 14, 15 and courier on Basement Level 01 can manoeuvre in and out of the proposed car spaces considering all other car spaces are occupied.
  5. The proposed development does not fall within the ‘domestic driveway’ profile. The ramp grades are shown to be 25% (1:4) and shall be amended to be a minimum of 16.7% (1:6) for ramps longer than 20m in a public car park as per AS2890.1-2004.
  6. The radius of the curved ramp shall measure to be 11.8m minimum for the outside radius and 4m minimum for the inside radius for a two way ramp as per AS2890.1
  7. Pedestrian splays be provided at the property line on both sides of the driveway in accordance with AS/NZS 2890.1:2004 Clause 3.2.4.
  8. A longitudinal surface profile for the proposed driveway must be submitted for assessment. The driveway profile is to start from the road centreline and include 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.

- **Geotechnical, Hydrogeological and/or Structural comments**
  The submitted geotechnical report and its addendum are similar to a desktop study with the latest investigation on the site dating back to more than 17 years ago. In this regard the geotechnical report submitted is considered unsatisfactory and further information is required.
• **Other comments**
  Due to the likelihood of additional power usage as a result of the new development, Energy Australia has requested that the applicant contact them with regards to the possible provision of a new Electricity Substation on site (if approval was recommended this could be satisfied via a condition of consent).

**Planning Comment:**

Council’s Planning Staff have considered the Technical Services Referral Response and provide the following comments:

**Site Drainage**

The applicant has provided stormwater disposal concept plans, however these plans do not provide details on the collection and management of stormwater. It is acknowledged that further and more detailed information may enable compliance with Council’s requirements, but given the application has been recommended for refusal for other reasons which are fatal to the application, no further information has been sought from the applicant and the current stormwater disposal system is considered to be unsatisfactory in this instance.

**Traffic / Parking**

In terms of the interpretation of AS2890.1, it is apparent there is a difference of opinion between Council’s Traffic Engineer and the applicants Traffic Engineer. The key differences are as follows:

- The applicant considers that the proposed development is a Category 1 off street parking facility whereas Council considers the proposed development is a Category 1A off-street parking facility
- The applicant considers that driveway gradients can be in accordance with Clause 3.2.2 of AS2890.1 which allows for a single width driveway to access the basement levels, whereas Council staff considers that Clause 3.2.2 of AS2890.1 is not applicable as it does not relate to domestic driveways and therefore a width of 5.5m is required.
- Given the applicant considers the basement car park as a Category 1 facility, a maximum ramp gradient of 1:4 (25%) is permitted. Council staff considers that given the basement car park will service at a minimum residential and courier vehicles (and possibly retail car parking spaces), a maximum gradient of 1:6 is permitted (16.7%)

Council’s Planning staff has relied upon the expertise of Council’s Traffic Engineer in the assessment of this application. Given this, it is apparent that the access driveway width and gradient of the access driveway do not comply with AS2890.1. The non-compliance would require a complete re-design of the access to the two levels of basement car parking.

These issues were flagged in the original Technical Services Referral response dated 18 November 2015 (attached to the Council report dated 7 December 2015) but have not been satisfactorily addressed. As such, Council has no other option but to refuse the application as it is non-compliant with AS2890.1 (amongst other reasons discussed below).
Geotechnical / Acid Sulfate Soils

The applicant has argued that given the site constraints there is no ability to undertake the necessary sub-strata geotechnical analysis but have relied upon similar geotechnical studies from surrounding properties from 17 years ago.

Council staff are of the opinion that it is not only insufficient to rely upon analysis of surrounding properties from 17 years ago, but also given 20-26 Cross Street is not completely developed (the courtyard area can accommodate bore holes for geotechnical analysis) there is adequate scope to undertake the required geotechnical analysis. It is conceded that this would cause some disruption to the tenants of 20-26 Cross Street, however given the high water table and possible acid sulphate soil and contamination, the requirement to obtain a geotechnical report analysing the conditions below the site would override the short term disruption to tenants.

The applicant has suggested a deferred commencement condition to undertake the geotechnical analysis after the buildings have been demolished. Whilst a deferred commencement condition is possible under the EPA Act for this site, Council staff do not agree with this approach given this requires the deferral of a number of key considerations (geotechnical, water table, acid sulfate soils etc) without a rigorous assessment by Council Staff.

There was no other referral response requested or required.

4. ENVIRONMENTAL ASSESSMENT UNDER SECTION 79C

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979 include the following:

1. The provisions of any environmental planning instrument
2. The provisions of any proposed instrument that is/has been the subject of public consultation
3. The provisions of any development control plan
4. Any planning agreement that has been entered into
5. Any draft planning agreement that a developer has offered to enter into
6. The regulations
7. Any coastal zone management plan
8. The likely impacts of that development:
   a. Environmental impacts on the natural and built environments
   b. Social and economic impacts
9. The suitability of the site
10. Any submissions
11. The public interest

4.1 STATE ENVIRONMENTAL PLANNING POLICY 55: REMEDIATION OF LAND

The terminology prescribed by Clause 7(1) of this SEPP is specific and states in part that Council, being the consent authority, …must not consent to carrying out development on land unless:

...it has considered whether the land is contaminated, and...
...if the land is contaminated, it is satisfied the land is suitable (or will be suitable)..., and...
...if the land requires remediation, ...it is satisfied that the land will be remediated...
Furthermore, Clause 2 states in part:

...Before determining an application for consent, the (Council) must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.

Clause 3 states in part:

...The applicant must carry out the investigation required by sub-clause (2) and must provide a report on it to the Council...(Note: emphasis added)

To date, no such investigation or report has been undertaken or submitted to Council for the subject site.

The Replacement Application that has been submitted and is the subject of this report reiterates the findings and position of the originally submitted engineers report and provides no additional information.

It is highly irregular for Council to consider an application that involves excavation to depths of over 6m without any testing of the sub-strata of the site but rather rely on speculative assumptions based on other field studies in the locality. Council’s Development Engineer reiterates that the submitted geotechnical report is unsatisfactory and require further investigation as detailed in Annexure 2.

Accordingly, insufficient detail has been submitted to enable Council to undertake an assessment of the potential contaminates in the sub-strata. If the site is contaminated, a separate development application may need to be lodged to undertake the remediation works.

4.2 STATE ENVIRONMENTAL PLANNING POLICY 65: DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT

The Replacement Application does not alter the previous assessment with the exception to additional storage provided.

The supplementary details depict additional storage for the residential component of the development both within the apartments and the basement level. The volume of storage provided is now compliant with the terms of the storage design criteria prescribed by Part 4E-1. The original reason for refusal has been deleted.

For reasons outlined in the original report attached as Annexure 1, the balance of the proposal fails to satisfy the relevant criteria prescribed by this SEPP.

4.3 WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

The Replacement Application does not alter the previous assessment. For reasons outlined in the original report attached as Annexure 1, the proposal fails to satisfy the relevant criteria prescribed by this LEP.
4.4 WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

The Replacement Application does not alter the originally proposed building envelope or the previous assessment. For reasons outlined in the original report attached as Annexure 1, the proposal fails to satisfy the relevant criteria prescribed by this DCP. The Replacement Application has modified the waste storage facilities for the proposed development. The assessment of this aspect is provided below.

The waste collection for the development is proposed to be undertaken by private contractor and the terms of collection are recommended to be enforced by conditions. However, the issue with the proposed waste collection is the use of 660L bins for the waste store. These bins are proposed to be loaded in the basement level, wheeled through the general apartment lifts and positioned onto the street for collection. The application recommends imposition of conditions to limit times when these bins can be wheeled through the passenger lifts to limit conflict with residents and guests. However, in relation to this proposed waste system, the key control states that: “...does not reduce amenity for occupants of the site...by way of visual, noise or olfactory impacts.”

In addition, these bins are not suitable for collection in the laneway (inadequate kerb space and the bins are unsuitable to manually manoeuvre onto the street for a rear end loader). The proposed bins are only suitable if the garbage truck can access the site. The submitted details concur with this site constraints and recommends conditions be imposed accordingly. However, the development is not designed to accommodate on-site loading for commercial vehicles as prescribed by Australian Standard 2890.2. The access details and the addendum to the Transport Report submitted is silent on this issue. The basis of the control is to ensure waste collection “…does not impact on traffic and pedestrian safety.” This issue remains unsatisfactory.

5. REVIEW OF DOUBLE BAY CENTRE ENVELOPE CONTROLS

In September 2015 the Double Bay Economic Feasibility Study (the Study) was reported to the Urban Planning Committee (UPC). The study reviewed the feasibility of developing six sites in the Double Bay Centre and found that generally, an FSR of between 3:1 and 3.5:1 is needed to make development viable. The Study recommended that Council review its planning controls in the Double Bay Centre based on these FSRs. That review is currently being undertaken and options for amending planning controls will be reported to a future UPC meeting.

In May 2016 Council resolved to publicly exhibit the Study until 30 June 2016 to allow residents of Double Bay to comment on it. The Council also resolved that, after the submissions on public exhibition of the study are reported, a community engagement program is undertaken. The engagement program will include staff presenting and seeking feedback on the Study and the urban development options, including 3D modelling, which have been prepared during the planning control review. The community engagement program is anticipated to commence in August 2016.

As such, there is no certainty that the planning controls for Double Bay will be altered and Council’s assessment of this application must be limited to the current planning controls in force for the subject site.

6. CONCLUSION

The supplementary details have not satisfactorily addressed the eight (8) original reasons for refusal. The supplementary details have only resulted in the deletion of the following points from the eight (8) original reasons for refusal detailed in Annexure 1:
Reason for Refusal 4:

b) The deletion of the storage facilities requirements

Reason for Refusal 7:

a) The drawings do not clearly depict the works (insufficient measurements provided for storage or waste facilities).

All other reasons have not been adequately addressed and are still pressed in Part 7 of this report (below). For reasons outlined in the original assessment report attached as Annexure 1, the proposal is an overdevelopment of the site and is recommended for REFUSAL.

RECOMMENDATION: Pursuant to Section 80(1) of The Environmental Planning and Assessment Act 1979

THAT Council, as the consent authority, refuse development consent to Development Application No. 390/2015/1 for demolition of existing buildings and the construction of a new 6 storey mixed development comprising two (2) levels of basement car parking with access from Knox Lane, six (6) commercial/retail units and a cafe/restaurant (indicative design only - no approval is sought for the use) on the ground floor level and five (5) levels of residential development above comprising of 34 units on land at 20-26 Cross Street Double Bay, for the following reasons:

1. The proposal at 21.21m in height exceeds the maximum Height of Building control of 14.7m which is a development standard prescribed by Clause 4.3 of Woollahra Local Environmental Plan 2014. This results in a building form that does not achieve the desired future character objectives prescribed by Woollahra Development Control Plan 2015 for Double Bay. The proposal would be detrimental to the spatial amenity of Knox Lane. It would also be detrimental to the amenity of adjoining property with respect to privacy, scale, bulk and solar access and compromises their potential future redevelopment.

In this regard, the applicant has not adequately demonstrated that the contravention of the Height of Buildings development standard prescribed by Clause 4.3 is justified pursuant to the relevant matters for consideration prescribed by Clause 4.6 of WLEP 2014.

2. The proposal has a floor space ratio of 3.5:1 and exceeds the maximum Floor Space Ratio of 2.5:1 which is a development standards prescribed by Clause 4.4 of Woollahra Local Environmental Plan 2014. This results in a building form that does not achieve the desired future character objectives prescribed by Woollahra Development Control Plan 2015 for Double Bay. The proposal is detrimental to the spatial amenity of Knox Lane. It is also detrimental to the amenity of adjoining property with respect to privacy, scale, bulk and solar access and compromises their potential future redevelopment.

In this regard, the applicant has not adequately demonstrated that the contravention of the Floor Space Ratio development standard prescribed by Clause 4.4 is justified pursuant to the relevant matters for consideration prescribed by Clause 4.6 of WLEP 2014.

3. In relation to the provisions prescribed by Woollahra Local Environmental Plan 2014:
   a) The buildings height, bulk and scale are excessive and do not relate to the existing character of the surrounding built environment or achieve the desired future character objectives of the area.
b) The building is insufficiently setback from Knox Lane and does not protect the amenity of the public domain with respect to scale, bulk and sense of enclosure.

c) The building provides insufficient separation between buildings and therefore does not protect the amenity of the subject residents and adjoining properties with respect to scale, bulk, sense of enclosure, privacy and solar access.

For these reasons, the proposal fails to satisfy the following provisions:

- Part 1 – Clause 1.2, Sub-clause (2)(g) and (l).
- Zone B4 Mixed Use – Sub-clause 1.
- Part 4 – Clause 4.3, (1)(a), (c), (d) and (e); and (2).
- Part 4 – Clause 4.4, (1)(b) and (2).

4. In relation to the Design Quality Principles contained in State Environmental Planning Policy 65 – Design Quality of Residential Flat Development:

a) The building is excessive in height and insufficiently setback from the Cross Street and Knox Lane boundaries resulting in a building that fails to achieve the desired future character objectives of the area.

b) The building form is excessive in relation to the prescribed envelope controls and results in a density that exceeds the sites capabilities to provide adequate waste facilities.

c) The building form does not provide adequate solar access to the subject residents or those adjoining.

For these reasons, the proposal fails to satisfy the following Planning Principles:

- Principle 1 - Context and neighbourhood character.
- Principle 2 - Built from and Scale.
- Principle 3 - Density.
- Principle 4 - Sustainability.

5. In relation to the State Environmental Planning Policy 65 – Design Quality of Residential Flat Development Apartment Design Guide:

a) The building is inappropriately sited and scaled and causes excessive overshadowing of properties on the opposite side of Knox Lane.

b) Inadequate separation or screening is provided between dwellings within the complex and from properties adjoining to the south which will compromise the privacy of the residents.

c) Insufficient parking is provided including spaces for bicycles.

d) Inadequate solar access is provided for the dwellings within the complex.

e) Inadequate waste storage facilities are provided for the complex.

For these reasons, the proposal fails to satisfy the following objectives and design criteria:

- Part 3B-1 & 2.
- Part 3F-1.
- Part 3J-1 & 4.
- Part 4A-1.
6. In relation to the provisions of Woollahra Development Control Plan 2015:
   a) The building is excessive in height and insufficiently setback from the Cross Street and
       Knox Lane boundaries resulting in a building that fails to achieve the desired future
       character objectives of the area.
   b) The building's height, bulk and scale are excessive and are incompatible with the
       existing built form, streetscape, village character and the future character of the centre.
   c) Insufficient setbacks are provided in the laneways and thereby resulting in a detrimental
       impact on the pedestrian amenity.
   d) The built form will result in an incoherent street scale and street definition particularly
       to the laneway.
   e) The proposal provides insufficient separation to Knox Lane and therefore does not
       minimise adverse impacts on adjoining properties with respect to scale, bulk, sense of
       enclosure, privacy and solar access.
   f) The proposal does not provide adequate waste storage facilities.
   g) The basement car park layout, access and turning areas are inadequate

For these reasons, the proposal fails to satisfy the following provisions:
- Part D5.1.3 – Objectives O7 and O8
- Part D5.3.2
- Part D5.4.7 – Objective c)
- Part D5.4.9 – Objective a)
- Part 5.5.1
- Part5.6.3.1 – Objectives O1 and Controls C1, C2 b), C3 and C4
- Part 5.6.3.2 – Objectives O1 and Controls C1, C2 and C3
- Part 5.6.3.4 – Objectives O1 and O3 and Controls C1, C2 and C 4b)
- Part 5.6.4.1 – Objective O2 and Control C2
- Part 5.6.5.1 – Objectives O1 and O2 and Controls C2, C3, C4 and C5
- Part 5.6.5.2 – Objective O1 and Control C1
- Part 5.6.6.1 – Objectives O1 and O2 and Controls C2 and C4
- Part 5.6.8 – Objective O2 and Control C1
- Part 5.6.8.4 – Objectives O1 and O2 and Control C1
- Part E1.8.2
- Part E1.8.4
- Part E1.8.5
- Part E1.8.6
- Part E5.1.4 – Objectives O2 and O3
- Part E5.5 – Objectives O1 and O2 and Controls C4, C7 and C12
- Part E5.6 – Objective O2 and Control C5.

7. The submitted information is inconsistent and insufficient in detail to enable an accurate
   assessment of the proposal. The following issues are raised:
   a) Insufficient details with regards to geotechnical and hydrogeological impacts.
   b) Insufficient details in relation to contamination and acid sulfate soils.
   c) Insufficient details in relation to flooding and the impact of sea level rise.

8. The proposal is not in the public interest.
Annexures

1. Original Assessment Report dated 7 December 2015
2. Replacement Application I Plans and Elevations
3. Original Plans and Elevations
4. Referral Response - Technical Services
DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No. D4
FILE No. DA390/2015/1
ADDRESS 20-26 Cross Street DOUBLE BAY
PROPOSAL Demolition of existing buildings and the construction of a new 6 storey mixed development comprising two (2) levels of basement car parking with access from Knox Lane, six (6) commercial / retail units and a cafe / restaurant (indicative design only - no approval is sought for the use) on the ground floor level and five (5) levels of residential development above comprising of 34 units

TYPE OF CONSENT Integrated development
COST OF WORKS $19,268,299.00
DATE LODGED 31/07/2015
APPLICANT/OWNER Roche Group Pty Ltd
AUTHOR Mr D Lukas
TEAM LEADER Mr D Waghorn
SUBMISSIONS 121
RECOMMENDATION Refusal

SUMMARY

1. LOCALITY PLAN

Note: There are 121 submissions received both for and against the development. Their postal addresses vary from either immediately adjoining or extend beyond the realms of this map (see Annexure 8 for details).
2. LEVEL OF DELEGATION

<table>
<thead>
<tr>
<th>Level of Delegation</th>
<th>Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>In accordance with Council’s delegations, the Manager of Development Control has requested that this application be referred to the Development Control Committee for determination because of the number of submissions received and the public interest.</td>
<td>Refusal</td>
</tr>
</tbody>
</table>

3. PROPOSAL

The proposal involves the demolition of the existing 2-storey commercial building constructed in the 1970’s. The site would be excavated to facilitate construction of a new 6 storey mixed use building with 2 levels of basement parking.

The 2 basement levels provide parking for 45 vehicles including 5 disabled spaces, 2 additional courier spaces and ancillary storage facilities. The upper basement level also contains residential waste storage which is linked via access chutes to the units above. Access to the basement level is via a single lane 2-way ramp from Knox Lane.

The ground floor level contains 6 retail spaces linked via 2 open arcades that are accessible from both Cross Street and Knox Lane. The ground floor also contains ancillary uses (eg. lobby, substation, fire services, bin store etc).

Above the ground floor level retail spaces are 5 levels of residential accommodation containing 34 units, the composition of the units being:

- 9 x 1 Bedrooms
- 12 x 2 Bedrooms
- 12 x 3 Bedrooms
- 1 x 4 Bedrooms

A photomontage of both street elevations is depicted as follows:
4. ADVISING AND NOTIFICATION

4.1 Submissions

The application was advertised and notified in accordance with Chapter A2 of the Woollahra DCP 2015 from 2 September 2015 to 1 October 2015.

In response there were a total of 121 submissions received with their details attached as Annexure 8. The breakdown of submissions is as follows:

- 13 submissions received in support of the proposal.
- 108 submissions received against the proposal.

The issues raised against the proposal are summarised immediately below in Section 5.2.

4.2 Statutory Declaration

The applicant has completed the statutory declaration declaring that the site notice was erected and maintained during the notification period in accordance with Chapter A2 of the Woollahra DCP 2015.

5. ISSUES SUMMARY

5.1 Non-compliance with Development Standard (WLEP 2014)

<table>
<thead>
<tr>
<th>Development Standard</th>
<th>Control</th>
<th>Proposed</th>
<th>Departure</th>
<th>Conclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Height of Buildings – Clause 4.3</td>
<td>14.7m</td>
<td>21.21m (lift o/run)</td>
<td>19.91m (parapet)</td>
<td>6.51m or 44%</td>
</tr>
<tr>
<td>Floor Space – Clause 4.4</td>
<td>2.5:1 (3148m²)</td>
<td>3.5:1 (4415m²)</td>
<td>1267m² or 40%</td>
<td>Unsatisfactory</td>
</tr>
</tbody>
</table>

5.2 Summation of issues raised

- Excessive in height
- Non-compliance with Council’s controls (ie. floor space, setbacks, number of storeys, height, SEPP 65 provisions, car parking)
- Precedent
- Loss of village atmosphere
- Loss of on-street parking
- Excavation issues (ie. acid sulfate soils, land contamination, ground water)
- Pedestrian/parking conflict in laneway
- Loss of views
- Overdevelopment
- Overshadowing
- Not compatible with the existing and future desired character for Double Bay
- Sense of enclosure
- Not in public interest
- Traffic congestion in laneway and locality
- Not compatible with existing streetscape
- Wind tunnel effect

The issues raised against the development are assessed where necessary under the relevant heads of consideration in the body of the report.
## PROPERTY DETAILS AND REFERRALS

### 6. SITE AND LOCALITY

<table>
<thead>
<tr>
<th>The Site</th>
<th>Streetscape</th>
<th>Cross Street</th>
<th>Knox Lane</th>
</tr>
</thead>
</table>

### Physical features

The site’s primary (northern) frontage is on the southern side of Cross Street, Double Bay with a secondary (southern) frontage to the northern side of Knox Lane. It is immediately opposite the Intercontinental Hotel.

Other than a splayed western boundary, the site is rectangular in shape. It has a frontage of 49.67m and 41.97m to Cross Street and Knox Lane respectively, an average depth of 27.47m and a total area of 1259m².

### Topography

The site is relatively flat and devoid of any landscaped area.

### Existing buildings and structures

On the site is a 2 storey commercial building. The ground floor is predominately occupied by shops and the upper level has a combination of retail and office spaces.

### Environment

The site is located in the heart of the Double Bay Commercial Centre. Double Bay is sited on the southern edge of Sydney Harbour. The surrounding area is relatively level and sits at the base of a large natural amphitheatre which
leads up to the ridges of Darling Point, Edgecliff and Bellevue Hill. The immediate area is characterised by development ranging in height between 1-7 storeys with a variety of uses such as residential, commercial, retail, offices, schools, a hotel and food and drink premises.

7. RELEVANT PROPERTY HISTORY

<table>
<thead>
<tr>
<th>Current uses</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail and Offices</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Previous Relevant Applications</th>
</tr>
</thead>
<tbody>
<tr>
<td>The subject site has a long history of applications for change of uses and alterations and additions thereto for the commercial tenancies. None of these applications are relevant to the scope of works proposed.</td>
</tr>
</tbody>
</table>

**DA571/2014** proposes a development immediately adjoining to the west at No.16-18 Cross Street. This adjoining scheme is similar to the subject proposal in terms of its use, height and scale and is being presented for determination concurrently.

<table>
<thead>
<tr>
<th>Pre-DA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Though there was no formal pre-da lodged for the subject site, there have been various meetings with the applicant and planning staff regarding the proposed redevelopment of the subject site.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Requests for Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>25.08.2015 – email request to applicant to address issues raised by NSW Department of Primary Industries</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Amended Plans/Replacement Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nil.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Land and Environment Court Appeal</th>
</tr>
</thead>
<tbody>
<tr>
<td>No appeal has been lodged.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Strategic Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Of relevance is the Hills PDA Report regarding the viability of the Double Bay Centre. The Council resolution of 28 September 2015 arising from consideration of the report was:</td>
</tr>
</tbody>
</table>

**17/16 Resolved without debate:**

A. THAT the report on the Double Bay Economic Feasibility study prepared by Hill PDA Consulting and attached to the Urban Planning Committee report on 7 September 2015 is received and noted.

B. THAT a further report be presented to the Urban Planning Committee, no later than the end of March 2016, containing the review of the planning controls to the Double Bay Centre, which is based on the recommendations and policy options presented to the Urban Planning Committee by Hill PDA Consulting on 7 September 2015.

C. THAT a Communication and Engagement Strategy be developed and implemented by the end of January 2016.

Strategic Planning staff are currently progressing parts B and C of the resolution.

8. REFERRALS

<table>
<thead>
<tr>
<th>Referral</th>
<th>Summary of Comment</th>
<th>Annexure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trees</td>
<td>There are three (3) Chinese Elm street trees positioned on the Cross Street frontage of the subject site. The trees should be replaced with super advanced trees of the same species.</td>
<td>2</td>
</tr>
<tr>
<td>Engineering</td>
<td>Council’s Development Engineer has determined that the proposal is satisfactory, subject to conditions.</td>
<td>3</td>
</tr>
<tr>
<td>Traffic</td>
<td>The development not be supported until the car park layout and design be amended to comply with AS/NZS 2890.1:2004.</td>
<td>4</td>
</tr>
<tr>
<td>Drainage</td>
<td>The proposal is generally satisfactory subject to conditions.</td>
<td>5</td>
</tr>
<tr>
<td>Health</td>
<td>Council’s Environmental Health Officer has determined that the proposal is satisfactory subject to conditions (including Deferred Commencement).</td>
<td>6*</td>
</tr>
</tbody>
</table>
Referral | Summary of Comment | Annexure
--- | --- | ---
Urban Planner | Despite this carefully designed building potentially making a substantial contribution to the Double Bay streetscape, I recommend refusal, due to non-compliance with the height control. An acceptable height, or heights, needs to be agreed for the whole of the Double Bay Centre, only then can buildings be designed to contribute to the Double Bay Centre vision in a unified and equitable manner. If this development were considered to be acceptable, in this or an amended form, the applicant needs to address the lack of outdoor drying areas, personal storage both in the apartments and elsewhere, bicycle parking and the location of the residential garbage bins. | 7

Fire | The proposal is satisfactory (subject to conditions). | n/a

NSW Department of Primary Industries - Water | The information provided to DPI Water still has some uncertainty in it with regard to the likely volume of groundwater to be taken during the excavation because the proposed shoring wall construction is not definitively stated. In addition, the subsurface conditions at the site have not been fully investigated and the hydrogeological setting has not been fully defined. Accordingly, we consider that the issue of our standard terms of approval is warranted. The construction dewatering proposed for the project is deemed to be an aquifer interference activity in accordance with the definition in the Water Management Act 2000. It is expected that the excavation and construction at the property will be conducted in accordance with the principles of the Aquifer Interference Policy. An authorisation for the take of groundwater as part of the proposed dewatering and remediation of the site is required. General Terms of Approval appropriate to the proposed aquifer interference activity are provided as required by s.91A (2) of the Environmental Planning and Assessment Act 1979. | n/a

Sydney Water | Detailed requirements will be provided at the Section 73 application phase. | n/a

Planning comment on Referrals:

- Referrals were also sent to Energy Australia and New South Wales Police (Rose Bay). No responses were received. Based on the relevant legislation, the absence of a response does not preclude Council from determining the application.

* A Report from Douglass Partners (DPR) addresses Site Contamination, Acid Sulphate Soils and De-Watering of the site. Due to the site constraints, it is not feasible to test the existing sub-strata and in particular, at the proposed excavation level, given the existing commercial buildings thereon. The DPR provides a response to each of the issues mentioned above and is assessed under the relevant heads of consideration that follow. Council’s Health Officer considers the development is satisfactory subject to deferred commencement consent based on the findings of the Geotechnical Engineers Report.

**ENVIRONMENTAL ASSESSMENT UNDER SECTION 79C**

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979 include the following:

1. The provisions of any environmental planning instrument
2. The provisions of any proposed instrument that is/has been the subject of public consultation
3. The provisions of any development control plan
4. Any planning agreement that has been entered into
5. Any draft planning agreement that a developer has offered to enter into
6. The regulations
7. Any coastal zone management plan
8. The likely impacts of that development:
   i) Environmental impacts on the natural and built environments
   ii) Social and economic impacts

9. The suitability of the site

10. Any submissions

11. The public interest

9. SYDNEY REGIONAL ENVIRONMENTAL PLAN (SYDNEY HARBOUR CATCHMENT) 2005

The development is located on a relatively level and flat site that is partially obscured from the waterway and the foreshores by existing development and landscaping. The subject site is not a land/water interface development but notwithstanding, Division 2 of the SREP prescribes matters for consideration for interrelationship of waterway and foreshore uses as well as maintenance, protection and enhancement of views.

Within the visual catchment from the harbour are other developments of equal or higher built form than the subject development. These other built forms include multi-storey developments immediately adjoining on Cross Street (Intercontinental Hotel and Georges buildings), on Knox Street (Cosmopolitan) and further afield on New South Head Road, Edgecliff, Darling Point and Double Bay. In this regard, the building remains compatible in its urban context and is another variable building form related to this established built environment.

The proposal does not result in any detrimental impact on the wetlands or cause pollution or siltation of the waterway. It does not detrimentally impact on existing vegetation or drainage patterns and does not obstruct vistas of the waterway from the public domain.

The proposal therefore satisfies the relevant criteria prescribed by the SREP.

10. STATE ENVIRONMENTAL PLANNING POLICY 55: REMEDIATION OF LAND

The Douglass Partner Geotechnical and Hydrogeological Engineers Report (DPR) submitted indicates that there are potential contamination issues at the site from both onsite and offsite sources. The site was previously used as a Service Station circa 1961 – 1971.

Clause 7(1)(b) & (c) requires that where land is contaminated Council must be satisfied that the land is or will be made suitable after remediation in its contaminated state for the purpose for which development is proposed.

The conclusion reached in the DPR states:

"...It is recommended that an investigation of soil and groundwater be undertaken to assess whether the site has been significantly contaminated from on-site or off-site sources. It is noted that much of the site cannot currently be accessed by a drilling rig, and, thus, (the majority or all of) the intrusive investigation is likely to occur post demolition. Soils designated for off-site disposal will need to be classified in accordance with NSW EPA, Waste Classification Guidelines, November 2014.

It is recommended that a hazardous building materials survey for the existing building be undertaken prior to its demolition, given that the existing building was constructed in the 1970s."
Insufficient detail has been submitted to enable Council to undertake an assessment of the potential contaminates in the sub-strata. Furthermore, the DPR does not make an assessment if site can or will be made suitable for the use as a mixed use building. It should be noted that if the site is contaminated, a separate development application may need to be lodged to undertake the remediation works.

11. STATE ENVIRONMENTAL PLANNING POLICY 64: ADVERTISING AND SIGNAGE

No signage is proposed as part of this application.

12. STATE ENVIRONMENTAL PLANNING POLICY 65: DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT

SEPP 65 applies to all new residential flat buildings which comprise 3 or more storeys and 4 or more self-contained dwellings. Based on the composition of this development, the SEPP applies.

The DA was accompanied by a design verification statement prepared by a qualified designer, as required by the EPA Regulations c.l.50(1A).

The instrument requires the proposal be referred to a Design Review Panel. However, this panel has not been established for the Woollahra area. Notwithstanding this, the instrument requires the assessment of the subject development application against the 9 design quality principles and against the relevant objectives of the Apartment Design Guide.

An assessment against the 9 design quality principles follows with summarised comments from Council’s Urban Planner inserted into each relevant head of consideration (see Annexure 7 for full comments):

12.1 Principle 1: Context and Neighbourhood Character

*Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.*

*Responding to context involves identifying the desirable elements of an area’s existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.*

There are a handful of relatively large developments in the centre (ie Intercontinental Hotel, George’s and Cosmopolitan Buildings). These building forms are anomalies within the centre which is generally low-scale. This site is in a location that is undergoing a transition. The proposal excessively exceeds the Height and Floor Space controls and inevitably results in a building envelope that exceeds the controls prescribed by the Woollahra Development Control Plan 2015 (DCP). One of the key objectives of this DCP states ...*To ensure new development is compatible with the existing built form, and streetscape and village character.*

This DCP also provides a desired future character for Cross Street and Knox Lane which state respectively ...*Allow 4-Storeys on 50% of each site frontage to Knox Lane and ...retain and enhance the varied spatial definition of Knox Lane.*
The proposal does not satisfy either of these key objectives or the desired future character for the locality and therefore fails to satisfy this principle.

12.2 Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building’s purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

The proposal exceeds the 14.7m height control. ...the top two levels which rise 6.51m above the height do not conform to the desired future character of the location. Similarly the proposed building has an FSR of 3.5:1 which exceeds the control of 2.5:1.

The building is excessive in scale, which is reflected in the non-compliances with the height and floor space ratio development standard prescribed by the WLEP 2014 (further assessment below). The excessive scale of the development is also reflected in the non-compliance with the envelope controls prescribed by the WDCP 2015 (further assessment below).

The proposal fails to satisfy this principle.

12.3 Principal 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area’s existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

The height, scale and bulk of the building exceed Councils prescribed envelope controls. The proposed building does not relate to the existing and future urban landscape. The proposed building does not positively contribute to the character of the streetscape as it is disproportional to existing and future development.

The proposal fails to satisfy this principle.

12.4 Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

The apartments perform reasonably with regard to solar access and cross ventilation. However 6 of the 34 apartments (17.6%) receive no sun in mid-winter. There is no significant sustainability
initiatives associated with this development. There is no provision for secure bicycle parking as required by WDCP2015.

The proposal fails to satisfy this principle.

12.5 Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development’s environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours’ amenity, provides for practical establishment and long term management.

There is effectively no landscape element to this mixed use development.

The DCP does not require landscaping on this site.

The proposal satisfies this principle.

12.6 Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well-being. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

The design provides good amenity across the development.

The proposal satisfies this principle.

12.7 Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

The apartments are safe. There is a maximum of 18 front doors off each core with no more than 5 off each landing.

The proposal satisfies this principle.
12.8 Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Although there is unlikely to be any real affordability, there is a mix of apartment sizes from 53m$^2$ to 206m$^2$. The ground level provides opportunities for social interaction.

The proposal satisfies this principle.

12.9 Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

The aesthetics of the building are considered and appropriate, yet distinctive.

The proposal satisfies this principle.

12.10 Apartment Design Guide (ADG)

SEPP 65 Clause 28(2)(c) provides that the consent authority must take into consideration the design criteria prescribed by the ADG. Clause 6 of the SEPP prescribes that in the event of an inconsistency between the SEPP and another environmental planning instrument (ie WLEP 2014 & WDCP 2015) this Policy prevails to the extent of the inconsistency.

Council’s Urban Planner’s provides comments in relation to the criteria prescribed by the ADG in the referral response attached as Annexure 7.

An assessment is provided against the relevant design guidance and criteria in the ADG as follows:

Compliance Table (Note: Non-compliances are highlighted)

<table>
<thead>
<tr>
<th>Design Criteria</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Communal open space</td>
<td>0% 0%</td>
<td>25% or (315) 50%</td>
<td>No No</td>
</tr>
<tr>
<td>Deep soil zones</td>
<td>0% 0</td>
<td>7% or (88) 3</td>
<td>No No</td>
</tr>
<tr>
<td>Minimum separation distances between windows and balconies (m):</td>
<td>0 1.5</td>
<td>6 6</td>
<td>No No</td>
</tr>
</tbody>
</table>
### Design Criteria

<table>
<thead>
<tr>
<th>Design Criteria</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum number of apartments that receive 2 hours of solar access during mid-winter to living rooms and private open space</td>
<td>82% or (28)</td>
<td>70% or (24)</td>
<td>Yes</td>
</tr>
<tr>
<td>Maximum number of apartments that receive no direct sunlight during mid-winter</td>
<td>18% or (6)</td>
<td>15% or (5)</td>
<td>No</td>
</tr>
<tr>
<td>Minimum number of apartments that are cross-ventilated</td>
<td>76% or (26)</td>
<td>60% or (20)</td>
<td>Yes</td>
</tr>
<tr>
<td>Cross-ventilated apartments (m)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Maximum depth</td>
<td>&lt;18</td>
<td>18</td>
<td>Yes</td>
</tr>
<tr>
<td>- Minimum internal width</td>
<td>4</td>
<td>4</td>
<td>Yes</td>
</tr>
<tr>
<td>Minimum ceiling heights (m)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Habitable rooms</td>
<td>2.7</td>
<td>2.7</td>
<td>Yes</td>
</tr>
<tr>
<td>- Non-habitable rooms</td>
<td>2.4</td>
<td>2.4</td>
<td>Yes</td>
</tr>
<tr>
<td>Minimum internal areas of apartments 1/2/3 x Bedrooms (m²)</td>
<td>&gt;50/&gt;70/&gt;90</td>
<td>50/70/90</td>
<td>Yes</td>
</tr>
<tr>
<td>Maximum habitable room depths (m)</td>
<td>8</td>
<td>8</td>
<td>Yes</td>
</tr>
<tr>
<td>Master bedroom &amp; other bedrooms:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Minimum sizes (m²)</td>
<td>&gt;10 &amp; &gt;9</td>
<td>10 &amp; 9</td>
<td>Yes</td>
</tr>
<tr>
<td>- Minimum dimension (m)</td>
<td>3</td>
<td>3</td>
<td>Yes</td>
</tr>
<tr>
<td>Apartment balconies (1/2/3 x Bedrooms)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Minimum area (m²)</td>
<td>&gt;8/&gt;10/&gt;12</td>
<td>8/10/12</td>
<td>Yes</td>
</tr>
<tr>
<td>- Minimum depth (m)</td>
<td>&gt;2/&gt;2/&gt;2.4</td>
<td>2/2/2.4</td>
<td>Yes</td>
</tr>
<tr>
<td>Maximum number of apartments off circulation core</td>
<td>&lt;8</td>
<td>8</td>
<td>Yes</td>
</tr>
<tr>
<td>Minimum storage size volume 1/2/3 x Bedrooms (m³)</td>
<td>Not specified</td>
<td>6/8/10</td>
<td>No</td>
</tr>
</tbody>
</table>

#### 12.10.1 Site analysis (Part 3)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

#### 12.10.2 Orientation (Part 3B)

The proposal fails to satisfy the relevant objective and design guidance prescribed by this Part because:

- The dwellings within the complex fronting Knox Lane are not suitably orientated to the site conditions and are compromised for solar access and privacy.
- The proposed building compromises solar access to the properties adjoining to the south immediately opposite Knox Lane in mid-winter.

#### 12.10.3 Public domain interface (Part 3C)

The proposal satisfies the relevant objectives and design guidance prescribed by this Part.

#### 12.10.4 Communal and public open space (Part 3D)

This design criteria requires a minimum of 252m² of communal open space on the site. This space must also have 50% direct sunlight access to its principal part in mid-winter.

No communal open space is provided. There is no opportunity to provide a communal open space on the site given that the WDCP 2015 encourages the ground floor of the site to be 100% occupiable area and comprise active retail frontages to both street fronts.
Notwithstanding, the proposal includes a space on the ground floor for a café/restaurant type use (a further DA is required for this use and fitout). The residents of this complex form part of a larger residential community within this urban centre. The proposal thereby satisfies the objective of the design criteria which states in part …to enhance residential amenity.

12.10.5 Deep soil zones (Part 3E)

The Design Criteria requires a deep soil zone be provided with a minimum dimension of 3m and a total area of 88m$^2$. This control acknowledges in certain localities this is not possible. The design guidance prescribes acceptable stormwater management and alternate forms of planting being provided. Planting is proposed on balconies to both street frontages.

The proposal satisfies the relevant objective and design criteria prescribed by this Part.

12.10.6 Visual privacy (Part 3F)

This Design Criteria prescribes a minimum separation distance of 6m between windows and balconies of dwellings not only on the site but also those on adjoining sites. The proposal fails to satisfy the relevant objective and design criteria prescribed by this Part because:

- Inadequate separation and screening is provided between the apartments on the subject site
- Inadequate separation is provided to properties immediately adjoining and opposite the site and will compromise any future redevelopment of these properties.

12.10.7 Pedestrian Access and Entries (Part 3G)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

12.10.8 Vehicle access (Part 3H)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

12.10.9 Bicycle and car parking (Part 3J)

This Design Criteria prescribes that car parking should comply with either the RTA’s Guide to Traffic Generating Development or Council’s requirements, whichever is the lesser.

Based on the prescribed parking generation rates, Council’s controls are the lesser in this instance (see WDCP 2015 below for details).

The proposal fails to satisfy the relevant objective and design criteria prescribed by this Part because:

- Inadequate car parking is provided on site.
- No parking is provided for scooters/bicycles.

12.10.10 Solar and daylight access (Part 4A)

This design criteria control prescribes a maximum of 15% of apartments within the complex receive direct solar access during mid-winter. This control acknowledges in certain localities this is not possible. Notwithstanding, the proposal fails to satisfy the relevant objective and design criteria prescribed by this Part because:
- 18% of apartments receive no direct sunlight between 9am-3pm during mid-winter.

12.10.11 Natural ventilation (Part 4B)

The proposal satisfies the relevant objective and design guidance and criteria prescribed by this Part.

12.10.12 Ceiling heights (Part 4C)

The proposal satisfies the relevant objective and design guidance and criteria prescribed by this Part.

12.10.13 Apartment size and layout (Part 4D)

The proposal satisfies the relevant objective and design guidance and criteria prescribed by this Part.

12.10.14 Private open space and balconies (Part 4E)

The proposal satisfies the relevant objective and design guidance and criteria prescribed by this Part.

12.10.15 Common circulation and spaces (Part 4F)

The proposal satisfies the relevant objective and design guidance and criteria prescribed by this Part.

12.10.16 Storage (Part 4G)

The design criteria prescribe a minimum storage volume for each unit based on the number of bedrooms. The design criteria also prescribes that 50% of the minimum storage volume is required within the units.

The proposal fails to satisfy the relevant objective and design criteria prescribed by this Part because:

- Inadequate storage capacity is provided in the apartments and the basement levels.
- The information submitted does not accurately depict or detail the storage volume for the residential component of the development.

12.10.17 Acoustic privacy (Part 4H)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

12.10.18 Noise and pollution (Part 4J)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

12.10.19 Apartment mix (Part 4K)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.
12.10.20 Facades (Part 4M)
The proposal satisfies the relevant objective and design guidance prescribed by this Part.

12.10.21 Roof design (Part 4N)
The proposal satisfies the relevant objective and design guidance prescribed by this Part.

12.10.22 Landscape design (Part 4O)
The proposal satisfies the relevant objective and design guidance prescribed by this Part.

12.10.23 Planting on structures (Part 4P)
The proposal satisfies the relevant objective and design guidance prescribed by this Part.

12.10.24 Universal design (Part 4Q)
The proposal satisfies the relevant objective and design guidance prescribed by this Part.

12.10.25 Mixed use (Part 4S)
The proposal satisfies the relevant objective and design guidance prescribed by this Part.

12.10.26 Awnings and signage (Part 4T)
The proposal satisfies the relevant objective and design guidance prescribed by this Part.

12.10.27 Energy efficiency (Part 4U)
The proposal satisfies the relevant objective and design guidance prescribed by this Part.

12.10.28 Water management and conservation (Part 4V)
The proposal satisfies the relevant objective and design guidance prescribed by this Part.

12.10.29 Waste management (Part 4W)
The proposal fails to satisfy the relevant objective and design guidance prescribed by this Part because:

- The waste storage facilities fail to satisfy Council’s prescribed controls with regard to their location, the bin sizes and the storage capacity.

See Section 15.7.3 for detailed assessment.

12.10.30 Building maintenance (Part 4X)
The proposal satisfies the relevant objective and design guidance prescribed by this Part.
13. STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

The SEPP (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the development and relates to commitments in relation to thermal comfort, water conservation and energy efficiency sustainability measures.

The development application was accompanied by BASIX Certificate committing to environmental sustainability measures relating to thermal comfort, water savings and energy efficiency. The measures as prescribed by Clause 97A of the Environmental Planning and Assessment Regulation 2000 can be imposed by conditional consent.

14. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

NOTE: The provisions of SEPP 65 Clause 6(1) and (2) prescribe that in the event of an inconsistency between the SEPP and another environmental planning instrument (ie WLEP 2014) the SEPP prevails to the extent of the inconsistency.

14.1 Preliminary (Part 1)

- Aims of Plan (Part 1.2)
  The proposal satisfies the relevant aims of this plan.

14.2 Permitted or Prohibited Development (Part 2)

- Zone B4 – Mixed Use
  The proposal is a permissible form of development. However, the key objective of this zone states:

  “…To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.”

The Woollahra Development Control Plan 2015 (WDCP) Chapter D5 – Part 5.4.7 and 5.4.9 prescribes the desired future character for Cross Street and Knox Lane respectively. These are:

**Cross Street**
The desired future character applicable to this development states ‘...Allow 4 storeys on 50% of each site frontage to Knox Lane.’

**Knox Lane**
The desired future character applicable to this development states ‘...Retain and enhance the varied spatial definition of Knox Lane.’

Following is a section of the proposed development with reference to the DCP envelope control:
Given the excessive non-compliance with the prescribed envelope controls, the proposal fails to satisfy the key desired future character objectives prescribed by this part and this zone.

14.3 Principal Development Standards (Part 4)

- **Height of Buildings (Part 4.3)**

<table>
<thead>
<tr>
<th>Development Standard</th>
<th>Control</th>
<th>Proposed</th>
<th>Departure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Height of Building</td>
<td>14.7m</td>
<td>21.21m (lift o/run)</td>
<td>6.51m or 44%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>19.91m (parapet)</td>
<td></td>
</tr>
</tbody>
</table>

The proposal exceeds the maximum building height prescribed by this Part. Notwithstanding, Part 4.6 of this LEP allows exceptions to development standards which is assessed below.

- **Floor Space Ratio (Part 4.4)**

<table>
<thead>
<tr>
<th>Development Standard</th>
<th>Control</th>
<th>Proposed</th>
<th>Departure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Floor Space Ratio</td>
<td>2.5:1 (3148m²)</td>
<td>3.5:1 (4415m²)</td>
<td>1267m² or 40%</td>
</tr>
</tbody>
</table>

The proposal exceeds the maximum floor space ratio prescribed by this Part. Notwithstanding, Part 4.6 of this LEP allows exceptions to development standards which is also assessed below.

14.4 Exceptions to Development Standards (Part 4.6)

- **Departure**
  For reasons outlined above, the proposal fails to comply with the Height of Buildings and Floor Space Ratio statutory control prescribed by Part 4.3 and 4.4 respectively of this Plan.

- **Objectives**
  The objectives of this clause are to provide flexibility in applying the development standard and to achieve better outcomes for and from the development in particular circumstances.

- **Written Request**
  The Consent Authority must consider a written request from the applicant seeking justification of the contravention of the development standard. The request must demonstrate that compliance with the development standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify the contravention.
The written requests have been provided and are attached as Annexure 9.

- **Assessment**

  Council must be satisfied that the written request from the applicant adequately justifies the contravention. Furthermore, the Council must be satisfied the proposal is in the public interest because it is consistent with the relevant objectives of the particular standard and the zone where the development is located.

  The Department issued Planning Circular No.PS08-003 which notified Councils of arrangements “...where the Director General’s concurrence may be assumed for exceptions to development standards under environmental planning instruments which adopt clause 4.6 ...of the Standard Instrument...” Clause 64 of the EPA Regulations provides that Council may assume the Director-General’s [Secretary’s] concurrence for exceptions to development standards, thus satisfying the terms of this clause.

  The proposal is assessed against the Objectives of the Development Standards prescribed by Part 4.3 (Height of Buildings) and 4.4 (Floor Space Ratio) as follows:

  **Height of Buildings (Part 4.3)**

  (a) To establish building heights that are consistent with the desired future character of the neighbourhood

  For reasons already discussed above, the proposal fails to satisfy this objective.

  (b) To establish a transition in scale between zones to protect local amenity

  This objective is not applicable to this development in this locality as there is no adjoining zone.

  (c) To minimise the loss of solar access to existing buildings and open space

  The proposal compromises solar access to existing and potential future residential development to properties on the southern side of Knox Lane.

  The proposal fails to satisfy this objective.

  (d) To minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion

  The proposed building envelope and setback from Knox Lane fails to satisfy the relevant provisions of SEPP 65 and Council’s envelope controls (see below for further assessment). The proposal compromises the amenity of existing and potential future residential development on the southern side of Knox Lane.

  The proposal fails to satisfy this objective.

  (e) To protect the amenity of the public domain by providing public views of the harbour and surrounding areas

  The site is in a locality that is in a transitional phase. The proposal does not relate to the sites dimensions or to the existing surrounding built form. The height, scale and bulk of the building
exceed Council’s prescribed envelope controls resulting in a built form that does not relate to the future character as assessed above. Due to the undeveloped nature of properties immediately adjoining, the upper levels of the proposed development would be visibly prominent from the streetscape.

The proposal fails to satisfy this objective.

**Floor Space Ratio (Part 4.4)**

..(b) To ensure that buildings are compatible with the desired future character of the area in terms of bulk and scale.

For reasons already discussed above, the proposal fails to satisfy this objective.

**Objectives of the Zone (B4 Mixed Use)**

- To provide a mixture of compatible land uses.

The proposal satisfies this objective.

- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

The proposal satisfies this objective.

- To provide active ground floor uses to create vibrant centres.

The proposal satisfies this objective.

- To provide for development of a scale and type that is compatible with the amenity of the surrounding residential area.

There is no surrounding residential area in this locality. The proposal satisfies this objective.

- To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.

For reasons already discussed above, the proposal fails to satisfy this objective.

**Conclusion**

The written submissions from the applicant have not adequately demonstrated that the contravention of the Height of Buildings and Floor Space Ratio development standards prescribed by Clause 4.3 and 4.4 respectively are justified pursuant to the relevant matters for consideration prescribed by this Clause.

Furthermore, the proposal is not in the public interest and is inconsistent with the objectives of the development standard and those applicable to the development within the zone. Accordingly, departure from the development standards is not justified in this instance.

14.5 **Miscellaneous Provisions (Part 5)**
• Development within the Coastal Zone (Part 5.5)
The proposal satisfies the relevant criteria prescribed by this Part.

• Heritage Conservation (Part 5.10)
The subject building is not listed on the State Heritage Register, has not been identified as a heritage item, is not a potential heritage item nor is it within the vicinity of a heritage item.

The subject building on the site has little heritage or conservation value and its demolition is supported.

The proposal satisfies the relevant criteria prescribed by this Part.

• Preservation of trees or vegetation (Part 5.9)
The proposal satisfies the relevant criteria prescribed by this Part.

14.6 Additional Local Provisions (Part 6)

• Acid sulphate soils (Part 6.1)
The subject site is identified within Land Class 2 of the Acid Sulfate Soils map which applies to any works below the natural ground level. Accordingly, development consent is required for the proposed excavation pursuant to sub-clause (2).

A Geotechnical and Hydrogeological Investigation undertaken by Douglas Partners (DPR) was submitted and concludes in part:

“...A service station previously operated at the site between circa 1961 and 1971 ...the potential for site contamination is considered to be moderate...the potential for the site to be contaminated from off-site sources (past and present) is considered to be low, particularly given the likely hydrogeology with groundwater expected to migrate northwards towards the bay of Double Bay.

...It is recommended that an investigation of soil and groundwater be undertaken to assess whether the site has been significantly contaminated from on-site or off-site sources (as described in Section 6). It is noted that much of the site cannot currently be accessed by a drilling rig, and, thus, (the majority or all of) the intrusive investigation is likely to occur post demolition.

...Soils designated for off-site disposal will need to be classified in accordance with NSW EPA, Waste Classification Guidelines, November 2014. It is recommended that a hazardous building materials survey for the existing building be undertaken prior to its demolition, given that the building was constructed in the 1970s. ...an intrusive ASS assessment will need to be undertaken to determine the presence or absence of ASS. An ASS management plan will be required if the presence of acid sulfate soils is confirmed.

Though no testing has been undertaken on the site, the DPR acknowledges that ASS is highly likely and provides a variety of options to manage the likely presence of ASS on the site including the discharge of acid water.

Sub-clause (3) requires Council to consider the …adequacy of the ASSMP and the likely discharge of acid water... Given the site constraints and having regard to Council’s Health Officers assessment, development consent can be issued subject to a deferred commencement condition requiring further testing pending demolition of the existing structures.
Earthworks (Part 6.2)

The proposed excavation of the site is summarised as follows:

- Excavation for the site has a maximum depth of 6m.
- Barring a 28m² triangulated area on the western side of the site, the excavation extends to all boundaries.
- The total volume of excavation is approximately 7,400m³.

According to sub-clause (3), the Council must consider the following matters:

(a) The likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,

The proposal will not significantly alter the natural water run-off patterns for the locality. The Hydrogeological Plan submitted provides adequate stormwater disposal of the site in accordance with Council’s requirements. The Geotechnological Report provides measures to stabilise the land. The terms of these Reports can be enforced by condition.

(b) The effect of the development on the likely future use or redevelopment of the land,

The proposed mixed use development is permissible and is encouraged in this locality.

(c) The quality of the fill or the soil to be excavated, or both,

Based on the information provided in the Geotechnological and Hydrogeological Report, the excavated soil will require treatment due to contamination and likely Acid Sulfate Soils. The Report provides methodology to remove and treat the soil. Conditions can be enforced to ensure the terms of the Report are satisfied.

(d) The effect of the development on the existing and likely amenity of adjoining properties,

The amenity of the neighbourhood can be addressed by Council’s standard conditions that regulate the excavation and construction process. The completed project is unlikely to detrimentally affect the amenity of adjoining residents with regard to land stability or hydrology.

(e) The source of any fill material and the destination of any excavated material,

The excavated soil can be removed according to the terms of the Geotechnical Report. The Report indicates that the excavated material can be treated and disposed of at a designated licensed facility.

(f) The likelihood of disturbing relics,

Given the previous historical use of the site as a Service Station and other excavations immediately opposite, this is unlikely to occur.

(g) The proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,
The basement level is to be tanked. In this regard, the proposal is unlikely to cause any adverse impact on the hydrology of the locality.

Furthermore, the NSW Department of Primary Industries has provided general terms of approval to ensure the natural flow of water will not be adversely affected by the proposed excavation.

(h) Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Given the scale of the proposed development, a Construction Management Plan (CMP) would be required to regulate such things as truck movements, security fencing, site signs and other mechanisms associated with the excavation and construction process. The CMP can be enforced by condition.

Furthermore, Council’s standard conditions can be applied to mitigate such things as noise, vibration, working hours, support of adjoining land and dust mitigation measures.

The proposal satisfies the relevant criteria prescribed by this part.

- Flood planning (Part 6.3)
  Council’s Drainage Engineer has reviewed the proposal and indicates that the proposal can satisfy the terms of this part subject to the imposition of conditions (see Annexure 5 for comments).

The proposal satisfies the relevant criteria prescribed by this part.

- Limited Development on Foreshore Area (Part 6.4)
  The proposal satisfies the relevant criteria prescribed by this part.

15. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

NOTE: The provisions of SEPP 65 Clause 6(1) and (2) prescribe that in the event of an inconsistency between the SEPP and another environmental planning instrument (ie WDCP 2015) the SEPP prevails to the extent of the inconsistency.

Part A - Introduction and Administration

15.1 About this DCP (A1.1)

- Objectives of this Plan (A1.1.5)
  The proposed mix use development is a permissible form of development and accordingly satisfies the relevant objectives prescribed by this Part.

Part D – Business Centres

15.2 Double Bay Centre (Chapter D5)
15.2.1 Introduction (D5.1)

- **Objectives (D5.1.3)**
  The proposed development is permissible and is encouraged by this DCP. However, the key objectives of the DCP states:

  “...O7 To ensure new development is compatible with the existing built form, and streetscape and village character.

  O8 To encourage view sharing and individual privacy.”

  Based on the excessive non-compliance with the maximum floor space and height controls, the proposal subsequently results in a building that excessively exceeds the envelope controls prescribed by this DCP. In this regard, the proposal fails to satisfy these key objectives.

15.2.2 Understanding the context (D5.2)

Double Bay sits at the base of a valley, cradled between the ridges of Darling Point, Edgecliff and Bellevue Hill which forms part of a large natural amphitheatre. Part D5.2.3 – Built Form, states in part:

“...The allotments and buildings between Knox Street and Cross Streets are generally wider and shallower, but are coherent as a ground in terms of grain, scale and massing.”

The proposed development, when assessed against the relevant FSR, height and envelope controls, is contrary to the existing and desired future character for the locality.

15.2.3 Urban structure (D5.3)

- **Key strategies for the Double Bay Centre**
  This proposed mix use development, with its active street frontages, link arcades and residential accommodation is encouraged and satisfies many of the key strategies.

  However, the height, scale and massing of the proposed development greatly exceeds the relevant prescribed envelope controls. Accordingly, the proposal fails to satisfy the relevant key strategies which are summarised in part as follows:

  “...Retain and enhance pedestrian access and amenity in and around the centre

  a) Reinforce the intimate scale...and pedestrian amenity of the lanes and little streets in the centre.

  b) Improve the pedestrian environment by:

     - providing building setbacks ...in lanes;

  ...Improve Double Bay’s built form to provide appropriate definition to the public domain

  a) Provide direction and certainty of outcome in relation to built form to ensure:

     - a coherent street scale;

     - compatibility with existing urban fabric...

  ...d) Establish building envelopes that define the building height and building lines (at lower and upper levels) to provide coherent street definition...

  ...e) Encourage view sharing and privacy...”
15.2.4 Street character (D5.4)

An assessment of the future character objectives prescribed by this part for Cross Street and Knox Lane has been undertaken above (see WLEP 2014).

Based on this previous assessment, the proposal fails to satisfy these objectives.

15.2.5 Built form envelopes: Control drawings (D5.5)

- **Compliance Table** (Non-compliances are highlighted)

<table>
<thead>
<tr>
<th>Site Area: 1259m²</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum Height – Storeys &amp; (m)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Cross Street</td>
<td>6 (21.21/lift - 19.91/parapet)</td>
<td>4 (14.7)</td>
<td>No</td>
</tr>
<tr>
<td>- Knox Lane</td>
<td>4 (14.3)</td>
<td>2 (8)</td>
<td>No</td>
</tr>
<tr>
<td>Occupiable Area (%)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Levels 1-2</td>
<td>100%</td>
<td>100%</td>
<td>Yes</td>
</tr>
<tr>
<td>- Levels 3-4</td>
<td>50-100%</td>
<td>50-100%</td>
<td>Yes</td>
</tr>
<tr>
<td>Build-to-line</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Cross Street (Level 1-4)</td>
<td>50-100%</td>
<td>50-100%</td>
<td>Yes</td>
</tr>
<tr>
<td>- Knox Lane (Levels 1-2)</td>
<td>50-100%</td>
<td>50-100%</td>
<td>Yes</td>
</tr>
<tr>
<td>Front Setback (Cross Street)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Level 1</td>
<td>0</td>
<td>0</td>
<td>Yes</td>
</tr>
<tr>
<td>- Level 2</td>
<td>0</td>
<td>0</td>
<td>Yes</td>
</tr>
<tr>
<td>- Level 3</td>
<td>0</td>
<td>0</td>
<td>Yes</td>
</tr>
<tr>
<td>- Level 4</td>
<td>0</td>
<td>3.5</td>
<td>No</td>
</tr>
<tr>
<td>- Level 5/6</td>
<td>4/4</td>
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<td>n/a*</td>
</tr>
<tr>
<td>Rear Setback (Knox Lane)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Level 1</td>
<td>2</td>
<td>2</td>
<td>Yes</td>
</tr>
<tr>
<td>- Level 2</td>
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<td>2</td>
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</tr>
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<td>- Level 3</td>
<td>0</td>
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<td>No</td>
</tr>
<tr>
<td>- Level 4</td>
<td>0</td>
<td>8</td>
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<tr>
<td>- Level 5/6</td>
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<tr>
<td>Building Articulation (L 3-5 Cross Street)*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Depth (m)</td>
<td>&gt;2.4</td>
<td>2.4</td>
<td>Yes</td>
</tr>
<tr>
<td>- Floor area &amp; open space elements (%)</td>
<td>Up to 40%</td>
<td>Up to 40%</td>
<td>Yes</td>
</tr>
<tr>
<td>Minimum floor-to-ceiling heights (m)</td>
<td>&gt;2.7</td>
<td>2.7</td>
<td>Yes</td>
</tr>
<tr>
<td>Maximum building depth Levels 3-5 (m)</td>
<td>27.4</td>
<td>15.6</td>
<td>No***</td>
</tr>
<tr>
<td>Minimum Awning soffit height (m)</td>
<td>&lt;3</td>
<td>3.2</td>
<td>No</td>
</tr>
<tr>
<td>Active Frontage to Lane (m)</td>
<td>67% (28)</td>
<td>75% (31)</td>
<td>No</td>
</tr>
<tr>
<td>Minimum setback of windows/balconies (m)</td>
<td>8</td>
<td>9 &amp; 12</td>
<td>No</td>
</tr>
<tr>
<td>Minimum Private Open Space</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Small dwelling (&lt;60m²)</td>
<td>6</td>
<td>8</td>
<td>No***</td>
</tr>
<tr>
<td>- Medium dwelling (60-90m²)</td>
<td>&gt;12</td>
<td>12</td>
<td>Yes***</td>
</tr>
<tr>
<td>- Large dwelling (&gt;90m²)</td>
<td>&gt;16</td>
<td>16</td>
<td>Yes***</td>
</tr>
<tr>
<td>- Preferred &amp; Minimum depth (m)</td>
<td>&gt;2.4 &amp; &gt;1.8</td>
<td>2.4 &amp; 1.8</td>
<td></td>
</tr>
<tr>
<td>Cross-ventilation to dwellings</td>
<td>&gt;80%</td>
<td>80%</td>
<td>Yes</td>
</tr>
<tr>
<td>Hours of Solar Access to habitable windows &amp; private open space of adjoining properties between 9am and 3pm on 22 June</td>
<td>3 &amp; 2**</td>
<td>3 &amp; 2</td>
<td>Yes***</td>
</tr>
<tr>
<td>Hours of Solar Access to habitable windows &amp; private open space of development between 9am and 3pm on 22 June</td>
<td>&lt;3 &amp; &lt;2</td>
<td>3 &amp; 2</td>
<td>No***</td>
</tr>
</tbody>
</table>
Site Area: 1259m²

<table>
<thead>
<tr>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Car Parking Spaces</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Retail (per 100m²)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- 1 x Bedroom Units (9)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- 2 x Bedroom Units (12)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- 3 x Bedroom Units (13)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Visitor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Total</td>
<td>45</td>
<td>No</td>
</tr>
</tbody>
</table>

- Retail (per 100m²) 20
- 1 x Bedroom Units (9) 5
- 2 x Bedroom Units (12) 12
- 3 x Bedroom Units (13) 20
- Visitor 7
- Total 64

Driveway access width (m) 3.6 3 - 6 Yes

* Proposed Levels 5 & 6
These levels of the development extend outside the permitted envelope controls.

** Solar Access
There are currently no dwellings adjoining Knox Lane. These properties are currently commercial use and therefore the terms of this control do not strictly apply.

*** SEPP 65
These controls are superseded by SEPP 65 as detailed above.

15.2.6 Development Controls (D5.6)

- **Use**
The proposal satisfies the relevant criteria prescribed by this control.

- **Building envelopes**
The proposal fails to comply with the prescribed envelope controls as noted in the Compliance Table above. It results in a building form that:
  - Fails to meet the existing or desired future character for Cross Street and Knox Lane.
  - Will compromise the amenity of adjoining properties and the public domain in terms of solar access and privacy
  - Will compromise the development potential of properties on the opposite side of Knox Lane.

The proposal therefore fails to satisfy the relevant objective of this control which states:

“O1 Development should contribute to the desired future character of streetscapes with appropriate and consistent building forms.”

- **Height**
The proposal fails to comply with the prescribed height controls as noted in the Compliance Table above. It results in a building form that:
  - Significantly exceeds the height requirement envisaged by this DCP for both Cross Street and Knox Lane.

The proposal therefore fails to satisfy the relevant objective of this control which states:

“O1 Encourage buildings to achieve the heights along street and lane frontages described by the control drawings.”

- **Building articulation**
The proposal satisfies the relevant criteria prescribed by this control for Levels 3 & 4.

There are no controls specified for Levels 5 & 6.

- **Setbacks**
  The proposal fails to comply with the prescribed setback controls to both Cross Street and Knox Lane as noted in the Compliance Table above. It results in a building form that:
  - Fails to meet the existing or desired future character for Cross Street and Knox Lane.
  - Will compromise the amenity of Knox Lane and properties immediately opposite with respect to solar access, privacy, sense of enclosure, scale and bulk.
  - Will compromise the development potential of properties on the opposite side of Knox Lane.

  The proposal therefore fails to satisfy the relevant objective of this control which states:

  "O1  **Encourage consistent building lines to provide coherent streetscapes.**
  O2  **Introduce new setbacks at street level in selected laneways to improve pedestrian amenity.**
  O3  **Where indicated provide street setbacks to the upper level of development to permit mid-winter sunlight.**"

- **Architectural resolution**
  The proposal satisfies the relevant criteria prescribed by this control.

- **Roof design**
  The proposal satisfies the relevant criteria prescribed by this control.

- **Heritage items and character buildings**
  The proposal satisfies the relevant criteria prescribed by this control.

- **Awnings**
  The proposed awning, though not required in this locality, fails to comply with the prescribed controls for awning design as noted in the Compliance Table above. The awning proposed to Knox Lane extends onto the footpath and may impede access to the loading zone.

  The proposal fails to satisfy the relevant objective of this control which states:

  "**O2  Encourage consistent awning design throughout the centre.**"

- **Arcades, walkways and courtyards**
  The proposal satisfies the relevant criteria prescribed by this control.

- **Ground floor active lane frontage**
  This control “generally requires” 75% of active frontage to the laneway.

  The proposal achieves an active frontage of 66% to Knox Lane thereby resulting in a non-compliance with this control. The non-compliance is primarily a result of services required for the building. These elements have been designed to be unobtrusive and have minimal lane
presence. In the circumstance and having regard to the terms of this control, the proposal nevertheless satisfies the relevant objective underpinning this control which state:

“…O2 Co-ordinate the provision of vehicular and service access to maximise ground floor activity along lanes.”

The balance of the proposal satisfies the relevant criteria prescribed by this control.

- **Visual privacy**
  There are currently no private residential properties immediately adjoining and on the opposite southern side of Knox Lane. These properties are currently commercial uses. Notwithstanding, the proposed units at Levels 1-3 are setback less than the minimum of 6m from the adjoining boundaries as prescribed by SEPP 65. This setback will potentially compromise the amenity of any future residential development immediately adjoining and for properties across the lane.

  Furthermore, the proposed layout, setback and screening between apartments within the complex do not provide adequate separation to mitigate overlooking of private open space and internal living spaces.

  Accordingly, the proposal fails to satisfy the relevant criteria prescribed by this control and their objectives which states:

  “O1 Ensure development protects the privacy of adjacent residential neighbours.
  O2 Ensure residential apartments and private open spaces have adequate visual privacy.”

- **Acoustic privacy**
  For reasons outlined immediately above regarding visual privacy, the proposal also fails to satisfy the relevant criteria prescribed by this control regarding acoustic privacy.

- **Private open space**
  The proposal satisfies the relevant criteria prescribed by this control.

- **Solar access**
  As previously mentioned, there are currently no private residential properties on the opposite and southern side of Knox Lane. Notwithstanding, the proposed height and setback of the development will compromise the amenity of any potential and encouraged future residential development of these properties. Accordingly, the proposal fails to satisfy the relevant objective of this control which is to “...minimise overshadowing of adjoining properties...”

  This issue of providing solar access to the subject apartments has been addressed under the provisions of SEPP 65 which supersede these controls.

- **Cross-ventilation**
  This issue has been addressed under the provisions of SEPP 65 which supersede these controls.

- **Geotechnology and hydrogeology**
  The application proposes a 2-level basement carpark beneath existing ground level. In accordance with the terms of this control, a Geotechnical and Hydrogeological Engineers Report have been submitted for consideration prepared by Douglas Partners (DPR).

  The DPR indicates excavation would extend to all boundaries, barring a relatively small triangulated area to the western side, and the basement levels tanked. Temporary anchors or
props would also be required until such time as the concrete slabs provide permanent lateral support.

The DPR acknowledges that further geotechnical and hydrogeological investigation is required. This is pending demolition of the existing structures to enable a detailed investigation of the sub-strata at levels consistent with the proposed depth of excavation.

Notwithstanding, the DPR acknowledges the limitations of the subject site and provides modelling based on a worst case scenario. The modelling also has regard to other field tests undertaken within a 500m radius of the subject site.

The proposal nevertheless satisfies the relevant criteria prescribed by this control based on the recommendations contained within the DPR.

The proposed excavation also involves de-watering of the site. The matter was referred to NSW Department of Primary Industries who have provided General Terms of Approval for Construction Dewatering.

The issue of Site Contamination and Acid Sulfate Soils is assessed under the relevant heads of consideration in this report.

- **On-site parking**
  
  This control requires that parking must comply with the terms of Chapter E1 of this DCP.

  See below for further assessment.

- **Vehicular access**
  
  The proposal includes a single lane 2-way ramp from Knox Lane incorporating a traffic management system and waiting bay.

  Council’s Traffic Engineer does not support this scheme and recommends that the driveway at Knox Lane be widened to permit the passage of 2 opposing vehicles. This approach is contrary to the terms of this control which states in part that *vehicle crossings interrupt street activity, diminish amenity, and reduce the area for public on-street parking.*

  The proposal nevertheless satisfies the relevant criteria prescribed by this control.

  Further assessment on the basement layout follows.

- **Site facilities**
  
  Details of the location and design of mail-boxes have not been provided but this can be addressed by Council’s standard conditions.

  Storage facilities for the dwellings fail to satisfy the minimum requirements prescribed by SEPP 65 for residential flat buildings.

  The issue of waste storage facilities is assessed in detail below. The conclusion reached is inadequate waste storage facilities have been provided.

  The proposal fails to satisfy the relevant criteria prescribed by this control and their objectives which state:
“O1 Ensure adequate provision of site facilities.
O2 Ensure site facilities are accessible, functional and unobtrusive.”

Part E - General Controls for All Development

15.3 Parking and Access (Chapter E1)

15.3.1 Introduction (E1.1)

- Objectives (E1.1.3)
  The proposal satisfies the relevant objectives prescribed by this Part.

15.3.2 Residential and non-residential parking (E1.4 and E1.5)

The proposal includes a 2-level basement accommodating 45 parking spaces, 2 of which are for service vehicles.

Based on the parking generation rate prescribed by this control, the proposal is deficient by 19 parking spaces (total of 64 spaces required).

Further discussion on parking is discussed immediately below.

15.3.3 Variations to the parking generation rates (E1.6)

- Mixed use developments (E1.6.2)
  This control enables Council to support a reduction in parking spaces for this development.

  In response, a Traffic & Parking Report (TPR) has been prepared by Colston Budd Hunt & Kafes Pty Ltd and is summarised in part as follows:

  - A previous S94 contribution for 53 parking spaces would satisfy the non-residential parking component of the development.
  - The proposed development would increase residential densities close to good public transport services and services and facilities in Double Bay.
  - Access and internal layout will be provided in accordance with AS 2890.1:2004.
  - The proposed development will have a low traffic generation and would not have noticeable effects on the operation of the surrounding road network.

  Council’s Traffic Engineer supports the findings of the TPR.

  Furthermore, Double Bay is served with three public car parks and excellent public transport services. In addition, parking demand created by the retail component of the development is highly likely to overlap with existing retail activity in the centre.

  Given the overlapping nature of visitors to Double Bay, visitor parking is not encouraged on this site. The surplus of parking spaces should be dedicated for use by the retail component of the development. The reason being is that accessing and traversing the basement levels may cause conflict between residents and their guests. In addition, managing the restricted access gate on Knox Lane may potentially cause traffic and pedestrian conflict.

  The basement car park and the surrounding road network could cater for the proposed mixed use development.
The commercial centre remains capable of accommodating the car parking generated by the development.

The proposal satisfies the relevant criteria prescribed by this part.

15.3.4 Special provisions (E1.7)

- **Car parks with 20 or more spaces (E1.7.1)**
  The proposal satisfies the relevant criteria prescribed by this part.

- **Parking spaces for people with a disability (E1.7.4)**
  The proposal satisfies the relevant criteria prescribed by this part.

15.3.5 Parking and access design standards (E1.8)

- **Controls**
  Council’s Traffic Engineer has noted design deficiencies with the ramps. Due to the technical non-compliance with the relevant Australian Standard, the proposal fails to satisfy the relevant criteria prescribed by this Part.

15.3.6 Electric vehicle charging points (E1.9)

- **Controls**
  This control requires 1 shared space being dedicated for vehicle charging. For reasons discussed, one of the proposed basement parking spaces can be adopted to cater for this requirement and compliance with the terms of this control can be enforced by condition.

15.3.7 Off-street loading and servicing facilities (E1.10)

- **Controls**
  This control indicates 1 off-street loading and servicing space may be required for the commercial component of the development.

  The proposal includes 2 spaces in the basement level dedicated for couriers. For reasons outlined regarding visitor spaces, this is not encouraged and these spaces should be dedicated for use by the retail component of the development.

  Notwithstanding, existing loading zone immediately to the rear of, and others in close proximity to the site, are sufficient to cater for the operation of the subject development.

15.4 Stormwater and Flood Risk Management (Chapter E2)

15.4.1 Introduction (E2.1)

- **Objectives (E2.1.3)**
  The proposal satisfies the relevant objectives prescribed by this part.

15.4.2 Stormwater drainage management controls (E2.2)
• **Objectives (E2.2)**
  The proposal satisfies the relevant objectives prescribed by this part.

• **Controls (E2.2.1 - 2.2.14)**
  The proposal satisfies the relevant criteria prescribed by this control and/or can be addressed by conditions.

15.4.3 **Flood risk management control (E2.3)**

• **Objectives (E2.3)**
  The proposal satisfies the relevant objectives prescribed by this part.

• **Controls (E2.3.1 - 2.3.4)**
  In relation to these controls, Council’s Drainage Engineer recommends the following conditions of note:

  - *The underground car park must have a flood planning level of 3.93m AHD if a physical threshold is used or alternately a flood planning level of 4.13m AHD if a mechanical barrier is used.*
  - *Flood compatible materials are to be used for all construction below the flood planning level 3.93m AHD*

  The proposal will need to be modified to satisfy these recommended levels. The proposal satisfies the relevant criteria prescribed by this control and/or can be addressed by conditions.

15.5 **Tree Management (Chapter E3)**

15.5.1 **Introduction (E3.1)**

• **Objectives (E3.1.3)**
  The proposal satisfies the relevant objectives prescribed by this part.

15.5.2 **Assessing a development application or a tree permit (E3.3)**

• **Matters to be considered – all applications (E3.3.1)**
  There are 2 street trees immediately fronting the site. Given the nature of development works, Council’s Trees Officer recommends the removal and replacement of these street trees with mature specimens.

  Notwithstanding, the proposal satisfies the relevant considerations prescribed by this part and can be addressed by Council’s standard conditions.

• **Additional matters to be considered – works requiring a DA (E3.3.1)**
  The proposal satisfies the relevant considerations prescribed by this part and can be addressed by Council’s standard conditions.

15.6 **Contaminated Land (Chapter E4)**

15.6.1 **Introduction (E4.1)**

• **Objectives (E4.1.3)**
  The proposal satisfies the relevant objectives prescribed by this part.
• **Controls (E4.2 - 4.4)**
  This Chapter identifies requirements for applicants when proposing a development and is consistent with the provisions of SEPP 55 for managing contaminated land.

  The provisions of SEPP 55 have been assessed above. The proposal satisfies the relevant considerations prescribed by this part and can be addressed by condition.

15.7 Waste Management (Chapter E5)

15.7.1 Introduction (E5.1)

• **Objectives (E5.1.4)**
  Insufficient garbage storage facilities are provided to cater for the development (see below for further assessment).

  For this reason, the proposal fails to satisfy the relevant objectives prescribed by this part.

15.7.2 Demolition and Construction Phase (E5.2)

• **Controls**
  The proposal satisfies the relevant criteria prescribed by this part and/or can be addressed by Council’s standard conditions.

15.7.3 On-site waste and recycling controls for all development (E5.3)

• **Controls**
  A Waste Management Report (WMR) prepared by The Mack Group Waste Management Consultants forms part of the submission.

  The application proposes a general waste store for the ground floor retail area in a designated space on the ground floor. The waste from the residential units above is to be transferred from each lobby via a chute to the upper basement level. The loaded waste bins are then to be transferred to a holding bin area adjacent to the commercial bin store on the ground floor. The WMR indicates a designated person will transfer the waste for the commercial component to the kerb to be collected by a private contractor and a similar process for the residential waste. The difference being is residential waste is to be collected by Council.

  The key points of the WMR relevant to the terms of this control for the **retail** use is summarised as follows:

  - Each bin is to be 660L
  - 10,073L/week of general waste and 2,454L/week of recyclables is created by the retail component

  That is, a total of 3 x 660L bins are required to cater for general and recyclable waste for the commercial component of the development per day. This control states that "**bulk waste is not encouraged for <12 tenancies** (proposed 6). Notwithstanding, the proposed waste store for the commercial component satisfies the terms of this control.
The key points of the WMR relevant to the terms of this control for the residential use is summarised as follows:

- Each bin is to be 660L
- The bins are to be collected by Council

The following controls applicable to the residential component of the development is summarised as follows:

- 4080L of general waste and 1870L of recyclables + 240L of organic waste will be generated
- 17 x 240L general waste bins, 8 x 240L of recyclable bins and 1 x 240L of organic waste are required

There are inadequate storage facilities to cater for the residential waste based on this control.

The WMR proposes 660L waste bins. Based on the above waste generation, there will be a need for 6 x 660L general waste bins and 3 x 660L recyclables and 1 x 240L of organic waste.

There are still inadequate storage facilities proposed for the residential waste based on this control. The issue with the waste storage facilities is summarised as follows:

- Transferring the 660L waste bins from the basement to the ground floor residential garbage store will be via the common lifts that services the apartments above (note: gradient of driveway is too steep to move manually).
- The ground floor residential garbage store is inadequate in area to cater for the required 10 bins
- The Council can collect the 660L bins but these are not suitable for collection in the laneway (inadequate kerb space and the bins will be too heavy to manually manoeuvre onto the street for a rear end loader).

The proposal fails to satisfy the relevant criteria prescribed by this part.

15.7.4 Mixed use developments (E5.7)

- Controls
  Based on the above assessment, the proposal fails to satisfy the relevant criteria prescribed by this part.

15.8 Sustainability (Chapter E6)

15.8.1 Introduction (E6.1)

- Objectives (E6.1.4)
  The proposal satisfies the relevant objectives prescribed by this part.

15.8.2 Commercial and non-residential buildings (E6.2)

- Controls
  The proposal satisfies the relevant criteria prescribed by this part.
15.8.3 Solar energy systems (including solar panels, solar hot water systems and solar heating systems) (E6.3)

- **Controls**
  The proposal satisfies the relevant criteria prescribed by this part.

15.9 Adaptable Housing (Chapter E8)

15.9.1 Introduction (E6.1)

- **Objectives (E8.1.3)**
  The proposal satisfies the relevant objectives prescribed by this part.

- **Controls**
  The proposal satisfies the relevant criteria prescribed by this part and/or can be addressed by Council’s standard conditions.

16. DRAFT AMENDMENTS TO POLICIES AND PLANS

There are no draft amendments applicable to this development.

17. SECTION 94 & 94A CONTRIBUTION PLANS

Should development consent be issued, a Contribution pursuant to either Section 94 or 94A would apply and can be enforced by condition.

18. APPLICABLE ACTS/REGULATIONS

18.1 Demolition of Structures

Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires the development to comply with Australian Standard AS 2601-2004: The demolition of structures. Compliance with this requirement can be enforced by condition.

18.2 Fire Safety

An annual fire safety schedule is required to be submitted and compliance with this requirement can be enforced by condition.

18.3 Building Code of Australia

The proposal is required to comply with the relevant provisions of the Building Code of Australia. Compliance with these requirements can be enforced by condition.

19. THE LIKELY IMPACTS OF THE PROPOSAL

19.1 Views

A number of submissions received have raised concern regarding view loss from the proposed development.
The WDCP has no control or criteria for consideration in relation to view loss except for a reference in the objectives which is “to encourage view sharing”. Notwithstanding, the impact on views is a relevant consideration under Section 79 of the Environmental Planning and Assessment Act 1979.

In assessing the view impact, the Land & Environment Court, in Tenacity Consulting Pty Ltd v Warringah Council (2004) adopted planning principle for assessing view impacts. These steps and assessment are as follows:

- **What is the value of the view?**

  The concerns expressed primarily relate to loss of water views of Sydney Harbour, loss of district views and the loss of views of the tree canopy.

- **From what part of the properties are the views obtained?**

  A gauge on the type of views afforded from the residents who raised concern is as follows:

  **No.10 Pinehill Avenue, Double Bay**

  ![Image of No.10 Pinehill Avenue, Double Bay]

  **No.20/321 Edgecliff Road, Edgecliff**

  ![Image of No.20/321 Edgecliff Road, Edgecliff]
Apartments within the cosmopolitan Building at 2-22 Knox Street Double Bay
(the submissions were a generic letter provided by the residents)

A photo of the property is shown.

- **What is the extent of the impact?**

  **No.10 Pinehill Avenue, Double Bay**

  The existing Intercontinental Hotel (RL25.33 for the parapet) forms the backdrop of the subject site from this property. The Double Bay Commercial Centre forms part of the view and hence the subject development becomes part of the existing view. The proposed development attains a maximum height of RL24.41 (lift overrun) and the view impact is considered to be negligible (ie. <5%).

  **No.20/321 Edgecliff Road, Edgecliff**

  The existing Intercontinental Hotel (RL25.33 for the parapet) forms the backdrop of the subject site from this property. The Double Bay Commercial Centre forms part of the view and hence the subject development becomes part of the existing view. The proposed development attains a maximum height of RL24.41 (lift overrun) and the view impact is considered to be negligible (ie. <1%).

*Apartments within the cosmopolitan Building at 2-22 Knox Street Double Bay*
The existing Intercontinental Hotel (RL25.33 for the parapet), the George’s Building (RL22.19 for the parapet) and the surrounding district views of the western side of Bellevue Hill form the backdrop of the subject site from various vantage points from these apartments. The Double Bay Commercial Centre forms part of the view and hence the subject development becomes part of the existing view. The proposed development attains a maximum height of RL24.41 (lift overrun) and the view impact is considered to be negligible (ie. <5%).

- **What is the reasonableness of the proposal that is causing the impact?**

The building excessively exceeds Council’s envelope controls with regard to height and floor space. This non-compliance causes unnecessary impact on existing views, particularly from residents within the Cosmopolitan building being the most affected.

The new development fails to satisfy the relevant objectives of the Double Bay Centre DCP. The degree of the view impact, though relatively minor, is unreasonable in this circumstance and the proposal fails to satisfy the principle established by the Court.

19.2 **Wind tunnel effect**

A resident has expressed concern regarding the possibility of a wind tunnel effect created by the proposed development which is an impact generally associated with high rise development. Having regard to the height, modulation, location, landscaping and the surrounding existing built form, the proposed development would not have a detrimental impact on the amenity of the pedestrian environment in the locality having regard to the effects of wind.

19.3 **Submitted information**

The submitted drawings are insufficient in detail with numerous Technical Services requirements for the 2 basement levels in terms of ramp grades, turning circles, geotechnical and hydrological information and potential acid sulphate soils either non-compliant or not adequately assessed.

The insufficient information submitted with this application precludes Council from making a determination other than refusal in this instance.

19.4 **General**

All other likely impacts have been addressed elsewhere in the report or are considered to be satisfactory and not warrant further consideration.

20. **THE PUBLIC INTEREST**

The proposal is not in the public interest.

21. **DISCLOSURE STATEMENTS**

Under Section 147 of the Environmental Planning and Assessment Act, 1979 there have been no disclosure statements regarding political donations or gifts made to any Councillor or gifts made to any council employee submitted with this development application by either the applicant or any person who made a submission.

22. **CONCLUSION**
The Double Bay Commercial Centre is acknowledged in the DCP as a village. The proposal will erode the existing character of the centre.

Furthermore, the assessment of the development against the relevant considerations under s79C of the Environmental Planning and Assessment Act 1979, State Environmental Planning Policy 65, Woollahra Local Environmental Plan 2014 and the Woollahra Development Control Plan 2015 concludes that the proposal is an overdevelopment of the site and is recommended for rejection.

23. **RECOMMENDATION: Pursuant To Section 80(1) Of The Environmental Planning and Assessment Act 1979**

THAT Council, as the consent authority, refuse development consent to DA390/2015/1 for demolition of existing buildings and the construction of a new 6 storey mixed development comprising two (2) levels of basement car parking with access from Knox Lane, six (6) commercial/retail units and a cafe/restaurant (indicative design only - no approval is sought for the use) on the ground floor level and five (5) levels of residential development above comprising of 34 units on land at 20-26 Cross Street DOUBLE BAY, for the following reasons:

1. The proposal at 21.21m in height exceeds the maximum Height of Building control of 14.7m which is a development standard prescribed by Clause 4.3 of Woollahra Local Environmental Plan 2014. This results in a building form that does not achieve the desired future character objectives prescribed by Woollahra Development Control Plan 2015 for Double Bay. The proposal would be detrimental to the spatial amenity of Knox Lane. It would also be detrimental to the amenity of adjoining property with respect to privacy, scale, bulk and solar access and compromises their potential future redevelopment.

In this regard, the applicant has not adequately demonstrated that the contravention of the Height of Buildings development standard prescribed by Clause 4.3 is justified pursuant to the relevant matters for consideration prescribed by Clause 4.6 of WLEP 2014.

2. The proposal has a floor space ratio of 3.5:1 and exceeds the maximum Floor Space Ratio of 2.5:1 which is a development standards prescribed by Clause 4.4 of Woollahra Local Environmental Plan 2014. This results in a building form that does not achieve the desired future character objectives prescribed by Woollahra Development Control Plan 2015 for Double Bay. The proposal is detrimental to the spatial amenity of Knox Lane. It is also detrimental to the amenity of adjoining property with respect to privacy, scale, bulk and solar access and compromises their potential future redevelopment.

In this regard, the applicant has not adequately demonstrated that the contravention of the Floor Space Ratio development standard prescribed by Clause 4.4 is justified pursuant to the relevant matters for consideration prescribed by Clause 4.6 of WLEP 2014.

3. In relation to the provisions prescribed by Woollahra Local Environmental Plan 2014:

   a) The buildings height, bulk and scale are excessive and do not relate to the existing character of the surrounding built environment or achieve the desired future character objectives of the area.
   
   b) The building is insufficiently setback from Knox Lane and does not protect the amenity of the public domain with respect to scale, bulk and sense of enclosure.
c) The building provides insufficient separation between buildings and therefore does not protect the amenity of the subject residents and adjoining properties with respect to scale, bulk, sense of enclosure, privacy and solar access.

For these reasons, the proposal fails to satisfy the following provisions:

- Part 1 – Clause 1.2, Sub-clause (2)(g) and (l).
- Zone B4 Mixed Use – Sub-clause 1.
- Part 4 – Clause 4.3, (1)(a), (c), (d) and (e); and (2).
- Part 4 – Clause 4.4, (1)(b) and (2).

4. In relation to the Design Quality Principles contained in State Environmental Planning Policy 65 – Design Quality of Residential Flat Development:

a) The building is excessive in height and insufficiently setback from the Cross Street and Knox Lane boundaries resulting in a building that fails to achieve the desired future character objectives of the area.

b) The building form is excessive in relation to the prescribed envelope controls and results in a density that exceeds the sites capabilities to provide adequate waste and storage facilities.

c) The building form does not provide adequate solar access to the subject residents or those adjoining.

For these reasons, the proposal fails to satisfy the following Planning Principles:

- Principle 1 - Context and neighbourhood character.
- Principle 2 - Built from and Scale.
- Principle 3 - Density.
- Principle 4 - Sustainability.

5. In relation to the State Environmental Planning Policy 65 – Design Quality of Residential Flat Development Apartment Design Guide:

a) The building is inappropriately sited and scaled and causes excessive overshadowing of properties on the opposite side of Knox Lane.

b) Inadequate separation or screening is provided between dwellings within the complex and from properties adjoining to the south which will compromise the privacy of the residents.

c) Insufficient parking is provided including spaces for bicycles.

d) Inadequate solar access is provided for the dwellings within the complex.

e) Inadequate storage facilities are provided for the dwellings within the complex.

f) Inadequate waste storage facilities are provided for the complex.

For these reasons, the proposal fails to satisfy the following objectives and design criteria:

- Part 3B-1 & 2.
- Part 3F-1.
- Part 3J-1 & 4.
- Part 4A-1.
- Part 4G-1.

6. In relation to the provisions of Woollahra Development Control Plan 2015:
a) The building is excessive in height and insufficiently setback from the Cross Street and Knox Lane boundaries resulting in a building that fails to achieve the desired future character objectives of the area.

b) The buildings height, bulk and scale are excessive and are incompatible with the existing built form, streetscape, village character and the future character of the centre.

c) Insufficient setbacks are provided in the laneways and thereby resulting in a detrimental impact on the pedestrian amenity.

d) The built form will result in an incoherent street scale and street definition particularly to the laneway.

e) The proposal provides insufficient separation to Knox Lane and therefore does not minimise adverse impacts on adjoining properties with respect to scale, bulk, sense of enclosure, privacy and solar access.

f) The proposal does not provide adequate waste storage facilities.

g) The basement car park layout, access and turning areas are inadequate

For these reasons, the proposal fails to satisfy the following provisions:

- Part D5.1.3 – Objectives O7 and O8
- Part D5.3.2
- Part D5.4.7 – Objective c)
- Part D5.4.9 – Objective a)
- Part 5.5.1
- Part 5.6.3.1 – Objectives O1 and Controls C1, C2 b), C3 and C4
- Part 5.6.3.2 – Objectives O1 and Controls C1, C2 and C3
- Part 5.6.3.4 – Objectives O1 and O3 and Controls C1, C2 and C 4b)
- Part 5.6.4.1 – Objective O2 and Control C2
- Part 5.6.5.1 – Objectives O1 and O2 and Controls C2, C3, C4 and C5
- Part 5.6.5.2 – Objective O1 and Control C1
- Part 5.6.6.1 – Objectives O1 and O2 and Controls C2 and C4
- Part 5.6.8 – Objective O2 and Control C1
- Part 5.6.8.4 – Objectives O1 and O2 and Control C1
- Part E1.8.2
- Part E1.8.4
- Part E1.8.5
- Part E1.8.6
- Part E5.1.4 – Objectives O2 and O3
- Part E5.5 – Objectives O1 and O2 and Controls C4, C7 and C12
- Part E5.6 – Objective O2 and Control C5.

7. The submitted information is inconsistent and insufficient in detail to enable an accurate assessment of the proposal. The following issues are raised:

   a) The drawings do not clearly depict the works (insufficient measurements provided for storage or waste facilities).
   b) Insufficient details with regards to geotechnical and hydrogeological impacts.
   c) Insufficient details in relation to contamination and acid sulfate soils.
   d) Insufficient details in relation to flooding and the impact of sea level rise.

8. The proposal is not in the public interest.
ANNEXURES

1. Plans and elevations
2. Referral Response – Trees
3. Referral Response – Engineering
4. Referral Response – Traffic
5. Referral Response – Drainage
6. Referral Response – Health
7. Referral Response – Urban Planner
8. Details of Submissions
9. Written submissions (Clause 4.6)
CLIENT
Roche Group

CONSULTANTS
Bates Smart gratefully acknowledges the consultant team who were integral to the preparation of this development application:
- Planning: Design Collaborative
- Landscape: Public Domains 360
- ESD: Belex, CBX Synergy
- Traffic & Parking: Cotton-Bright Hunt Bates
- BCA: Steve Watson & Partners
- Accessibility: Accessibility Solutions
- Geotechnical/Contamination & Acid Substrate Soils: Douglas Partners
- Surveyor: Project Surveyors
- Stormwater + Flooding: Wood and Cleaves Engineers
- Waste Management: The Mark Group
- Demolition: Ubis
- Electrical: Power Solutions
- M&E: Modernmaking

PROJECT NUMBER
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NOMINATED NSW REGISTERED ARCHITECTS
Annexure 3  Original Plans and Elevations  Page 200
REFERRAL RESPONSE – TECHNICAL SERVICES

FILE NO: Development Applications/ 390/2015/1
ADDRESS: 20-26 Cross Street DOUBLE BAY 2028
PROPOSAL: Demolition of existing buildings and the construction of a new 6 storey mixed development comprising two (2) levels of basement car parking with access from Knox Lane, six (6) commercial / retail units and a cafe / restaurant (indicative design only - no approval is sought for the use) on the ground floor level and five (5) levels of residential development above comprising of 34 units

FROM: Mehrnaz Jamali - Development Engineer
TO: Mr D Lukas

1. ISSUES

- Provision of a stormwater concept plan as detailed under point ‘a. Stormwater Drainage plans’.
- Amendments required to address flooding issues as detailed under point ‘b. Flooding & Overland Flow comments’.
- Amendments required addressing traffic issues as detailed under point ‘d. Traffic comments’.
- Amendments to the parking and access layout as detailed under points ‘c. Impacts on Council Infrastructure comments and e. Vehicle Access & Accommodation comments’.
- Provision of a revised Geotechnical Report as detailed under point ‘f. Geotechnical, Hydrogeological and/or Structural comments’.

2. DOCUMENTATION

I refer to the following documents received for this report:

- Survey, referenced B1905 (Sheets 1, 2 & 3), prepared by Project Surveyors, dated 2014.
- Council Traffic comments, dated 20 May 2016.
Woollahra Municipal Council  
Development Control Committee Agenda  
6 June 2016

- Department of Primary Industries – Office of Water letter, dated 28 October 2015.

3. ASSESSMENT

Comments have been prepared on the following. **Where Approval is recommended, Conditions of Consent follow at the end of the comments.**

a. Site Drainage comments

*The Stormwater Disposal Concept Plan, Project No. 27475-SYD, Drawing No. C-DA-01 Rev 1, prepared by Wood & Grieve Engineers, dated 08/02/2016 is considered unsatisfactory as it provides no details for the collection and management of stormwater from the development site and hence shall be amended to reflect the following:*

- **Whilst the site is exempt from the provision of an OSD system the stormwater design provides no stormwater treatment measures for the site. The development shall provide rain gardens of 10m² per 1000m² for the entire site area in accordance with Council’s Chapter E2 “Stormwater and Flood Risk Management” DCP. As an alternative to all or part of the rain garden, a rainwater tank can be provided with relevant calculations by a suitably qualified practitioner demonstrating adequate volume has been provided to substitute for the rain garden. Please Note: only room water shall drain to the rainwater tank.**

- **The plans shall also include all details of the collection of stormwater from the site which shall comprise of roof water (with the provision of any rainwater tanks with details) and surface runoff other than roof water (which shall include surface inlets pits including invert levels and sizes) and all pipes (including falls and sizes).**

- **The plans shall also include the collection of stormwater from the basement car parking areas showing the location of the pump-out systems and surface inlet pits with section details of the pump-out systems proposed. Please note the pump-out systems shall not pump water directly to Council’s drainage system. All stormwater discharge from the site shall drain under gravity.**

*The general layout and design of the stormwater concept plan shall include the following details (where applicable):*

**Stormwater Management Plan – No OSD Required**


Accordingly, the proposed development drainage system must satisfy the following requirements:

**Private Drainage Easements**

New or existing stormwater drainage systems that discharge to an approved Council drainage point after passing over other private properties will be required to provide evidence of the
existence of a private drainage easement. Alternatively, evidence of the procurement of a private drainage easement over any intervening properties must be provided.

**Infiltration and Discharge to Surface**

The continued use of ageing infiltration systems, such as rubble pits, “soak-aways” and discharge to the surface are not acceptable in the Woollahra Municipality. Applicants must rectify the stormwater drainage system to comply with the Woollahra DCP Chapter E2 – Stormwater Flood Risk Management. This rectification could result in the requirement for on-site detention, gravity drainage, private drainage easement, water quality and pump and sump, which must be specified.

**Stormwater Discharge to Sewer**

Existing stormwater drainage systems that discharge to the sewer are not in compliance with Sydney Water or Council’s requirements. The applicant will be required to submit details of a stormwater drainage system that complies with Sydney Water’s requirements and Woollahra DCP Chapter E2 – Stormwater Flood Risk Management.

**New Connection to Council Drainage Point**

Stormwater run-off from the proposed dwelling must drain to an approved Council drainage point. In most cases, this must be via a piped gravity connection to Councils kerb and gutter or in-ground drainage network. A pumpout system may be required where a gravity drainage solution cannot be achieved.

The Stormwater Management Plan to be submitted must include the following specific requirements (as appropriate):

- Drainage Layout Plan: A detailed drainage plan 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:
  a) Proposed pipe layout, dimensions, grades, lengths and materials
  b) All invert levels reduced to Australian Height Datum (AHD)
  c) Location, dimensions and types of all drainage pits
  d) Exact point and type of connection to Councils drainage infrastructure
  e) Overland flow paths over impervious areas.

- Location of all trees on and adjacent to the site that will be retained under the proposal. Note: Drainage systems must not interfere with these trees

- Copies of certificates of title, showing the creation of easements to drain water, if required.

- The location of the closest Council stormwater pit and line, regardless of the point of discharge, together with the exact location of any Council drainage easement and/or
reserve on the property, must be specified. This information can be obtained from the site survey, visual inspection of the area and by perusal of Council’s drainage plans.

- Subsoil Drainage
- Subsoil drainage details and layout, clean out points, discharge point.
- Pump/Sump (where a gravity solution is not possible)
- Type of pump & sump details and discharge rates
- Details of buffer storage, stilling pits.
- Details of buffer storage/pump timer so that subsoil discharge occurs at night and infrequently.

b. Flooding & Overland Flow comments

The flood gate shall be amended to be designed to be at a flood planning level of 4.13m AHD.

c. Impacts on Council Infrastructure comments

The plans shall clearly indicate the location and width of the proposed vehicular crossing on Council’s road reserve with all services shown. The vehicular crossing shall be perpendicular to the road carriageway from property boundary.

d. Traffic comments

Council’s Traffic Engineer has made the following comments:

‘It is recommended that the development not be supported at this stage until the following issues are addressed:

1. AS/NZS 2890.1:2004 Clause 2.5.2 requires a minimum of 5.5m two-way ramp between kerbs. The straight ramp connecting the ground floor level and the basement level 01 appears to be noncompliant.
2. AS/NZS 2890.1:2004 Clause 2.5.2 requires a separator or median on two-way curved ramps where the radius to the outer kerb is less than 15m. The dimensions shall comply with the minimum roadway widths listed in Table 2.2 of AS/NZS 2890.1:2004. Additional 300mm clearance shall be provided where a high kerb or barrier is proposed. The proposed curve ramps connecting the ground floor level and two basement levels appear to be noncompliant.
3. Allocation of staff parking associated with the retail use fully or partially in lieu of visitor parking or implementing complimentary use of the residential visitor spaces by suitable signposting’.

As such amendments are required to address the above requirements. See attached TS Traffic comments, dated 20 May 2016 for further details.

e. Vehicle Access & Accommodation comments

The car parking layout is considered unsatisfactory and shall be amended to reflect the following:
The dimensions of the proposed parking spaces do not measure to comply with the minimum required dimensions. The length of the proposed car spaces shall be increased to be 5.4m minimum and the width a minimum 2.4m with an additional 300mm on each side when adjacent to an obstruction as per AS2890.1.

The length of the parallel parking space No. 14 and 23 on Basement Level 01 and Level 02 respectively, shall be increased from 6.4m to 6.6m minimum as per AS2890.1.

Vehicle turning paths shall be provided showing how car spaces No.23, 24, 26 and 27 on Basement Level 02 and car spaces No. 14, 15 and courier on Basement Level 01 can manoeuvre in and out of the proposed car spaces considering all other car spaces are occupied.

Note: Vehicle turning paths shall be determined in accordance with Australian Standard 2890.1.2004. The 85th percentile vehicle is a standardised vehicle based on the significant characteristics of various vehicle types operating on Australian roads. More information about the 85th percentile vehicle, including its dimensions, can be found in AS 2890.1.2004.

The proposed development does not fall within the ‘domestic driveway’ profile. The ramp grades are shown to be 25% and shall be amended to be a minimum of 16.7% for ramps longer than 20m in a public car park as per AS2890.1-2004.

The radius of the curved ramp shall measure to be 11.8m minimum for the outside radius and 4m minimum for the inside radius for a two way ramp as per AS2890.1.

Where the vehicular entrance is proposed in conjunction with a fence of over 1.2m high, a 2x2m splay or its equivalent shall be provided on either side of the entrance to ensure driveway and pedestrian vision in accordance with Woollahra DCP Chapter E1 – Parking and Access.

Australian Standard 2890.1 – 2004, Part 1 (Off-street car parking) has a requirement to prevent vehicles scraping or bottoming. Changes in grade in excess of 12.5% algebraically (1 in 8) for summit changes or 15% algebraically (1 in 6.7) for sag grade changes require the introduction of a transition between the main grade lines. Before approval can be granted, it must be ascertained whether the proposed driveway in this development meets all the requirements of Australian Standard 2890.1 - 2004 "Off Street car-parking". A longitudinal surface profile for the proposed driveway must be submitted for assessment. The driveway profile is to start from the road centreline and include 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 design, grades, natural surface levels and distances.

The layback, crossing and street levels (where practicable) are to comply with Council’s Standard Drawing RF2 “Standard Crossing & Layback” The existing footpath levels are to be maintained wherever possible and cannot be altered without Council’s approval.

f. Geotechnical, Hydrogeological and/or Structural comments

A Geotechnical Report, referenced Project 84850.01.Revl, prepared by Douglas Partners, dated July 2015 has been submitted in support of the application. The assessment is a review of the findings from previous investigations and inspections carried out on the nearby sites including an investigation on the site in 1999.
The report is therefore similar to a desktop study with the latest investigation on the site dating back to more than 17 years ago. In this regard the geotechnical report submitted is considered unsatisfactory and shall address the following requirements:

- **Geotechnical reports shall be site specific and relate directly to the proposed development.** Previous reports and data may be utilized or provided as supplementary information where certified by the author of the report as suitable for the new development. Visual inspections and use of geological mapping alone will not be satisfactory for geotechnical and/or hydrogeological data in particular for the extent of the development proposed for the subject site.

- **The geotechnical and hydrogeological report shall be prepared in accordance with all aspects of Council’s DCP requirements, Attachment 6 - Guidelines for Geotechnical and Hydrogeological Reports.** The report shall in particular include further information addressing the following in accordance with Councils document “Guidelines for Preparation of Geotechnical and Hydrogeological Reports”:

  — **Demonstrating that temporary changes to the groundwater level during construction will be kept within the historical range of natural groundwater fluctuation.** The report shall also demonstrate that the changes in the natural water table will not exceed 0.3m unless calculations using the results of the site specific field testing, supporting a greater change can be provided and can demonstrate no adverse impact to the surrounding properties and infrastructure.

  — **Demonstrating that permanent changes (if any) in the natural water table due to carrying out of the development will not exceed 0.2m unless calculations using the results of the site specific field testing, supporting a greater change can be provided.**

  — **Demonstrating that ground settlement in areas adjacent to the development site resulting from temporary and permanent site support and retention measures will have no adverse impact on the surrounding properties and infrastructure.**

  — **Show that permanent support and retention measures will be set back a minimum of 900mm (or minimum as advised in the relevant Development Control Plan) from the adjacent property boundaries.** Please note it may be possible for the development to be built up to the boundary however it will require the geotechnical/hydrogeological report to confirm the structural adequacy of any adjacent structures.

g. **Other comments**

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

4. **RECOMMENDATION**

Council’s Development Engineer has determined that the proposal is unsatisfactory for the following reasons:
- Provision of a stormwater concept plan as detailed under point ‘a. Stormwater Drainage plans’.
- Amendments required to address flooding issues as detailed under point ‘b. Flooding & Overland Flow comments’.
- Amendments required addressing traffic issues as detailed under point ‘d. Traffic comments’.
- Amendments to the parking and access layout as detailed under points ‘c. Impacts on Council Infrastructure comments and e. Vehicle Access & Accommodation comments’.
- Provision of a revised Geotechnical Report as detailed under point ‘f. Geotechnical, Hydrogeological and/or Structural comments’.
Memorandum - Traffic

Date 20 May, 2016
File No. Development Applications: 390/2015/1
To Mr D Lukas
CC Ms M Jamali
From Ms Q Liu
Address 20-26 CROSS STREET DOUBLE BAY 2028

I refer to the memo from the Planning Department dated 12 May 2016 requesting comments in relation to the above.

Traffic Engineering has reviewed:

2. Statement of Environmental Effects dated July 2015 by Design Collaborative Pty Ltd;
3. Architectural Plan dated July 2015 by Bates Smart Architects Pty Ltd;
4. Additional information dated 1 April 2016 by Design Collaborative Pty Ltd.

Proposal

Demolition of existing buildings and the construction of a new 6 storey mixed development comprising two (2) levels of basement car parking with access from Knox Lane, six (6) commercial / retail units and a cafe / restaurant (indicative design only - no approval is sought for the use) on the ground floor level and five (5) levels of residential development above comprising of 34 units

COMMENTS

Parking Provision

In addition to the traffic comments dated 27 October 2015 and in line with the development application submitted for the adjacent site at 18 Cross Street which proposed no parking provision
for its commercial component (still under assessment), Traffic Section consider the likely future cumulative effect of such parking shortfalls and request that the applicant to consider re-allocating the limited parking provision to at least accommodate long-term staff parking generated from the commercial component. It is recommended that visitor parking provision for the residential component be partially or fully allocated to long-term staff parking generated from the retail component. Alternatively, complementary use of residential visitor parking spaces should be implemented to ease the parking pressure from the surrounding road network as a result of the shortfall of 22 commercial parking spaces. The complementary use arrangement will make efficient utilisation of the spaces if the spaces are clearly signposted to allow staff parking during commercial operating hours and allow residential visitor parking outside commercial operating hours.

Resident permit parking schemes operate in close vicinity to the subject site and would assist to some extent neighbouring residents without off-street parking in terms of their ability to find on-street parking close to their homes were the development approved. Council’s Traffic Section raises concerns with any increased reliance on the on-street parking supply as these spaces are already highly utilised. To maintain the viability of the existing resident parking schemes, **should consent be considered it is recommended that a condition be imposed stating that tenants and residents of the proposed development will not be eligible for resident or visitor parking permits.**

**Car Park Layout**

With regards to the design deficiencies identified from the traffic comments dated 27 October 2015, Traffic Section would like to clarify the following:

**AS/NZS 2890.1:2004 Clause 1.3.1** defines ‘access driveway’ as ‘a roadway extending from the edge of the frontage roadway to the property boundary to connect with the first ramp, circulation roadway, parking aisle or domestic driveway encountered, and carrying one- or two-way traffic’. Clause 1.3.9 defines ‘circulation roadway’ as ‘a roadway within an off-street car park which is used solely for circulation and to gain access to parking aisles, and on which there is no parking. Clause 1.3.21 further defines ‘ramp’ as ‘a circulation roadway which connects an access driveway to an off-street car park on a substantially different level, or which connects two levels in a multi-level car park’. AS/NZS 2890.1:2004 Clause 2.5.2 requires a minimum of 5.5m two-way ramp between kerbs irrespective of the number of traffic movements. The straight ramp connecting the ground floor level and the basement level 01 is therefore noncompliant. Similarly, the curve ramps connecting the ground floor level and two basement levels do not conform to the minimum roadway widths listed in **Table 2.2** of **AS/NZS 2890.1:2004**.

The proposed signal system is considered unsatisfactory due to the following facts:

- Signal systems are generally only used as a last resort and not as a replacement for good planning or design. Two-way standard ramps appear to be feasible given the site space.
- Depending on the vehicle exiting and arrival patterns, the signal system will still generate some delays for vehicle entering the basement.
- The proposed commercial parking spaces in the basement generate regular movements along the proposed ramps. These movements in general require additional clearance than standard vehicles which require fully compliant ramps to ensure safety.
• The estimated 10 traffic movements at peaks are not necessarily evenly distributed which may still generate congestions.
• Knox Lane contains a single-width travel way which will be fully blocked if any queuing occurs at the property boundary.

**RECOMMENDATION**

It is recommended that the development not be supported at this stage until the following issues are addressed:

4. *AS/NZS 2890.1:2004 Clause 2.5.2* requires a minimum of 5.5m two-way ramp between kerbs. The straight ramp connecting the ground floor level and the basement level 01 appears to be noncompliant.

5. *AS/NZS 2890.1:2004 Clause 2.5.2* requires a separator or median on two-way curved ramps where the radius to the outer kerb is less than 15m. The dimensions shall comply with the minimum roadway widths listed in *Table 2.2* of *AS/NZS 2890.1:2004*. Additional 300mm clearance shall be provided where a high kerb or barrier is proposed. The proposed curve ramps connecting the ground floor level and two basement levels appear to be noncompliant.

6. Allocation of staff parking associated with the retail use fully or partially in lieu of visitor parking or implementing complimentary use of the residential visitor spaces by suitable signposting.
DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No. D5
FILE No. DA571/2014/1
ADDRESS 16-18 Cross Street DOUBLE BAY ('Hunters Lodge ')
PROPOSAL Demolition of the existing commercial building and construction of a 6 storey mixed use development comprising 2 basement levels with parking for 18 vehicles, 3 ground floor retail spaces with an arcade and 7 x 3 Bedroom, 4 x 2 Bedroom and 2 x 1 Bedroom units on the levels above
TYPE OF CONSENT Integrated development
COST OF WORKS $12,441,220.00
DATE LODGED 19/12/2014 – Original Submission
07/10/2015 – Replacement Application I
23/02/2016 – Replacement Application II
APPLICANT Toga Double Bay Developments Pty Ltd
OWNER Mr T Fischer & Ms V Mohay
AUTHOR Mr D Lukas
TEAM LEADER Mr D Waghorn
SUBMISSIONS 281 (Original proposal)
RECOMMENDATION Refusal

PREAMBLE

The subject application was originally presented to the Development Control Committee of Council on 7 December 2015 with a recommendation for refusal for the following reasons:

1. The proposed floor space ratio of 4.54:1 exceeds the maximum floor space ratio standard of 2.5:1 under WLEP 1995. This results in a building form that does not achieve the desired future character objectives prescribed by Woollahra Development Control Plan 2015 for Double Bay. The proposal is detrimental to the spatial amenity of the Knox Lane. It is also detrimental to the amenity of adjoining property with respect to privacy, scale, bulk and solar access and compromises their potential future redevelopment.

In this regard, the SEPP 1 objection advanced by the applicant is not well founded. The development is contrary to the following:

- SEPP 65: Design Quality of Residential Flat Development - Clause 12: Principle 1 (Context), Principle 2 (Scale), Principle 3 (Built Form) and Principle 4 (Density)
- Woollahra LEP 1995 - Clause 11 and Clause 11AA - Objectives (a) to (d)
- Double Bay DCP 2002 - Part 6.3 Control C1 (Control Drawing 4)
2. In relation to the provisions prescribed by Woollahra Local Environmental Plan 1995:

   a) The buildings height, bulk and scale are excessive and do not relate to the existing character of the surrounding built environment or achieve the desired future character objectives of Double Bay.

   b) The proposal provides insufficient separation between buildings and therefore does not minimise adverse impacts on adjoining properties with respect to scale, bulk, sense of enclosure, privacy and solar access.

   c) The basement car park is not convenient for older or disabled people.

   For these reasons, the proposal fails to satisfy the following provisions:

   - Part 1 – Clause 2, Sub-clause (2)(a)(ii); (2)(d)(i) and (x); and, (2)(k)(i), (ii) and (iii).
   - Part 2 – Clause 8(5).

3. In relation to State Environmental Planning Policy 65 –Design Quality of Residential Flat Development:

   a) The building is excessive in height and insufficiently setback from the Cross Street and Knox Lane boundaries resulting in a building that fails to achieve the desired future character objectives of the area.

   b) The building form is excessive in relation to the prescribed envelope controls and results in a density in excess of the sites capabilities to cater for the density with respect to waste and storage facilities.

   c) The building form does not provide adequate solar access to the subject residents or those adjoining.

   For these reasons, the proposal fails to satisfy the following Planning Principles:

   - Principle 1 - Context.
   - Principle 2 - Scale.
   - Principle 3 - Built Form.
   - Principle 4 - Density.
   - Principle 8 - Safety & Security.
   - The rules of thumb of the Residential Flat Design Code.

4. In relation to the provisions of Double Bay Centre Development Control Plan 2002:

   a) The building exceeds the maximum storey and height control.

   b) The buildings height, bulk and scale are excessive and are incompatible with the existing built form, streetscape, village character and the future character of the centre.

   c) Insufficient setbacks are provided in the laneways and thereby resulting in a detrimental impact on the pedestrian amenity.

   d) The built form will result in an incoherent street scale and street definition particularly to the laneway.

   e) The proposal provides insufficient separation to Knox Lane and therefore does not minimise adverse impacts on adjoining properties with respect to scale, bulk, sense of enclosure, privacy and solar access.

   f) The proposal does not provide adequate waste storage facilities.
For these reasons, the proposal fails to satisfy the following provisions:

- Part 1.5 – Objective viii and ix.
- Part 3.2.4 – Objective (i) and (ii).
- Part 3.2.5 – Objective (iv) and (vi).
- Part 4.7 – Control 4.7.1 and 4.7.2.
- Part 4.9 – Control 4.9.1 and 4.9.2.
- Part 6.3.1 – Principle P1, P2 and P3 and Control C1 and C2
- Part 6.3.2 – Principle P1 and Control C1 and C2
- Part 6.3.4 – Principle P1, P2 and P3 and Control C1, C2, C4 and C6.
- Part 6.4.1 – Principle P2 and Control C1.
- Part 6.5.1 – Principle P1 and P2 and Control C2.
- Part 6.5.2 – Principle P1 and Control C1.
- Part 6.6.3 – Principle P1
- Part 6.7.2 – Principle P2 and Control C1.
- Part 6.7.5 – Principle P1 and P2 and Control C2.

5. The basement car park layout, access and turning areas fail to comply with Woollahra Council’s Parking Development Control Plan 2011 and Australian Standard 2890.6.

6. The submitted information is inconsistent and insufficient in detail to enable an accurate assessment of the proposal. The following issues are raised:
   a) The drawings do not clearly depict the works (insufficient measurements provided).
   b) No detail of the lift plant room.
   c) No detail of air-conditioning plant.
   d) No detail of exhaust vents.
   e) Insufficient details with regards to geotechnical and hydrogeological impacts.
   f) Insufficient details in relation to contamination and acid sulfate soils.
   g) Insufficient details in relation to flooding and the impact of sea level rise.

7. The proposal is not in the public interest.

At that meeting, the Development Control Committee resolved as follows:

THAT Council, defer Development Application No. 571/2014/1 for demolition of the existing commercial building and construction of a 6 storey mixed use development comprising 2 basement levels with parking for 18 vehicles, 3 ground floor retail spaces with an arcade and 7 x 3 Bedroom, 4 x 2 Bedroom and 2 x 1 Bedroom units on the levels above on land at 16-18 Cross Street Double Bay, at the Applicants request to a Development Control Committee Meeting in March 2016.

In response, the applicant submitted supplementary details and modified plans identified as Replacement Application II on 23 February 2016.

This report is an addendum to, and is to be read in conjunction with, the original assessment report that is attached as Annexure 1. This addendum provides an assessment of the supplementary details that are identified as Replacement Application II.
CONSIDERATION

1. SUPPLEMENTARY DETAILS SUMMARY

The essence of the original proposal is retained. The key changes to the design are:

- Revised basement layout to enable additional storage, widened access ramps and turning areas
- The ground floor retail space altered to increase garbage facilities, vehicular access and adjusted floor levels for flooding
- The internal residential levels are altered to accommodate air-conditioning plant and garbage facilities
- Measurements added to the architectural drawings
- Details of plant and ducting added to the roof

In addition, addendums to the stormwater management plan, geotechnical investigation, disability design revisions and waste management plan were submitted for consideration.

2. ADVERTISING AND NOTIFICATION

The supplementary details, identified as Replacement Application II (as defined by Clause 90 of the Environmental Planning and Assessment Regulation 2000) were lodged on 23 February 2016 and were not renotified. The reason being, and pursuant to the Advertising and Notification DCP, the amendments proposed are substantially the same to those originally advertised and have no greater impact upon neighbours amenity or the environment.

Notwithstanding, the submissions received in relation to the original proposal still apply and have been taken into consideration in this assessment (see Annexure 1 for details of submissions and issues raised).

3. REFERRALS

Council’s Development Engineer has reviewed the supplementary information submitted with the full comments attached as Annexure 2. A summary is provided below:

- **Site Drainage**
  The Stormwater Disposal Concept Plan is considered unsatisfactory as it provides no details for the collection and management of stormwater from the development site.

- **Flooding and Overland Flow**
  If approval was recommended, appropriate conditions can be imposed to ensure that flooding will not inundate the basement car park levels or ground floor levels.

- **Impacts on Council Infrastructure**
  The plans shall clearly indicate the location and width of the proposed vehicular crossing on Council’s road reserve. The vehicular crossing shall be perpendicular to the road carriageway from property boundary.

- **Traffic, Vehicle Access and Accommodation**
  The following issues need to be addressed:
1. Further revision on the parking layout to accommodate additional parking spaces in lieu of the storage lockers or wherever feasible.
2. Allocation of staff parking associated with the retail use in lieu of visitor parking.
3. The ramps connecting the ground floor level and both basement levels appear to be non-compliant with AS/NZS 2890.1:2004 Clause 2.5.2
4. Pedestrian splays be provided at the property line on both sides of the driveway in accordance with AS/NZS 2890.1:2004 Clause 3.2.4.
5. A minimum of 12m (two car space) queuing area be provided between the vehicular control point (on-site) and the property boundary in accordance with AS/NZS 2890.1:2004 Clause 3.4.
6. Shared area and bollards associated with the disabled parking spaces be provided as per AS/NZS 2890.6:2009 Clause 2.2.1.
7. The dimensions of the proposed parking spaces are to be in accordance with AS2890.1.
8. The gradient of the access driveway inside property boundary shall be 5% for the first 6m and maybe increased to 12.5% if the grade is a downgrade for traffic leaving the property and entering the frontage road. The gradient for the second 3m of the ramp is 13% and shall be decreased to be 5% only with all required transitions in place. The design shall be in accordance with AS2890.1 - Gradients of Access Driveways
9. The proposed development does not fall within the ‘domestic driveway’ profile. The ramp grades are shown to be 25% and shall be amended to be a minimum of 16.7% for ramps longer than 20m in a public car park as per AS2890.1-2004.
10. The radius of the curved ramp shall measure to be 11.8m minimum for the outside radius and 4m minimum for the inside radius for a two way ramp as per AS2890.1.
11. Vehicle turning paths shall be provided showing how car space No.10 Level 2 Basement 2 can manoeuvre out of the proposed car space.

- **Geotechnical, Hydrogeological and/or Structural comments**

The submitted geotechnical report and its addendum are similar to a desktop study with the latest investigation on the site dating back to more than 17 years ago. In this regard, the geotechnical report submitted is considered unsatisfactory and further information is required.

**Planning Comment:**

Council’s Planning Staff have considered the Technical Services Referral Response and provide the following comments:

**Site Drainage**

The applicant has provided stormwater disposal concept plans, however these plans do not provide details on the collection and management of stormwater. It is acknowledged that further and more detailed information may enable compliance with Council’s requirements, but given the application has been recommended for refusal for other reasons which are fatal to the application, no further information has been sought from the applicant and the current stormwater disposal system is considered to be unsatisfactory in this instance.

**Traffic / Parking**

In terms of the interpretation of AS2890.1, it is apparent there is a difference of opinion between Council’s Traffic Engineer and the applicants Traffic Engineer. The key differences are as follows:
The applicant considers that the proposed development is a Category 1 off street parking facility whereas Council considers the proposed development is a Category 1A off-street parking facility.

The applicant considers that driveway gradients can be in accordance with Clause 3.2.2 of AS2890.1 which allows for a single width driveway to access the basement levels, whereas Council staff considers that Clause 3.2.2 of AS2890.1 is not applicable as it does not relate to domestic driveways and therefore a width of 5.5m is required.

Given the applicant considers the basement car park as a Category 1 facility, a maximum ramp gradient of 1:4 (25%) is permitted. Council staff considers that given the basement car park will service residential vehicles (and possibly retail car parking spaces), a maximum gradient of 1:6 is permitted (16.7%). Furthermore, the ‘hump’ required for flood protection of the basement car park levels results in a non-compliance with the driveway gradients within the first 6m.

Council’s Planning staff has relied upon the expertise of Council’s Traffic Engineer in the assessment of this application. Given this, it is apparent that the access driveway width and gradient of the access driveway do not comply with AS2890.1. The non-compliance would require a complete re-design of the access to the two levels of basement car parking.

These issues were flagged in the original Technical Services Referral response dated 19 February 2015 (attached to the Council report dated 7 December 2015) but have not been satisfactorily addressed. As such, Council has no other option but to refuse the application as it is non-compliant with AS2890.1 (amongst other reasons discussed below).

Geotechnical / Acid Sulfate Soils

The applicant has argued that given the site constraints there is no ability to undertake the necessary sub-strata geotechnical analysis but have relied upon similar geotechnical studies from surrounding properties from 17 years ago.

As opposed to 20-26 Cross Street, the subject site is fully developed which precludes the applicant from undertaking sub-strata geotechnical analysis from the subject site. However, Council staff suggested to the applicants of both 16-18 Cross Street and 20-26 Cross Street to undertake a combined sub-strata geotechnical analysis in or around the two properties. It is apparent that this suggestion was not accepted by either applicant as there continues to be no sub-strata geotechnical analysis.

It is considered that given the high water table and possible acid sulphate soil and contamination issues, the requirement to obtain a geotechnical report analysing the sub-strata conditions is considered critical.

As with the proposal for 20-26 Cross Street, it is open to Council to impose a deferred commencement condition to undertake the geotechnical analysis after the buildings have been demolished. However, Council staff does not agree with this approach given this requires the deferral of a number of key considerations (geotechnical, water table, acid sulfate soils etc) without a rigorous assessment by Council Staff.

There was no other referral responses requested or required.

4. ENVIRONMENTAL ASSESSMENT UNDER SECTION 79C
The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979 include the following:

1. The provisions of any environmental planning instrument
2. The provisions of any proposed instrument that is/has been the subject of public consultation
3. The provisions of any development control plan
4. Any planning agreement that has been entered into
5. Any draft planning agreement that a developer has offered to enter into
6. The regulations
7. Any coastal zone management plan
8. The likely impacts of that development:
   a. Environmental impacts on the natural and built environments
   b. Social and economic impacts
9. The suitability of the site
10. Any submissions
11. The public interest

4.1 STATE ENVIRONMENTAL PLANNING POLICY 55: REMEDIATION OF LAND

The terminology prescribed by Clause 7(1) of this SEPP is specific and states in part that Council, being the consent authority, …must not consent to carrying out development on land unless:

...it has considered whether the land is contaminated, and ..., 
...if the land is contaminated, it is satisfied the land is suitable (or will be suitable) ..., and, ... 
...if the land requires remediation, ...it is satisfied that the land will be remediated...

Furthermore, Clause 2 states in part:

...Before determining an application for consent, the (Council) must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.

Clause 3 states in part:

...The applicant must carry out the investigation required by sub-clause (2) and must provide a report on it to the Council...

(Note: emphasis added)

To date, no such investigation or report has been undertaken or submitted to Council for the subject site.

Replacement Application II has been submitted and is the subject of this report includes an addendum (dated 15 February 2016) to the original Geotechnical Engineers Report. The addendum reiterates the findings and position of the originally submitted engineers report and provides no additional information.

It is highly irregular for Council to consider an application that involves excavation to depths of over 6m without any testing of the sub-strata but rather rely on speculative assumptions based on other field studies in the locality. Council’s Development Engineer reiterates that the submitted geotechnical and addendum reports are unsatisfactory and require further investigation as detailed in Annexure 2.
Accordingly, insufficient detail has been submitted to enable Council to undertake an assessment of the potential contaminants in the sub-strata. If the site is contaminated, a separate development application may need to be lodged to undertake the remediation works.

4.2 STATE ENVIRONMENTAL PLANNING POLICY 65: DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT

Replacement Application II does not alter the previous assessment with the exception to additional storage provided.

The supplementary details depict 114m$^3$ of additional storage for the residential component of the development within the basement level. The apartments are also afforded with internal storage space. The volume of storage proposed is compliant with the terms of the storage control. The original reason for refusal has been deleted.

For reasons outlined in the original report attached as Annexure 1, the balance of the proposal fails to satisfy the relevant criteria prescribed by this SEPP.

4.3 WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

Replacement Application II does not alter the previous assessment. For reasons outlined in the original report attached as Annexure 1, the proposal fails to satisfy the relevant criteria prescribed by this LEP.

4.4 DOUBLE BAY CENTRE DEVELOPMENT CONTROL PLAN 2002

Replacement Application II does not alter the originally proposed building envelope or the previous assessment. For reasons outlined in the original report attached as Annexure 1, the proposal fails to satisfy the relevant criteria prescribed by this DCP.

Replacement Application II has modified the waste storage facilities and detailed the location of the air conditioning units for each dwelling. The assessment of these aspects is provided below.

Waste Storage

A supplementary Waste Management Plan (WMP) has been submitted. The ground floor has been altered to provide 27m$^2$ of waste storage area. The WMP remains deficient for servicing the expected generation and collection of waste from the development. The WMP proposes 660litre general waste bins for residential use for collection by Council from a loading bay on Knox Lane. There is no loading bay in Knox Lane nor is there standing area for the bins in this locality. The WMP states in part: “...a traffic consultant is preparing drawings to confirm the swept paths for waste collection, access and egress, ...internal maneuvering ...load requirements ...collection vehicle dimensions ...sweep paths...” The proposal remains deficient in detail and design and does not satisfy the relevant criteria prescribed by this DCP or the Waste Not DCP 2010.

Air Conditioning Units

The details of plant and air-conditioning units satisfy the relevant criteria prescribed by this DCP and would be subject to conditions if approval was recommended. As such, the original reason for refusal is deleted.
For reasons outlined in the original report attached as Annexure 1, the balance of the proposal fails to satisfy the relevant criteria prescribed by this DCP.

5. REVIEW OF DOUBLE BAY CENTRE ENVELOPE CONTROLS

In September 2015 the Double Bay Economic Feasibility Study (the Study) was reported to the Urban Planning Committee (UPC). The study reviewed the feasibility of developing six sites in the Double Bay Centre and found that generally, an FSR of between 3:1 and 3.5:1 is needed to make development viable. The Study recommended that Council review its planning controls in the Double Bay Centre based on these FSRs. That review is currently being undertaken and options for amending planning controls will be reported to a future UPC meeting.

In May 2016 Council resolved to publicly exhibit the Study until 30 June 2016 to allow residents of Double Bay to comment on it. The Council also resolved that, after the submissions on public exhibition of the study are reported, a community engagement program is undertaken. The engagement program will include staff presenting and seeking feedback on the Study and the urban development options, including 3D modelling, which have been prepared during the planning control review. The community engagement program is anticipated to commence in August 2016.

As such, there is no certainty that the planning controls for Double Bay will be altered and Council’s assessment of this application must be limited to the current planning controls in force for the subject site.

6. CONCLUSION

The supplementary details have not satisfactorily addressed the seven (7) original reasons for refusal. The supplementary details have only resulted in the deletion of the following points from the seven (7) original reasons for refusal detailed in Annexure 1:

- Reason for Refusal 3:
  - b) The deletion of the storage facilities requirements

- Reason for Refusal 6:
  - a) The drawings do not clearly depict the works (insufficient measurements provided).
  - b) No detail of the lift plant room.
  - c) No detail of air-conditioning plant.
  - d) No detail of exhaust vents.

All other reasons have not been adequately addressed and are still pressed in Part 7 of this report (below). For reasons outlined in the original assessment report attached as Annexure 1, the proposal is an overdevelopment of the site and is recommended for REFUSAL.

RECOMMENDATION: Pursuant to Section 80(1) of The Environmental Planning and Assessment Act 1979

THAT Council, as the consent authority, refuse development consent to Development Application No. 571/2014/1 for demolition of the existing commercial building and construction of a 6 storey mixed use development comprising 2 basement levels with parking for 18 vehicles, 3 ground floor retail spaces with an arcade and 7 x 3 Bedroom, 4 x 2 Bedroom and 2 x 1 Bedroom units on the levels above on land at 16-18 Cross Street Double Bay, for the following reasons:
1. The proposed floor space ratio of 4.54:1 exceeds the maximum floor space ratio standard of 2.5:1 under WLEP 1995. This results in a building form that does not achieve the desired future character objectives prescribed by Woollahra Development Control Plan 2015 for Double Bay. The proposal is detrimental to the spatial amenity of the Knox Lane. It is also detrimental to the amenity of adjoining property with respect to privacy, scale, bulk and solar access and compromises their potential future redevelopment.

In this regard, the SEPP 1 objection advanced by the applicant is not well founded. The development is contrary to the following:

- SEPP 65: Design Quality of Residential Flat Development - Clause 12: Principle 1 (Context), Principle 2 (Scale), Principle 3 (Built Form) and Principle 4 (Density)
- Woollahra LEP 1995 - Clause 11 and Clause 11AA - Objectives (a) to (d)
- Double Bay DCP 2002 - Part 6.3 Control C1 (Control Drawing 4)

2. In relation to the provisions prescribed by Woollahra Local Environmental Plan 1995:
   a) The buildings height, bulk and scale are excessive and do not relate to the existing character of the surrounding built environment or achieve the desired future character objectives of Double Bay.
   b) The proposal provides insufficient separation between buildings and therefore does not minimise adverse impacts on adjoining properties with respect to scale, bulk, sense of enclosure, privacy and solar access.
   c) The basement car park is not convenient for older or disabled people.

For these reasons, the proposal fails to satisfy the following provisions:
- Part 1 – Clause 2, Sub-clause (2)(a)(ii); (2)(d)(i) and (x); and, (2)(k)(i), (ii) and (iii).
- Part 2 – Clause 8(5).

3. In relation to State Environmental Planning Policy 65 –Design Quality of Residential Flat Development:
   a) The building is excessive in height and insufficiently setback from the Cross Street and Knox Lane boundaries resulting in a building that fails to achieve the desired future character objectives of the area.
   b) The building form is excessive in relation to the prescribed envelope controls and results in a density in excess of the sites capabilities to cater for the density with respect to waste facilities.
   c) The building form does not provide adequate solar access to the subject residents or those adjoining.

For these reasons, the proposal fails to satisfy the following Planning Principles:
- Principle 1 - Context.
- Principle 2 - Scale.
- Principle 3 - Built Form.
- Principle 4 - Density.
- Principle 8 - Safety & Security.
- The rules of thumb of the Residential Flat Design Code.

4. In relation to the provisions of Double Bay Centre Development Control Plan 2002:
   a) The building exceeds the maximum storey and height control.
b) The buildings height, bulk and scale are excessive and are incompatible with the existing built form, streetscape, village character and the future character of the centre.

c) Insufficient setbacks are provided in the laneways and thereby resulting in a detrimental impact on the pedestrian amenity.

d) The built form will result in an incoherent street scale and street definition particularly to the laneway.

e) The proposal provides insufficient separation to Knox Lane and therefore does not minimise adverse impacts on adjoining properties with respect to scale, bulk, sense of enclosure, privacy and solar access.

f) The proposal does not provide adequate waste storage facilities.

For these reasons, the proposal fails to satisfy the following provisions:

- Part 1.5 – Objective viii and ix.
- Part 3.2.4 – Objective (i) and (ii).
- Part 3.2.5 – Objective (iv) and (vi).
- Part 4.7 – Control 4.7.1 and 4.7.2.
- Part 4.9 – Control 4.9.1 and 4.9.2.
- Part 6.3.1 – Principle P1, P2 and P3 and Control C1 and C2.
- Part 6.3.2 – Principle P1 and Control C1 and C2.
- Part 6.3.4 – Principle P1, P2 and P3 and Control C1, C2, C4 and C6.
- Part 6.4.1 – Principle P2 and Control C1.
- Part 6.5.1 – Principle P1 and P2 and Control C2.
- Part 6.5.2 – Principle P1 and Control C1.
- Part 6.6.3 – Principle P1.
- Part 6.7.2 – Principle P2 and Control C1.
- Part 6.7.5 – Principle P1 and P2 and Control C2.


6. The submitted information is inconsistent and insufficient in detail to enable an accurate assessment of the proposal. The following issues are raised:

a) Insufficient details with regards to geotechnical and hydrogeological impacts.

b) Insufficient details in relation to contamination and acid sulfate soils.

c) Insufficient detail with regard to waste collection.

7. The proposal is not in the public interest.

**Annexures**

1. Original Assessment Report dated 7 December 2015
2. Replacement Application II Plans and Elevations
3. Referral Response - Technical Services
4. Referral Response - Drainage
DEVELOPMENT APPLICATION ASSESSMENT REPORT

<table>
<thead>
<tr>
<th>ITEM No.</th>
<th>D5</th>
</tr>
</thead>
<tbody>
<tr>
<td>FILE No.</td>
<td>DA 571/2014/1</td>
</tr>
<tr>
<td>ADDRESS</td>
<td>16-18 Cross Street DOUBLE BAY (‘Hunter’s Lodge’)</td>
</tr>
<tr>
<td>AMENDED PROPOSAL</td>
<td>Demolition of the existing commercial building and construction of a 6 storey mixed use development comprising 2 basement levels with parking for 18 vehicles, 3 ground floor retail spaces with an arcade and 7 x 3 Bedroom, 4 x 2 Bedroom and 2 x 1 Bedroom units on the levels above</td>
</tr>
<tr>
<td>TYPE OF CONSENT</td>
<td>Integrated development</td>
</tr>
<tr>
<td>COST OF WORKS</td>
<td>$12,441,220.00</td>
</tr>
<tr>
<td>DATE LODGED</td>
<td>19/12/2014 – Original Submission</td>
</tr>
<tr>
<td></td>
<td>07/10/2015 – Replacement Application</td>
</tr>
<tr>
<td>APPLICANT</td>
<td>Toga Double Bay Developments Pty Ltd</td>
</tr>
<tr>
<td>OWNER</td>
<td>Mr T Fischer &amp; Ms V Mohay</td>
</tr>
<tr>
<td>AUTHOR</td>
<td>Mr D Lukas</td>
</tr>
<tr>
<td>TEAM LEADER</td>
<td>Mr D Waghorn</td>
</tr>
<tr>
<td>SUBMISSIONS</td>
<td>281</td>
</tr>
<tr>
<td>RECOMMENDATION</td>
<td>Refusal</td>
</tr>
</tbody>
</table>

EXECUTIVE SUMMARY

1. LOCALITY PLAN

Note: There are 281 submissions received both for and against the development. Their postal addresses vary from either immediately adjoining or extend beyond the realms of this map (see Annexure 7 for details).
2. DELEGATIONS SUMMARY

<table>
<thead>
<tr>
<th>Level of Delegation</th>
<th>Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>In accordance with Council’s delegations, the Manager of Development Control has requested that this application be referred to the Development Control Committee for determination because of the number of submissions received and the public interest.</td>
<td>Refusal</td>
</tr>
</tbody>
</table>

3. PROPOSAL SUMMARY

The proposal, as amended, involves the demolition of the existing commercial building known as the ‘Hunter's Lodge’. The site would be excavated to facilitate construction of a new 6 storey mixed use building with 2 levels of basement carparking.

The basement levels will provide carparking for 18 vehicles, amenities for the retail level, garbage facilities and ancillary storage facilities. Access to the basement level is via a single driveway from Knox Lane. The ground floor level contains 3 retail spaces linked via an open arcade that is accessible from both Cross Street and Knox Lane. The ground floor also contains ancillary uses (eg. lobby, garbage facilities, fire services etc).

Above the ground floor level retail spaces are 5 levels of residential accommodation, the composition of the units being: 2 x 1 Bedrooms; 4 x 2 Bedrooms and 7 x 3 Bedrooms.

The Replacement Application was submitted on 7 October 2015. This application included amended plans that refined the design of the building, reduced the number of car parking spaces from 19 to 18 and increased the number of units from 12 to 13.

The external changes vary the facades on Cross Street and Knox Lane and provide increased setbacks from these respective frontages on the upper levels. These amended plans form the subject of this report.

A photomontage, as amended, of both street elevations is depicted as follows:

4. SEPP 1 SUMMARY

| Woollahra LEP Clause 11(1) | Standard Floor Space Ratio (m²) | Control 2.5:1 (1677) | Proposed 4.5:1 (3021) | Departure 80% or (1344m²) | Conclusion Unsatisfactory |

5. ADVERTISING AND NOTIFICATION
5.1 Submissions

The original application was notified and advertised in accordance with Parts 3 and 4 of the Woollahra Advertising and Notification DCP from 21 January 2015 to 19 February 2015.

A Replacement Application (as defined by Clause 90 of the Environmental Planning and Assessment Regulation 2000) was lodged on 7 October 2015. The replacement application was also notified and advertised in accordance with Parts 3 and 4 of the Woollahra Advertising and Notification DCP from 14 October 2015 to 12 November 2015.

In response to both notification and advertising periods, there were a total of 281 submissions received with their details attached as Annexure 7. The breakdown of submissions is as follows:

- **141 submissions** received in support of the proposal.
- **140 submissions** received against the proposal.

The issues raised against the proposal are summarised immediately below in Section 6.

6. ISSUES SUMMARY

- Excessive in height
- Non-compliance with Council’s controls (ie. floor space, setbacks, number of storeys, height, SEPP 65 provisions, car parking)
- Precedent
- Loss of village atmosphere
- Loss of on-street parking
- Excavation issues (ie. acid sulfate soils, land contamination, ground water)
- Pedestrian/parking conflict in laneway
- Loss of views
- Overdevelopment
- Overshadowing
- Not compatible with the existing and future desired character for Double Bay
- Sense of enclosure
- Not in public interest
- Traffic congestion in laneway and locality
- Not compatible with existing streetscape
- Wind tunnel effect

The issues raised against the development are assessed where necessary under the relevant heads of consideration in the body of the report.

PROPERTY DETAILS AND REFERRALS

7. SITE AND LOCALITY
## Physical features

The site’s primary (northern) frontage is on the southern side of Cross Street, Double Bay with a secondary (southern) frontage to the northern side of Knox Lane. It is almost immediately opposite the Intercontinental Hotel. The site is rectangular in shape and has a frontage of 24.42m, a depth of 27.47m and a total area of 671m².

## Topography

The site is relatively flat and devoid of any landscaped area.

## Existing buildings and structures

On the site is a part 2/part 3 storey commercial building currently occupied by the Hunters Lodge. It is a building that is entirely commercial. The ground floor is predominately occupied by shops and the upper levels is a night club.

## Environment

The site is located in the heart of the Double Bay Commercial Centre. Double Bay is sited on the southern edge of Sydney Harbour. The surrounding area is relatively level and sits at the base of a large natural amphitheatre which leads up to the ridges of Darling Point, Edgecliff and Bellevue Hill. The immediate area is characterised by development ranging in height between 1-7 storeys with a variety of uses such as residential, commercial, retail, offices, schools, a hotel and food and drink premises.

### 8. RELEVANT PROPERTY HISTORY

<table>
<thead>
<tr>
<th>Current use</th>
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<tbody>
<tr>
<td>Retail on ground floor, night club on the upper levels.</td>
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</table>

<table>
<thead>
<tr>
<th>Previous Relevant Applications</th>
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</thead>
<tbody>
<tr>
<td>The subject site has a long history of applications for change of uses and alterations and additions thereto for the commercial tenancies.</td>
</tr>
</tbody>
</table>

Of note is **DA290/2015** which proposes a development immediately adjoining to the west at No20-26 Cross Street. This adjoining scheme is similar to the subject proposal in terms of its use, height and scale and is being presented for determination concurrently.
Pre-DA
Though there was no formal pre-da lodged for the subject site, there have been various meetings with the applicant and planning staff regarding the proposed redevelopment of the subject site.

Requests for Additional Information
09.01.2015 – Request to submit a model.
29.01.2015 – email to applicant to respond to NSW Department of Primary Industries request for additional information.
01.07.2015 – email to applicant requesting additional information to address engineering issues (ie site drainage; flooding & overland flows; traffic; vehicle access & accommodation; geotechnical, hydrogeological and/or structural issues) as well as Site Contamination and Acid Sulfate Soils.

Amended Plans/Replacement Application
A Replacement Application was submitted on 7 October 2015. This application included amended plans that refined the design of the building, modified the internal configuration, increased the number of units from 12 to 13 and reduced the number of car parking spaces from 19 to 18. The external changes vary the facades on Cross Street and Knox Lane and provide increased setbacks from these respective frontages on the upper levels.

Land and Environment Court Appeal
No appeal has been lodged.

Strategic Issues
Of relevance is the Hills PDA Report regarding viability of the Double Bay Centre. The Council resolution of 28 September 2015 arising from consideration of the report was:

17/16 Resolved without debate:

A. THAT the report on the Double Bay Economic Feasibility study prepared by Hill PDA Consulting and attached to the Urban Planning Committee report on 7 September 2015 is received and noted.

B. THAT a further report be presented to the Urban Planning Committee, no later than the end of March 2016, containing the review of the planning controls to the Double Bay Centre, which is based on the recommendations and policy options presented to the Urban Planning Committee by Hill PDA Consulting on 7 September 2015.

C. THAT a Communication and Engagement Strategy be developed and implemented by the end of January 2016.

Strategic Planning staff are currently progressing parts B and C of the resolution.

9. REFERRALS

<table>
<thead>
<tr>
<th>Referral</th>
<th>Summary of Comment</th>
<th>Annexure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engineering</td>
<td>Council’s Development Engineer has determined that insufficient information has been submitted to enable an assessment of the proposal. The following information is required before any further assessment of the application can be undertaken:</td>
<td>2*</td>
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<tr>
<td></td>
<td>• Stormwater management plan is to be submitted to Council.</td>
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<td></td>
<td>• Flooding – sea level rise information to be included into the design.</td>
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<td></td>
<td>• Traffic – Revised traffic report to comply with Council’s parking requirements.</td>
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<td></td>
<td>• Vehicle Access – Driveway section to include any flood protection measures.</td>
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<tr>
<td></td>
<td>• Geotechnical Investigation – revised report to comply with Council’s requirements.</td>
<td></td>
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</tbody>
</table>
## Traffic

The development is currently not supported with reference to the following points:

- **The proposal to provide 0 spaces for the retail component of the development.**
- **The proposed disabled parking spaces shown on the B1 and B2 basement plans are not in accordance with AS/NZS 2890.6.**

An off-street servicing arrangement be provided and ‘designed to cater for the vehicles and servicing operations anticipated to occur’ associated with the retail component of the development ensuring that ‘all service vehicles stand entirely on the site of the premises during loading and unloading operations.’

*It is recommended that the driveway be widened to permit the passage of two opposing vehicles.*

Should consent be considered it is recommended that a condition be imposed stating that tenants and residents of the proposed development will not be eligible for resident or visitor parking permits.

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## Urban Planner

This proposal does not comply with the Council’s controls for this location. The doubling of the permissible GFA means the building will not fit within the building envelope.

There may be reasonable arguments that can be made for increasing development potential in Double Bay Centre. However, these need to be tested across the whole area and assessed with regard to the impacts that such changes would have on the whole centre. Approval of this scheme would undermine the controls that have been formulated for Double Bay Centre, hence establishing a different development environment. Discussing the virtues of this proposal in isolation to its context and the current controls would seem pointless, while a wholesale reappraisal of the planning controls for Double Bay Centre is outside the brief of this referral response.

*Refusal due to impacts resulting from non-compliance with the planning controls.*

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## Trees

There are no landscape issues related to this proposal other than the protection of two street trees.

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## Health

Insufficient information has been submitted to enable an assessment of the proposal.

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## NSW Department of Primary Industries - Water

Preliminary assessment indicates the groundwater table will be intercepted as a result of the excavation works, but comprehensive evaluation hydrogeological situation has not been made available. The construction dewatering proposed for the project is deemed to be an aquifer interference activity in accordance with the definition in the Water Management Act 2000. It is expected that the excavation and construction at the property will be conducted in accordance with the principles of the Aquifer Interference Policy. The basement construction should be tanked to prevent any on-going take of groundwater interference activity are provided as required by s.91A (2) of the Environmental Planning and Assessment Act 1979.

General Terms of Approval provided.

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## Heritage

There are no heritage concerns with the proposed development.

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## Property Officer

The proposal satisfies Technical Services concerns subject to conditions.

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## Fire

The proposal is acceptable.

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## Sydney Water

Detailed requirements will be provided at the Section 73 application phase.
Referrals were also sent to Energy Australia and New South Wales Police (Rose Bay). No responses were received. Based on the relevant legislation, the absence of a response does not preclude Council from determining the application.

* The Replacement Application included a Report from Douglass Partners (DPR) that addresses Site Contamination, Acid Sulphate Soils and De-Watering of the site. Due to the site being 100% occupied, it is not feasible to test the existing sub-strata and in particular, at the proposed excavation level. The DPR provides a response to each of the issues mentioned above and is assessed under the relevant heads of consideration that follow.

** The Development Application for No.20-26 Cross Street immediately adjoining proposes excavation to a similar depth as the subject site. It also has the same limitations with regard to testing the existing sub-strata given the existing commercial buildings thereon. Council’s Health Officer considered that the adjoining development is satisfactory subject to deferred commencement consent based on the findings of the Geotechnical Engineers Report. It should be noted that the Engineers report for the adjoining development site has been undertaken by the same firm (Douglas Partners). If this subject application is approved, the same condition would apply.

Environmental Assessment Under Section 79C

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979 include the following:

1. The provisions of any environmental planning instrument
2. The provisions of any proposed instrument that is/has been the subject of public consultation
3. The provisions of any development control plan
4. Any planning agreement that has been entered into
5. Any draft planning agreement that a developer has offered to enter into
6. The regulations
7. Any coastal zone management plan
8. The likely impacts of that development:
   a. Environmental impacts on the natural and built environments
   b. Social and economic impacts
9. The suitability of the site
10. Any submissions
11. The public interest

10. Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The development is located on a relatively level and flat site that is partially obscured from the waterway and the foreshores by existing development and landscaping. The subject site is not a land/water interface development but notwithstanding, Division 2 of the SREP prescribes matters for consideration for interrelationship of waterway and foreshore uses as well as maintenance, protection and enhancement of views.

Within the visual catchment from the harbour are other developments of equal or higher built form than the subject development. These other built forms include multi-storey developments immediately adjoining on Cross Street (Intercontinental Hotel and Georges buildings), on Knox Street (Cosmopolitan) and further afield on New South Head Road, Edgecliff, Darling Point and Double Bay. In this regard, the building remains compatible in its urban context and is another variable building form related to this established built environment.

The proposal does not result in any detrimental impact on the wetlands or cause pollution or siltation of the waterway. It does not detrimentally impact on existing vegetation or drainage patterns and does not obstruct vistas of the waterway from the public domain.
The proposal therefore satisfies the relevant criteria prescribed by the SREP.

11. STATE ENVIRONMENTAL PLANNING POLICY 55: REMEDIATION OF LAND

The Douglass Partner Geotechnical and Hydrogeological Engineers Report (DPR) submitted indicates that there are potential contamination issues at the site from both onsite and offsite sources.

Clause 7(1)(b) & (c) requires that where land is contaminated Council must be satisfied that the land is or will be made suitable after remediation in its contaminated state for the purpose for which development is proposed.

The conclusion reached in the DPR states:

“...It is recommended that an investigation of soil and groundwater be undertaken to assess whether the site has been significantly contaminated from on-site or off-site sources. It is noted that much of the site cannot currently be accessed by a drilling rig, and, thus, (the majority or all of) the intrusive investigation is likely to occur post demolition. Soils designated for off-site disposal will need to be classified in accordance with NSW EPA, Waste Classification Guidelines, November 2014.

It is recommended that a hazardous building materials survey for the existing building be undertaken prior to its demolition, given that the existing building was constructed in the 1960s and 1970s.”

Insufficient detail has been submitted to enable Council to undertake an assessment of the potential contaminates in the sub-strata. Furthermore, the DPR does not make an assessment if site can or will be made suitable for the use as a mixed use building. It should be noted that if the site is contaminated, a separate development application may need to be lodged to undertake the remediation works.

12. STATE ENVIRONMENTAL PLANNING POLICY 64: ADVERTISING AND SIGNAGE

No signage is proposed as part of this application.

13. STATE ENVIRONMENTAL PLANNING POLICY 65: DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT

SEPP 65 applies to all new residential flat buildings which comprise 3 or more storeys and 4 or more self-contained dwellings. Based on the composition of this development, the SEPP applies.

The DA was accompanied by a design verification statement prepared by a qualified designer, as required by the EPA Regulations cl.50(1A).

The instrument requires the proposal be referred to a Design Review Panel. However, this panel has not been established for the Woollahra area. Notwithstanding this, the instrument requires the assessment of the subject development application against the 10 design quality principles contained in Part 2 and against the considerations contained in the publication “Residential Flat Design Code”.
An assessment against the 10 design quality principles follows with summarised comments from Council’s Urban Planner inserted into each relevant head of consideration (see Annexure 4 for full comments):

13.1 Principle 1: Context

Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area. Responding to context involves identifying the desirable elements of a location’s current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area.

There are a handful of relatively large developments in the centre (ie Intercontinental Hotel, George’s and Cosmopolitan Buildings). These building forms are anomalies within the centre which is generally low-scale. This site is in a location that is undergoing a transition. The proposal excessively exceeds the Floor Space control and inevitably results in a building envelope that exceeds the controls prescribed by the Double Bay Development Control Plan 2002 (DBDCP). One of the key objectives of this DCP states …To ensure new development is compatible with the existing built form, and streetscape and village character.

This DCP also provides a strategy for Cross Street and Knox Lane which state respectively …Encourage a limited variety of permissible 4 storey built forms on the south side and …retain and enhance the varied spatial definition of Knox Lane.

The proposal does not satisfy either of these key objectives or the strategies for the centre and therefore fails to satisfy this principle.

13.2 Principle 2: Scale

Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings. Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area.

This proposal is situated in a location that is undergoing a transition …The proposal …exceeds the 13.5m height limit by 7.95m. The proposal cannot be said to respond to the desired future character of the location as stated in planning and design policies with regard to height.

The building is excessive in scale, which is reflected in the non-compliances with the height control (DCP) and the floor space ratio development standard prescribed by the LEP. The excessive scale of the development is also reflected in the non-compliance with the envelope controls prescribed by the DBDCP 2002 (further assessment below).

The proposal fails to satisfy this principle.

13.3 Principal 3: Built Form

Good design achieves an appropriate built form for a site and the building’s purpose, in terms of building alignments, proportions, building type and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.
...To Knox Lane ...the.....street wall will cause the amenity of the proposed units at lower levels, and that of potential development 9m away across the lane, to be compromised. The addition of two levels above the four storeys will also impact on potential future development on surrounding sites. The built form, in its present form, is considered inappropriate in this location.

The height, scale and bulk of the building exceed Councils prescribed envelope controls resulting in a built form that does not relate to the existing and future urban landscape. The proposal presents as an 11m high street wall to Knox Lane (7.5m required under DBDCP). This will be detrimental to the amenity of the laneway and to properties on the opposite side of Knox Lane. The proposed built form does not positively contribute to the character of the streetscape as it is disproportional to existing and future development.

The proposal fails to satisfy this principle.

13.4 Principle 4: Density

Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents). Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality.

The proposed density is considered potentially acceptable in this location given the proximity of services. However the proposed density is not consistent with the location’s desired future character.

In principal, the provision of 13 residential units within the Double Bay centre is not opposed. However, the proposed building envelope and density (expressed as FSR) is considered to be excessive and is not consistent with the existing or desired future character of the Double Bay centre. The proposal fails to satisfy this principle.

13.5 Principle 5: Resource, energy and water efficiency

Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction. Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and reuse of water.

Most apartments perform well regarding energy efficiency. One apartment is heavily compromised. There are no substantial sustainability initiatives beyond those required by the controls.

The proposal satisfies this principle.

13.6 Principle 6: Landscape
Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.

Landscape design builds on the existing site’s natural and cultural features in responsible and creative ways. It enhances the development’s natural environmental performance by coordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character. Landscape design should optimise usability, privacy and social opportunity, equitable access and respect for neighbours’ amenity, and provide for practical establishment and long term management.

The proposal occupies the whole site. There is no space, save for some small planter boxes, for any landscape.

The site is zoned General Business 3(a) and the DBDCP does not require the proposed development to provide deep soil landscaping on the site. The proposal satisfies this principle.

13.7 Principle 7: Amenity

Good design provides amenity through the physical, spatial and environmental quality of a development. Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.

Most apartments provide good amenity. One apartment is compromised facing south west with no cross ventilation and a limited outlook.

The proposal satisfies this principle (see Part 13.15 below for further comment).

13.8 Principle 8: Safety and security

Good design optimises safety and security, both internal to the development and for the public domain.

This is achieved by maximising overlooking of public and communal spaces while maintaining internal privacy, avoiding dark and non-visible areas, maximising activity on streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces.

The lobby to the residential apartments appears to have two access points and a hiding point just inside the arcade entry. This may constitute a safety problem.

Furthermore, access to the basement garage is unrestricted and provides further concealment opportunities.

The proposal fails to satisfy this principle.

13.9 Principle 9: Social dimensions and housing affordability
Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities. New developments should optimise provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community. New developments should address housing affordability by optimising the provision of economic housing choices and providing a mix of housing types to cater for different budgets and housing needs.

This development provides a reasonable range of housing options

The proposal satisfies this principle.

13.10 Principle 10: Aesthetics

Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.

The design resolution of the facades of the building is aesthetically appropriate.

The proposal satisfies this principle.

13.11 Residential Flat Design Code

This code provides clarification and further detail for the design of a residential flat building having regard to the 10 Design Principles outlined in SEPP 65, which was assessed above.

13.12 Rules of Thumb

<table>
<thead>
<tr>
<th>Site Area: 1,534.8m²</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apartment Building Depth</td>
<td>24.2m</td>
<td>10-18m</td>
<td>No</td>
</tr>
<tr>
<td>Min. Open Space Area as Deep Soil Zone</td>
<td>0%</td>
<td>25%</td>
<td>No</td>
</tr>
<tr>
<td>Communal Open Space</td>
<td>0%</td>
<td>25-30% (384m²)</td>
<td>No</td>
</tr>
<tr>
<td>Barrier Free Access</td>
<td>&gt; 3 units</td>
<td>20% of Units (3 units)</td>
<td>Yes</td>
</tr>
<tr>
<td>Maximum Width of Driveway</td>
<td>3m</td>
<td>6m</td>
<td>Yes</td>
</tr>
<tr>
<td>Driveway Entrance</td>
<td>Knox Lane</td>
<td>Removed from Pedestrian Entrance</td>
<td>Yes</td>
</tr>
<tr>
<td>Single Aspect Units Maximum Depth</td>
<td>8.8m</td>
<td>8m</td>
<td>No</td>
</tr>
<tr>
<td>Minimum Apartment Sizes</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>- One bedroom</td>
<td>61.8m²</td>
<td>50m² (1 bed)</td>
<td>Yes</td>
</tr>
<tr>
<td>- Two bedroom</td>
<td>76.3m²</td>
<td>70m² (2 bed)</td>
<td>Yes</td>
</tr>
<tr>
<td>- Three Bedroom</td>
<td>153.4m²</td>
<td>95m² (3 bed)</td>
<td>Yes</td>
</tr>
<tr>
<td>Minimum Depth of Balconies</td>
<td>1.7m</td>
<td>2m</td>
<td>No</td>
</tr>
<tr>
<td>Floor to Ceiling Height – Retail</td>
<td>3.3m</td>
<td>3.3m</td>
<td>Yes</td>
</tr>
</tbody>
</table>
## 13.13 Part 1: Local Context

The proposed development relates to the local context with the exception of the following:

- **Apartment Building depth**

  In general, developments that have a depth greater than 18m are to demonstrate how satisfactory daylight and natural ventilation is achieved. The proposed development attains a building depth of 24.2m at the first and second floor levels. With the exception of the two 2 x Bedroom units on the first floor, all other units will have good internal amenity with their primary living areas orientated to the north with direct solar access and natural ventilation. Furthermore, the proposal complies with the solar access and ventilation requirements of SEPP 65.

## 13.14 Part 2: Site Design

The rules of thumb require 25% of the open space area to be deep soil landscaped area. However, given the commercial zoning and the required 100% occupation of the site, no deep soil landscaping is possible nor is it required as part of the DBDCP 2002.

## 13.15 Part 3: Building Design

The proposed development provides a satisfactory building design with the exception of the following:

- **Single aspect units**

  The rules of thumb specify a maximum depth of single aspect units to be 8m. The two 1 x Bedroom single aspect units on Levels 3 & 4 have a depth of 8.8m. The extent of the departure is relatively minor given these units have wide north facing frontages providing direct solar access and views over Cross Street.

- **Balcony depth for units**
The rules of thumb specify a minimum depth of balconies to be 2m. The units fronting Knox Lane have a balcony depth of 1.7m. Despite the relatively minor non-compliance, these balconies are larger in area than the minimum standard and are accessed off the primary living areas. The units are provided with access to afternoon sun and are cross-ventilated. The units are afforded with good amenity.

- **Storage Areas**

The rules of thumb stipulate that between 6-10m$^3$ of storage per unit (pending the number of bedrooms) is required. Based on the composition of units, a total of 114m$^3$ of storage is required. The proposal provides approximately 47m$^3$ of storage area in the basement level. The allocation of the storage area has not been specified and can be used for either the residential or commercial uses.

The storage area remains deficient in volume for the residential component of the development.

**14. STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004**

The SEPP (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the development and relates to commitments in relation to thermal comfort, water conservation and energy efficiency sustainability measures.

The development application was accompanied by BASIX Certificate committing to environmental sustainability measures relating to thermal comfort, water savings and energy efficiency. The measures as prescribed by Clause 97A of the Environmental Planning and Assessment Regulation 2000 can be imposed by conditional consent.

**15. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014**

**15.1 Savings provision relating to development applications**

The subject development application was made and not finally determined before the commencement of this Plan (23 May 2015). According to the savings provision, the application must be determined as if this Plan had not commenced. On this basis, the WLEP 1995 continues to apply and is assessed immediately below.

The development standards prescribed by WLEP 2014 are as follows:

- **Height (Part 4.3)**

<table>
<thead>
<tr>
<th>Site Area: 671m$^2$</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Height (m)</td>
<td>20.75</td>
<td>14.7</td>
<td>No</td>
</tr>
</tbody>
</table>

The proposal fails to comply with Part 4.3 of Woollahra LEP 2014 and is considered excessive for the same reasons as discussed below (see Section 17).

- **Floor Space Ratio (Part 4.4)**
The definition of floor space is altered under Woollahra LEP 2014. Notwithstanding, the proposal fails to comply with Part 4.4 of Woollahra LEP 2014 and is considered excessive for the same reasons as discussed below (see Section Part 16.3).

16. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

16.1 Compliance Table

<table>
<thead>
<tr>
<th>Site Area: 671m²</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Floor Space Ratio (m²)</td>
<td>3.31:1 (2,219)</td>
<td>2.5:1 (1677)</td>
<td>No</td>
</tr>
</tbody>
</table>

(Note: Non-compliances are highlighted)

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

The proposed mixed use development is permissible and consistent with the aims and objectives prescribed for the zone. However, the proposal fails to satisfy Part 2 - Clause 8(5) which references the relevant objectives of the plan as follows:

- The proposal is an overdevelopment of the site resulting in a building form that does not enhance the attributes of the site or improve the quality of the public environment. It would be detrimental to the existing and future character of Double Bay. The proposal fails to satisfy Objectives (2)(a)(ii); (k)(i), (ii) and (iii).
- The basement car park and the turning areas, ramps, parking spaces etc are non-compliant and does not provide a safe and convenient facility for pedestrians and other road users. Furthermore, the proposed development does not provide convenient access for older or disabled people. The proposal fails to satisfy Objectives (2)(d)(i) and (x).

16.3 Floor Space Ratios (Clause 11)

The proposed development exceeds the maximum floor space ratio control by 1344m² as prescribed by this clause. In response, the applicant has submitted a State Environmental Planning Policy No.1 objection to seek variation of the development standard and is attached as Annexure 6.

In relation to the SEPP 1 Objection submitted, the following assessment applies the principles arising from Hooker Corporation Pty Limited v Hornsby Shire Council (NSWLEC, 2 June 1986, unreported) by using the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46 (6 April 2001) whilst having regard to the criteria in assessing the SEPP 1 objection as outlined in Wehbe v Pittwater Council (2007).

The SEPP 1 Objection is assessed as follows:

i) Is the planning control in question a development standard?

The maximum floor space ratio is a development standard under WLEP 1995.

ii) What is the underlying purpose of the standard?
The underlying purpose of the standard is its objectives which are discussed below.

iii) **Is non-compliance with the development standard consistent with the aims of the Policy, and in particular, would strict compliance with the development standard tend to hinder the attainment of the objectives specified in s.5(a)(i) and (ii) of the EPA Act?**

The proposed development is assessed against the **objectives of the standard** as follows:

a) **To set the maximum density for new development**

As assessed against the SEPP 65 provisions above, the proposed density is considered potentially acceptable in this location given the proximity of infrastructure and services. However, the proposed density is not consistent with the location’s desired future character and is excessive in context to the sites dimensions.

The proposal fails to satisfy this objective.

b) **To control building density, bulk and scale in all residential and commercial localities in the area in order to achieve the desired future character objectives of those localities**

The proposal is an over-development of the site and is reflected in the non-compliance with the envelope controls prescribed by the Double Bay Centre Development Control Plan 2002 (further assessment below). The desired future character objectives for the centre are broken down into each street in Part 4 of DBDCP 2002. These are discussed below:

- **Cross Street**
  The key strategy applicable to this development states ‘...Encourage a limited variety of permissible 4 storey built forms on the south side.’

- **Knox Lane**
  The key strategy applicable to this development states ‘...Retain and enhance the varied spatial definition of Knox Lane.’

Following is a section of the proposed development with reference to the envelope controls prescribed by DBDCP 2013:
The proposed 6 storey development will be highly visible from both Cross Street and Knox Lane given the underdeveloped nature of surrounding properties.

The proposed 6 storey building does not comply with the key strategy for Cross Street as it will be 2 storeys above the control. Furthermore, the additional storeys result in adverse impacts on the amenity of adjoining properties on the opposite side of Knox Lane in terms of excessive bulk and scale, loss of solar access and a reduction in development potential.

The proposal presents an 11m high wall to Knox Lane which is 3.5m above the control. This wall height will not enhance the varied spatial definition of Knox Lane and will increase the sense of enclosure. It will also have a significant impact on the development potential on properties on the opposite side of Knox Lane in terms of privacy and solar access.

The proposal fails to satisfy this objective.

c)  To minimise adverse environmental effect on the use of enjoyment, or both, of adjoining properties

The proposed building envelope potentially compromises development across the lane with regard to sense of enclosure, scale, bulk, privacy and overshadowing (further assessment below).

The proposal fails to satisfy this objective.

d)  To relate new development to the existing character of surrounding built and natural environment as viewed from the streetscape, the harbour or any other panoramic viewing point

The proposal does not relate to the sites dimensions or to the existing surrounding built form. This locality is in a transitional phase. The height, scale and bulk of the building exceed Councils
prescribed envelope controls resulting in a built form that will not relate to the future character of this locality. Due to the undeveloped nature of adjoining properties, the upper levels of the proposed building would be visibly prominent from the streetscape.

The proposal fails to satisfy this objective.

In relation to the objectives specified in S.5(a)(i) and (ii) of the EPA Act, they are as follows:

5(a)(i) To encourage the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.

5(a)(ii) To encourage the promotion and co-ordination of the orderly and economic use and development of land.

Strict enforcement of the standard does not hinder the proper management of the site or the orderly and economic use and development of the land. The breach of the standard benefits the owner of the site but not for the betterment of the environment as there are detrimental environmental issues associated with the non-compliances as discussed, contrary to the objectives prescribed by the EPA Act.

Having considered the arguments presented by the applicant in the SEPP 1 submission against the relevant objectives of the development standard contained in Woollahra LEP 1995, the proposal does not uphold the objectives underlying the development standard.

iv) Is compliance with the standard unreasonable or unnecessary in the circumstances of the case?

Having regard to the objectives of the development standard outlined above, strict compliance with this standard is reasonable and necessary in this case because there are no exceptional circumstances to warrant a departure.

v) Is the objection well founded?

In view of the above, the objection advanced by the applicant that compliance with the development standard is unreasonable and unnecessary is not well founded and that granting of development consent is inconsistent with the aims and objectives of the development standard.

16.4 Excavation (Clause 18)

The proposed excavation of the site is summarised as follows:

- Excavation for the site has a maximum depth of 6m
- The excavation extends to all boundaries
- The total volume of excavation is approximately 4026m³

An assessment of the proposed excavation is assessed against the objectives of this Clause as follows:

(a) The amenity of the neighbourhood by way of noise, vibration, dust or other similar circumstances related to the excavation process
The maintenance of the amenity of the neighbourhood in terms of minimising noise, vibration and dust can be addressed by Council’s standard conditions which limit hours of work, support of adjoining land and buildings, vibration monitoring and dust mitigation measures.

(b) Public safety
(c) Vehicle and pedestrian movements

Issues relating to public safety and pedestrian movements during the excavation phase are inter-related. These can be addressed by submission of a Construction Management Plan enforced by Council’s standard conditions. The CMP can regulate truck movements, security fencing, site signs and other mechanisms for the maintenance of vehicular and pedestrian safety.

(d) The heritage significance of any heritage item that may be affected by the proposed excavation and its setting

The works are sufficiently removed from the only significant buildings located within the Transvaal Conservation Area. The excavation is unlikely to result in any adverse impact on any of these buildings or their curtilage.

(e) Natural landforms and vegetation

The proposed excavation would not alter the landform as seen from both the private and public domain and does not detrimentally impact on existing trees.

(f) Natural water run-off patterns

The proposal will not significantly alter the natural water run-off patterns for the locality. If approval was recommended, NSW Department of Primary Industries has provided general terms of approval to ensure the natural flow of water will not be adversely affected by the proposed excavation.

The Hydrogeological Plan submitted provides adequate stormwater disposal of the site in accordance with Council’s requirements.

The excavation associated with the proposal satisfies the relevant criteria prescribed by this clause.

16.5 HFSPA (Clause 19)

The proposal satisfies the relevant criteria prescribed by this clause.

16.6 Land adjoining public open space (Clause 24)

The proposal satisfies the relevant criteria prescribed by this clause.

16.7 Water, wastewater and stormwater (Clause 25)

The proposal satisfies the relevant criteria prescribed by this clause (see DBDCP 2002 below for detailed assessment).
16.8 Acid Sulfate Soils (Clause 25D)

The subject site is identified within Land Class 2 of the Acid Sulfate Soils map which applies to any works below the natural ground level. Accordingly, development consent is required for the proposed excavation pursuant to sub-clause (2).

A Geotechnical and Hydrogeological Investigation undertaken by Douglas Partners (DPR) dated December 2014 was submitted with the application. A preliminary assessment of this report was undertaken and the applicant was subsequently advised that:

“...The applicant is to provide further information pertaining to Acid Sulphate Soils (Acid Sulphate Soil Management Plan) and contamination (SEPP55 –PSI) as recommended within the Douglas Partners Report No 84639.00 dated December 2014.”

A further Report by Douglas Partners (DPR) dated September 2015 was submitted and states:

“...It is noted that to date no ASS sampling has been conducted for the site, and will be conducted as part of the redevelopment works at a further date. Given the current site access constraints it is recommended that the sampling and testing of soils for ASS potential is carried out once all buildings have been demolished and removed from the site.”

Though no testing has been undertaken on the site, the DPR acknowledges that Acid Sulfate Soils (ASS) are highly likely given other field tests within a 500m radius of the subject site. Notwithstanding, the DPR provides a variety of options to manage the likely presence of ASS on the site including the discharge of acid water. The DPR concludes:

“...This ASSMP details the requirements to manage (unidentified) ASS during the proposed development works. It is considered that implementation of this ASSMP will enable appropriate management of the associated potential risk to the surrounding water bodies, including the local groundwater and Double Bay. An intrusive investigation is required prior to construction works commencing to confirm the presence (and severity) or otherwise of ASS at the site, and subsequently to confirm the most appropriate method of treatment.”

Sub-clause (3) requires Council to consider the …adequacy of the ASSMP and the likely discharge of acid water... Given the site constraints and having regard to Council’s Health Officers assessment of the adjoining development at No.20-26 Cross Street, development consent can be issued subject to a deferred commencement condition requiring further testing pending demolition of the existing structures.

16.9 Heritage and conservation area provisions (Clauses 26-32)

The subject building is not listed on the State Heritage Register, has not been identified as a heritage item, is not a potential heritage item nor is it within the vicinity of a heritage item. The subject building on the site has little heritage or conservation value and its demolition is supported. Council’s Heritage Officer supports this position.

The proposal satisfies the relevant criteria prescribed by these clauses.
The proposed development is permissible and is encouraged by this DCP. However, one of the key objectives of the DCP states:

“…viii To ensure new development is compatible with the existing built form, and streetscape and village character.”

Based on the excessive non-compliance with the maximum floor space control, the proposal subsequently results in a building envelope that excessively exceeds the envelope and height controls prescribed by this DCP. In this regard, the proposal fails to satisfy this key objective.

17.2 Understanding the context (Part 2)

Double Bay sits at the base of a valley, cradled between the ridges of Darling Point, Edgecliff and Bellevue Hill which forms part of a large natural amphitheatre. Part 2.3 – Built Form, states in part:

“…The allotments and buildings between Knox Street and Cross Streets are generally wider and shallower, but are coherent as a ground in terms of grain, scale and massing.”

The proposed development, when assessed against the relevant FSR, height and envelope controls, is contrary to the existing and desired future character for the locality.

17.3 Urban structure (Part 3)

- **Key objectives and strategies**
  This proposed mix use development, with its active street frontages, link arcade and residential accommodation is encouraged and satisfies many of these key objectives and strategies.

  However, the height, scale and massing of the proposed development greatly exceeds the relevant prescribed envelope controls. Accordingly, the proposal fails to satisfy the relevant key objectives and strategies which are summarised in part as follows:

  ...3.2.4 Retain and enhance pedestrian access and amenity in and around the centre

    i. Reinforce the intimate scale…and pedestrian amenity of the lanes and little streets in the centre.
    ii. Improve the pedestrian environment by:
        ...- providing building setbacks ...in lanes;

  3.2.5 Improve Double Bay’s built form to provide appropriate definition to the public domain

    ...iv Provide direction and certainty of outcome in relation to built form to ensure:
        - a coherent street scale;
        - compatibility with existing urban fabric;

    ...vi Establish building envelopes that define the building height and ‘build to’ lines (at lower and upper levels) to provide coherent street definition.”

17.4 Street character (Part 4)

These desired future character strategies have been discussed above. For reasons already provided, the proposal fails to satisfy the key desired future character objectives prescribed by this part.
17.5 Built form envelopes: Control drawings (Part 5)

**Compliance Table** (Non-compliances are highlighted)

<table>
<thead>
<tr>
<th></th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum Height – Storeys &amp; (m)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Cross Street</td>
<td>6 (19.5/parapet - 20.75/lift)</td>
<td>4 (13.5)</td>
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</tr>
<tr>
<td>- Knox Lane</td>
<td>2 (11)</td>
<td>2 (7.5)</td>
<td>No</td>
</tr>
<tr>
<td>Occupiable Area (%)</td>
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<td></td>
<td></td>
</tr>
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<td>- Level 1-2</td>
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<td>100% (621)</td>
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<tr>
<td>- Level 3-4</td>
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<td>50-100% (412)</td>
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<td>- Level 5-6</td>
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<td>Build-to-line to Knox Lane (Level 1-2)</td>
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<tr>
<td>Front Setback (Cross Street)</td>
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<tr>
<td>- Level 3</td>
<td>0</td>
<td>8</td>
<td>No</td>
</tr>
<tr>
<td>- Level 4</td>
<td>0</td>
<td>8</td>
<td>No</td>
</tr>
<tr>
<td>- Level 5/6</td>
<td>4.6/5.3</td>
<td>n/a*</td>
<td>n/a*</td>
</tr>
<tr>
<td>Building Articulation (L 3-5 Cross Street)*</td>
<td>&gt;2.4</td>
<td>2.4</td>
<td>Yes</td>
</tr>
<tr>
<td>- Depth (m)</td>
<td>40%</td>
<td>Up to 40%</td>
<td>Yes</td>
</tr>
<tr>
<td>- Floor area &amp; open space elements (%)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minimum floor-to-ceiling heights (m)</td>
<td>&gt;2.7</td>
<td>2.7</td>
<td>Yes</td>
</tr>
<tr>
<td>Maximum building depth Levels 3-5 (m)</td>
<td>24.2</td>
<td>15.6</td>
<td>No</td>
</tr>
<tr>
<td>Minimum Awning soffit height (m)</td>
<td>&lt;3</td>
<td>3.2</td>
<td>No</td>
</tr>
<tr>
<td>Active Frontage to Lane (m)</td>
<td>61% (15)</td>
<td>75% (18.3)</td>
<td>No</td>
</tr>
<tr>
<td>Minimum setback of windows/balconies (m)</td>
<td>8.7</td>
<td>9 &amp; 12</td>
<td>No</td>
</tr>
<tr>
<td>Minimum Private Open Space</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Medium dwelling (60-90m²)</td>
<td>&gt;12</td>
<td>12</td>
<td>Yes</td>
</tr>
<tr>
<td>- Large dwelling (&gt;90m²)</td>
<td>&gt;16</td>
<td>16</td>
<td>Yes</td>
</tr>
<tr>
<td>- Preferred &amp; Minimum depth (m)</td>
<td>1.7</td>
<td>2.4 &amp; 1.8</td>
<td>No</td>
</tr>
<tr>
<td>Cross-ventilation to dwellings</td>
<td>&gt;80%</td>
<td>80%</td>
<td>Yes</td>
</tr>
<tr>
<td>Hours of Solar Access to habitable windows and private open space of adjoining properties between 9am and 3pm on 22 June</td>
<td>&lt;4**</td>
<td>4</td>
<td>Yes**</td>
</tr>
<tr>
<td>Hours of Solar Access to habitable windows and private open space of development between 9am and 3pm on 22 June</td>
<td>&gt;3</td>
<td>3</td>
<td>Yes</td>
</tr>
<tr>
<td>Car Parking Spaces</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Retail (per 100m²)</td>
<td>11</td>
<td>1</td>
<td>No</td>
</tr>
<tr>
<td>- 1 x Bedroom Units (2)</td>
<td></td>
<td>1</td>
<td>No</td>
</tr>
<tr>
<td>- 2 x Bedroom Units (1)</td>
<td></td>
<td>14</td>
<td>No</td>
</tr>
<tr>
<td>- 3 x Bedroom Units (9)</td>
<td></td>
<td>2</td>
<td>No</td>
</tr>
<tr>
<td>- Visitor</td>
<td></td>
<td>Total 29</td>
<td></td>
</tr>
<tr>
<td>- Total</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Driveway access width (m)</td>
<td>3.5</td>
<td>3 - 6</td>
<td>Yes</td>
</tr>
</tbody>
</table>

* Proposed Levels 5 & 6
These levels of the development extend outside the permitted envelope controls.

**Solar Access**
There are currently no dwellings adjoining Knox Lane. These properties are currently commercial use and therefore the terms of this control do not strictly apply.

17.6 Development controls (Part 6)

- **Use**
The proposal satisfies the relevant criteria prescribed by this control.

- **Building envelopes**
The proposal fails to comply with the prescribed envelope controls as noted in the Compliance Table above. It results in a building form that:
  - Fails to meet the existing or desired future character for Cross Street and Knox Lane.
  - Will compromise the amenity of adjoining properties and the public domain in terms of solar access, privacy, scale and bulk.
  - Will compromise the development potential of properties on the opposite side of Knox Lane.

The proposal therefore fails to satisfy the relevant Principles which state:

“P1 Development should contribute to the desired future character of streetscapes with appropriate and consistent building forms.

...P3 Promote building forms that allow natural daylight, natural ventilation and privacy between dwellings or commercial premises.”

- **Height**
The proposal fails to comply with the prescribed envelope controls as noted in the Compliance Table above. It results in a building form that:
  - Significantly exceeds the height requirements envisaged by this DCP for both Cross Street and Knox Lane.

The proposal therefore fails to satisfy the relevant Principle which states:

“P1 Encourage buildings to achieve the heights along street and lane frontages described by the control drawings”

- **Building articulation**
The proposal satisfies the relevant criteria prescribed by this control for Levels 3 & 4.

There are no controls specified for Levels 5 & 6.

- **Setbacks**
The proposal fails to comply with the prescribed envelope controls as noted in the Compliance Table above. It results in a building form that:
  - Fails to meet the existing or desired future character for Cross Street and Knox Lane.
- Will compromise the amenity of Knox Lane and properties immediately opposite with respect to solar access, privacy, sense of enclosure, scale and bulk.
- Will compromise the development potential of properties on the opposite side of Knox Lane.

The proposal therefore fails to satisfy the relevant Principles which state:

```
“..P2 Where required in laneways introduce new setbacks at street level to improve pedestrian amenity
P3 Where indicated provide street setbacks to the upper level of development to permit mid-winter sun.”
```

• **Architectural resolution**
  The proposal satisfies the relevant criteria prescribed by this control.

• **Roof design**
  The proposal satisfies the relevant criteria prescribed by this control.

• **Heritage and contributory character**
  The proposal satisfies the relevant criteria prescribed by this control.

• **Awnings**
  The proposed awning, though not required in this locality, fails to comply with the prescribed controls for awning design as noted in the Compliance Table above and the relevant Principle which states:

  “P2 Encourage consistent awning design throughout the centre.”

• **Arcades, walkways and courtyards**
  The proposal satisfies the relevant criteria prescribed by this control.

• **Ground floor active lane frontage**
  This control “generally requires” 75% of active frontage to the laneway. The proposal achieves an active frontage of 61% to Knox Lane thereby resulting in a non-compliance with this control. The non-compliance is primarily a result of services required for the building. These elements have been designed to be unobtrusive and have minimal lane presence. In the circumstance and having regard to the terms of this control, the proposal nevertheless satisfies the relevant principle which states:

  “…P2 Co-ordinate the provision of vehicular and service access whilst maximising ground floor activity along lanes.”

  The balance of the proposal satisfies the relevant criteria prescribed by this control.

• **Visual privacy**
  There are currently no private residential properties adjoining the southern side of Knox Lane. They are currently commercial uses. Notwithstanding, the proposed units at Levels 1-3 are setback less than 9m from the adjoining boundaries. This setback will potentially compromise the amenity of any future residential development of properties across the lane. Furthermore, the design of the proposed development will result in overlooking of open space areas within the same development.
Accordingly, the proposal fails to satisfy the relevant criteria prescribed by this control and the Principles which states:

“...P1 Ensure development protects the privacy of adjacent residential neighbours.  
P2 Ensure residential apartments and private open spaces have adequate visual privacy.”

- **Acoustic privacy**
  For reasons outlined immediately above regarding visual privacy, the proposal fails to satisfy the relevant criteria prescribed by this control and the Principles as stated.

- **Private open space**
  For the reasons already discussed, the maximum depth of balconies to Knox Lane at 1.7m is satisfactory.

The balance of the proposal satisfies the relevant criteria prescribed by this control.

- **Energy efficiency and conservation**
  For the reasons already discussed, the maximum building depth of 15.6m is satisfactory.

The balance of the proposal satisfies the relevant criteria prescribed by this control.

- **Solar access**
  The proposal fails to comply with the prescribed controls as noted in the Compliance Table above.

As mentioned above, there are currently no private residential properties on the opposite and southern side of Knox Lane. Notwithstanding, the proposed height and setback of the development will compromise the amenity of any potential and encouraged future residential development of properties across the lane. Accordingly, the proposal fails to satisfy the relevant Principle of this control which states in part “...minimise overshadowing of adjoining properties...”

- **Glazing**
  The proposal satisfies the relevant criteria prescribed by this control.

- **Water conservation**
  The proposal satisfies the relevant criteria prescribed by this control.

- **Stormwater and pollution minimisation**
  The proposal satisfies the relevant criteria prescribed by this control.

- **Waste minimisation**
  The proposal satisfies the relevant criteria prescribed by this control.

- **Environmentally sustainable building materials**
  The proposal satisfies the relevant criteria prescribed by this control.

- **Geotechnology and hydrogeology**
  The application proposes a 2-level basement carpark beneath existing ground level. In accordance with the terms of this control, a Geotechnical and Hydrogeological Engineers Report have been submitted for consideration prepared by Douglas Partners (DPR).
The DPR indicates excavation would extend to all boundaries and the basement levels are to be tanked. Temporary anchors or props would also be required until such time as the concrete slabs provide permanent lateral support.

The DPR acknowledges the limitations of the subject site and provides modelling based on a worst case scenario. The modelling also has regard to other field tests undertaken within a 500m radius of the subject site.

The DPR acknowledges that further geotechnical and hydrogeological investigation is required. This is pending demolition of the existing structures to enable a detailed investigation of the sub-strata at levels consistent with the proposed depth of excavation.

The proposed excavation would involve de-watering of the site. The matter was referred to NSW Department of Primary Industries who have provided General Terms of Approval for Construction Dewatering.

Council’s Development Engineers have assessed the amended plans and considered that insufficient information has been submitted to assess the proposal against these controls.

The issue of Site Contamination and Acid Sulfate Soils has been discussed above.

- **Pedestrian access and mobility**
  The proposal satisfies the relevant criteria prescribed by this control.

- **On-site parking**
  The proposal includes a 2-level basement that accommodates 18 parking spaces.

  Based on the parking generation rate prescribed by this control, the residential component requires 16 spaces whereas the retail component requires 11 spaces. The proposal is deficient by a total of 9 parking spaces (ie. total of 27 spaces required).

  In response, a Traffic & Parking Report (TPR) has been prepared by GSA Planning. The TPR indicates that the proposed 18 parking spaces are to be allocated to the residential component of the development only. In this regard, the proposal results in a deficiency of 11 retail parking spaces.

  Given the overlapping nature of visitors to Double Bay, visitor parking is not encouraged on this site. The reason being is that accessing and traversing the basement levels may cause conflict between residents and their guests. In addition, managing the restricted access on Knox Lane may potentially cause traffic and pedestrian conflict. In this circumstance, it is recommended, that if approval is granted, the additional 2 spaces be allocated to the retail uses.

  The TPR also indicates that a monetary contribution of $35,700 was paid to Council on 1 December 1993 which was in lieu of 4 car parking spaces provided on site. This would reduce the shortfall to 7 parking spaces.

  This control states in part that ...on small sites ...required to provide less than 15 retail spaces ...a monetary contribution in lieu of all, or part of, the required parking. This control subsequently references the S.94 Contributions Plan. Clause 3.14 of the S94 Plan, being Flexibility and avoidance of disputes, acknowledges there may be circumstances where payment would not be appropriate because of the development history or the proposal achieves a planning objective or because of the public interest.
The TPR indicates that the site is currently afforded with 1 off-street parking space. The existing retail and commercial tenancies generate 22 parking spaces based on the terms of this control. In addition, there is an existing nightclub on the upper levels. Though this DCP does not provide parking rates for this type of use, the Parking DCP provides parking rates for pubs, which is most compatible in this instance. The club, based on its floor area of 604m$^2$ generates an additional 138 parking spaces. That is, the current site generates a total of 160 spaces.

Based on the car parking generation rates prescribed by Council’s controls, the existing building is a more intensive form of development with regard to parking demands than the proposed development.

On this basis, the proposed number of parking spaces satisfies the relevant principle underpinning this control because Double Bay is served with three public car parks and excellent public transport services. In addition, parking demand created by the retail component of the development is highly likely to overlap with existing retail activity in the locality.

The basement car park and the surrounding road network could cater for the proposed mixed use development. The commercial centre remains capable of accommodating the car parking generated by the development.

Notwithstanding, the Council may impose a monetary contribution for any shortfall in parking on the site.

- **Vehicular access**
  The proposal includes a single driveway entry from Knox Lane incorporating a traffic signal system. The green light would be for vehicles entering the site to avoid car queuing in Knox Lane. The red light would be for the designated holding bay in the isle in the upper basement level.

  Council’s Traffic Engineer does not support this scheme and recommends that the driveway at Knox Lane be widened to incorporate a holding bay at the Knox Lane entrance. This approach is contrary to the terms of this control which states in part that *vehicle crossings interrupt street activity, diminish amenity, and reduce the area for public on-street parking.*

  The provision of a holding bay will require modification of the Knox Lane frontage.

- **Site facilities**
  Details of the location and design of mail-boxes have not been provided but this can be addressed by Council’s standard conditions.

  Storage facilities are provided in the basement level and total of 47m$^3$. For reasons already outlined, the storage volume does not satisfy the storage area requirements prescribed by SEPP 65 for the dwellings, being 114m$^3$. The volume of storage capacity provided is insufficient and fails to satisfy the relevant criteria prescribed by this control.

  The Waste Management Plan (WMP) provides details for the waste generation for the retail and residential components of the development based on Council’s current standards. The WMP states that the minimum size of the waste store area for this development must be:

  - Residential 12.5m$^2$
  - Retail 14.5m$^2$
That is, a total area of 27m$^2$ is required for waste storage.

There is only one garbage store located on the ground floor. It has a total area <12m$^2$ and is incapable of catering for the waste generated by either the retail or the residential component of this building.

In this regard, inadequate waste storage facilities have been provided and the proposal fails to satisfy the relevant criteria prescribed by this control.

18. PARKING DEVELOPMENT CONTROL PLAN 2011

Though there is a numerical discrepancy in parking requirements, the car parking provisions prescribed by the DBDCP 2003 prevail and have been assessed above.

Council’s Traffic Engineer raises issue with the layout, clearances, turning areas and access of the basement.

The application does not propose any loading facilities on site. Notwithstanding, existing loading zones in and around the site are sufficient to cater for the site.

The proposal nevertheless fails to satisfy the relevant criteria prescribed by this DCP.

19. WASTE NOT DEVELOPMENT CONTROL PLAN 2010

A Site Waste Minimisation Management Plan (SWMMP) was submitted with the development application. The SWMMP addresses volume and type of waste and recyclables to be generated, their storage and disposal and the ongoing management once the development is complete.

The SWMMP does not provide garbage storage areas that comply with Council requirements and fails to satisfy the relevant criteria prescribed by this DCP.

20. ACCESS DEVELOPMENT CONTROL PLAN 2004

The proposal is fully accessible to people with a disability and complies with the relevant requirements of the BCA as well as Australian Standard AS1428.2.

The proposal provides satisfactory access within the building in accordance with the requirements prescribed by this DCP.

Concern is raised with compliance with the Disability Inclusion Act whereby the proposal would require customers of the retail component who have a disability to use the accessible toilet in the basement level. No details are provided if lift access is possible for people with a disability and questions are raised with regards to this being a dignified design response. Given that the proposal is recommended for refusal, no further assessment has been made.

21. SECTION 94 & 94A CONTRIBUTION PLANS

Should development consent be issued, a Contribution pursuant to either Section 94 or 94A would apply and can be enforced by condition.
22. APPLICABLE ACTS/REGULATIONS

22.1 Demolition of Structures

Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires the development to comply with Australian Standard AS 2601-2004: The demolition of structures. Compliance with this requirement can be enforced by condition.

22.2 Fire Safety

An annual fire safety schedule is required to be submitted and compliance with this requirement can be enforced by condition.

22.3 Building Code of Australia

The proposal is required to comply with the relevant provisions of the Building Code of Australia. Compliance with these requirements can be enforced by condition.

23. THE LIKELY IMPACTS OF THE PROPOSAL

23.1 Submitted information

The submitted drawings are inconsistent in detail and do not accurately depict the proposed development. Missing information includes air-conditioning plant, roof vents, solar panels and lift plant equipment. Furthermore, there are limited dimensions stated on the plans. The scale of drawings at 1:200 enables varied interpretation of the actual location and setback of the building (i.e. awning clearance, colonnades, driveway clearances etc).

There are also numerous deficiencies with the Technical Services requirements for the 2 basement levels in terms of ramp grades, turning circles, geotechnical and hydrological information and potential acid sulphate soils.

The insufficient information submitted with this application precludes Council from making a determination other than refusal for this application.

Additional information was originally requested on 1 July 2015 and was not provided with the Replacement Application submitted on 7 October 2015. The information submitted with the replacement application remains insufficient as assessed by Council’s Technical Services Department in their referral response dated 27 November 2015. Given the application is recommended for refusal and Council’s request to consider the matter before years end, the applicant was not requested to provide the additional information for the replacement application.

23.2 Views

A number of submissions received have raised concern regarding view loss from the proposed development.

The Double Bay Centre DCP has no control or criteria for consideration in relation to view loss except for a reference in the objectives which is “to encourage view sharing”. Notwithstanding, the impact on views is a relevant consideration under Section 79 of the Environmental Planning and Assessment Act 1979.
In assessing the view impact, the Land & Environment Court, in Tenacity Consulting Pty Ltd v Warringah Council (2004) adopted *planning principle* for assessing view impacts. These steps and assessment are as follows:

- **What is the value of the view?**

The concerns expressed primarily relate to loss of water views of Sydney Harbour, loss of district views and the loss of views of the tree canopy.

- **From what part of the properties are the views obtained?**

A gauge on the type of views afforded from the residents who raised concern is as follows:

*No.10 Pinehill Avenue, Double Bay*

![Image of No.10 Pinehill Avenue, Double Bay]

*No.20/321 Edgecliff Road, Edgecliff*

![Image of No.20/321 Edgecliff Road, Edgecliff]

*Apartments within the cosmopolitan Building at 2-22 Knox Street Double Bay (the submissions were a generic letter provided by the residents)*
• **What is the extent of the impact?**

_No.10 Pinehill Avenue, Double Bay_

The existing Intercontinental Hotel (RL27.22 for the parapet) forms the backdrop of the subject site from this property. The Double Bay Commercial Centre forms part of the view and hence the subject development becomes part of the existing view. The proposed development attains a maximum height of RL23.85 (lift overrun) and the view impact is considered to be negligible (ie. <5%)

_No.20/321 Edgecliff Road, Edgecliff_

The existing Intercontinental Hotel (RL27.22 for the parapet) forms the backdrop of the subject site from this property. The Double Bay Commercial Centre forms part of the view and hence the subject development becomes part of the existing view. The proposed development attains a maximum height of RL23.85 (lift overrun) and the view impact is considered to be negligible (ie. <1%)

_Apartments within the cosmopolitan Building at 2-22 Knox Street Double Bay_

The existing Intercontinental Hotel (RL25.33 for the parapet), the George’s Building (RL22.19 for the parapet) and the surrounding district views of the western side of Bellevue Hill form the backdrop of the subject site from various vantage points from these apartments. The Double Bay Commercial Centre forms part of the view and hence the subject development becomes part of the existing view. The proposed development attains a maximum height of RL23.85 (lift overrun) and the view impact is considered to be negligible (ie. <5%)

• **What is the reasonableness of the proposal that is causing the impact?**

The building excessively exceeds Council’s envelope controls with regard to height and floor space. This non-compliance causes unnecessary impact on existing views, particularly from residents within the Cosmopolitan building being the most affected.

The new development fails to satisfy the relevant objectives of the Double Bay Centre DCP. The degree of the view impact, though relatively minor, is unreasonable in this circumstance and the proposal fails to satisfy the principle established by the Court.

**23.3 Wind Tunnel Effect**
Concerns have been expressed regarding the possibility of a wind tunnel effect created by the proposed development which is an impact generally associated with high rise development. Having regard to the height, modulation, location, landscaping and the surrounding existing built form, the proposed development would not have a detrimental impact on the amenity of the pedestrian environment in the locality having regard to the effects of wind.

23.4 General

All other likely impacts have been addressed elsewhere in the report or are considered to be satisfactory and not warrant further consideration.

24. THE PUBLIC INTEREST

The proposal is not in the public interest.

25. DISCLOSURE STATEMENTS

Under Section 147 of the Environmental Planning and Assessment Act, 1979 there have been no disclosure statements regarding political donations or gifts made to any Councillor or gifts made to any council employee submitted with this development application by either the applicant or any person who made a submission.

26. CONCLUSION

The Double Bay Commercial Centre is acknowledged in the DCP as a village. The proposal will erode the existing character of the centre not be consistent with the desired future character.

Furthermore, the assessment of the development against the relevant considerations under s79C of the Environmental Planning and Assessment Act 1979, State Environmental Planning Policy 65, Woollahra Local Environmental Plan 1995 and the Woollahra Double Bay Centre Development Control Plan 2002 concludes that the proposal is an overdevelopment of the site and is recommended for REFUSAL.

27. RECOMMENDATION: Pursuant To Section 80(1) Of The Environmental Planning And Assessment Act 1979

THAT Council, as the consent authority, refuse development consent to DA 571/2014/1 for demolition of the existing commercial building and construction of a 6 storey mixed use development comprising 2 basement levels with parking for 18 vehicles, 3 ground floor retail spaces with an arcade and 7 x 3 Bedroom, 4 x 2 Bedroom and 2 x 1 Bedroom units on the levels above on land at 16-18 Cross Street DOUBLE BAY, for the following reasons:

1. The proposed floor space ratio of 4.54:1 exceeds the maximum floor space ratio standard of 2.5:1 under WLEP 1995. This results in a building form that does not achieve the desired future character objectives prescribed by Woollahra Development Control Plan 2015 for Double Bay. The proposal is detrimental to the spatial amenity of the Knox Lane. It is also detrimental to the amenity of adjoining property with respect to privacy, scale, bulk and solar access and compromises their potential future redevelopment.

In this regard, the SEPP 1 objection advanced by the applicant is not well founded. The development is contrary to the following:
2. In relation to the provisions prescribed by Woollahra Local Environmental Plan 1995:

   a) The building height, bulk and scale are excessive and do not relate to the existing character of the surrounding built environment or achieve the desired future character objectives of Double Bay.

   b) The proposal provides insufficient separation between buildings and therefore does not minimise adverse impacts on adjoining properties with respect to scale, bulk, sense of enclosure, privacy and solar access.

   c) The basement car park is not convenient for older or disabled people.

   For these reasons, the proposal fails to satisfy the following provisions:

   - Part 1 – Clause 2, Sub-clause (2)(a)(ii); (2)(d)(i) and (x); and, (2)(k)(i), (ii) and (iii).
   - Part 2 – Clause 8(5).

3. In relation to State Environmental Planning Policy 65 – Design Quality of Residential Flat Development:

   a) The building is excessive in height and insufficiently setback from the Cross Street and Knox Lane boundaries resulting in a building that fails to achieve the desired future character objectives of the area.

   b) The building form is excessive in relation to the prescribed envelope controls and results in a density in excess of the sites capabilities to cater for the density with respect to waste and storage facilities.

   c) The building form does not provide adequate solar access to the subject residents or those adjoining.

   For these reasons, the proposal fails to satisfy the following Planning Principles:

   - Principle 1 - Context.
   - Principle 2 - Scale.
   - Principle 3 - Built Form.
   - Principle 4 - Density.
   - Principle 8 - Safety & Security.
   - The rules of thumb of the Residential Flat Design Code.

4. In relation to the provisions of Double Bay Centre Development Control Plan 2002:

   a) The building exceeds the maximum storey and height control.

   b) The buildings height, bulk and scale are excessive and are incompatible with the existing built form, streetscape, village character and the future character of the centre.

   c) Insufficient setbacks are provided in the laneways and thereby resulting in a detrimental impact on the pedestrian amenity.

   d) The built form will result in an incoherent street scale and street definition particularly to the laneway.
e) The proposal provides insufficient separation to Knox Lane and therefore does not minimise adverse impacts on adjoining properties with respect to scale, bulk, sense of enclosure, privacy and solar access.

f) The proposal does not provide adequate waste storage facilities.

For these reasons, the proposal fails to satisfy the following provisions:

- Part 1.5 – Objective viii and ix.
- Part 3.2.4 – Objective (i) and (ii).
- Part 3.2.5 – Objective (iv) and (vi).
- Part 4.7 – Control 4.7.1 and 4.7.2.
- Part 4.9 – Control 4.9.1 and 4.9.2.
- Part 6.3.1 – Principle P1, P2 and P3 and Control C1 and C2
- Part 6.3.2 – Principle P1 and Control C1 and C2
- Part 6.3.4 – Principle P1, P2 and P3 and Control C1, C2, C4 and C6.
- Part 6.4.1 – Principle P2 and Control C1.
- Part 6.5.1 – Principle P1 and P2 and Control C2.
- Part 6.5.2 – Principle P1 and Control C1.
- Part 6.6.3 – Principle P1
- Part 6.7.2 – Principle P2 and Control C1.
- Part 6.7.5 – Principle P1 and P2 and Control C2.

5. The basement car park layout, access and turning areas fail to comply with Woollahra Council’s Parking Development Control Plan 2011 and Australian Standard 2890.6.

6. The submitted information is inconsistent and insufficient in detail to enable an accurate assessment of the proposal. The following issues are raised:

   a) The drawings do not clearly depict the works (insufficient measurements provided).
   b) No detail of the lift plant room.
   c) No detail of air-conditioning plant.
   d) No detail of exhaust vents.
   e) Insufficient details with regards to geotechnical and hydrogeological impacts.
   f) Insufficient details in relation to contamination and acid sulfate soils.
   g) Insufficient details in relation to flooding and the impact of sea level rise.

7. The proposal is not in the public interest.

**Annexures**

1. Plans and Elevations
2. Referral Response - Technical Services
3. Referral Response - Traffic
4. Referral Response - Urban Design
5. Referral Response - Trees
6. Referral Response - Health
7. List of Submissions

8. Applicants SEPP 1 Objection
HUNTERS LODGE 16-18 CROSS ST, DOUBLE BAY
MIXED USE DEVELOPMENT

ARCHITECTURAL DRAWING LIST
DA01 LOCATION AND CONTEXT PLAN
DA02 SITE ANALYSIS
DA02-11 FLOOR PLANE
DA12-16 SECTIONS
DA17-18 ELEVATIONS
DA18-20 PHOTO RENDERS
DA21-23 SHADOW STUDIES
DA30-24 SOLAR ACCESS STUDIES
DA35 CROSS VEITILATION DIAGRAM
DA36-41 DETIALED UNIT PLAN
DA42 ADAPTABLE UNITS
DA43 AREAS
DA44 DRIVEWAY SECTION
REFERRAL RESPONSE – TECHNICAL SERVICES

FILE NO: Development Applications/ 571/2014/1
ADDRESS: 18 Cross Street DOUBLE BAY 2028
PROPOSAL: Demolition of the existing commercial building and construction of a 6 storey mixed use development comprising 2 basement levels with parking for 18 vehicles, 3 ground floor retail spaces with an arcade and 7 x 3 Bedroom, 4 x 2 Bedroom and 2 x 1 Bedroom units on the levels above

FROM: Mehrnaz Jamali - Development Engineer
TO: Mr D Lukas

1. ISSUES

- Provision of a stormwater concept plan as detailed under point ‘a. Stormwater Drainage plans’.
- Amendments required to address traffic issues as detailed under point ‘d.Traffic comments’.
- Amendments to the parking and access layout as detailed under points ‘c. Impacts on Council Infrastructure comments and e.Vehicle Access & Accommodation comments’.
- Provision of a revised Geotechnical Report as detailed under point ‘f.Geotechnical, Hydrogeological and/or Structural comments’.

2. DOCUMENTATION

I refer to the following documents received for this report:

- Architectural Plans, Project No. 2014068, prepared by JPRA Architects, dated 18/02/2016.
- Survey, referenced 141141, prepared by Linker Surveying, dated 1/12/2014.
- Geotechnical Desktop Study, Project No. 84639.00, prepared by Douglas Partners, dated 30 September 2015.
3. **ASSESSMENT**

Comments have been prepared on the following. **Where Approval is recommended, Conditions of Consent follow at the end of the comments.**

a. **Site Drainage comments**

*The Stormwater Disposal Concept Plan, Project No. 27475-SYD, Drawing No. C-DA-01 Rev 1, prepared by Wood & Grieve Engineers, dated 08/02/2016 is considered unsatisfactory as it provides no details for the collection and management of stormwater from the development site and hence shall be amended to reflect the following:***

- Whilst the site is exempt from the provision of an OSD system, a detailed stormwater management plans shall be provided. The plans shall include all details of the collection of stormwater from the site which shall comprise of roof water (with the provision of any rainwater tanks with details) and surface runoff other than roof water (which shall include surface inlets pits including invert levels and sizes) and all pipes (including falls and sizes). The plans shall also include the collection of stormwater from the basement car parking areas showing the location of the pump-out systems and surface inlet pits with section details of the pump-out systems proposed. The layout and design shall also include the following (where applicable);**

**Stormwater Management Plan – No OSD Required**


Accordingly, the proposed development drainage system must satisfy the following requirements:

**Private Drainage Easements**

New or existing stormwater drainage systems that discharge to an approved Council drainage point after passing over other private properties will be required to provide evidence of the existence of a private drainage easement. Alternatively, evidence of the procurement of a private drainage easement over any intervening properties must be provided.

**Infiltration and Discharge to Surface**

The continued use of ageing infiltration systems, such as rubble pits, “soak-aways” and discharge to the surface are not acceptable in the Woollahra Municipality. Applicants must rectify the stormwater drainage system to comply with the Woollahra DCP Chapter E2 – Stormwater Flood Risk Management. This rectification could result in the requirement for
on-site detention, gravity drainage, private drainage easement, water quality and pump and sump, which must be specified.

*Stormwater Discharge to Sewer*

Existing stormwater drainage systems that discharge to the sewer are not in compliance with Sydney Water or Council’s requirements. The applicant will be required to submit details of a stormwater drainage system that complies with Sydney Water’s requirements and Woollahra DCP Chapter E2 – Stormwater Flood Risk Management.

*New Connection to Council Drainage Point*

Stormwater run-off from the proposed dwelling must drain to an approved Council drainage point. In most cases, this must be via a piped gravity connection to Councils kerb and gutter or in-ground drainage network. A pumpout system may be required where a gravity drainage solution cannot be achieved.

The Stormwater Management Plan to be submitted must include the following specific requirements (as appropriate):

- Drainage Layout Plan: A detailed drainage plan 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:
  
  a) Proposed pipe layout, dimensions, grades, lengths and materials
  b) All invert levels reduced to Australian Height Datum (AHD)
  c) Location, dimensions and types of all drainage pits
  d) Exact point and type of connection to Councils drainage infrastructure
  e) Overland flow paths over impervious areas.

- Location of all trees on and adjacent to the site that will be retained under the proposal. Note: Drainage systems must not interfere with these trees

- Copies of certificates of title, showing the creation of easements to drain water, if required.

- The location of the closest Council stormwater pit and line, regardless of the point of discharge, together with the exact location of any Council drainage easement and/or reserve on the property, must be specified. This information can be obtained from the site survey, visual inspection of the area and by perusal of Council’s drainage plans.

- Subsoil Drainage
- Subsoil drainage details and layout, clean out points, discharge point.
- Pump/Sump (where a gravity solution is not possible)
- Type of pump & sump details and discharge rates
- Details of buffer storage, stilling pits.
b. Flooding & Overland Flow comments

Council’s drainage Engineer has determined that the development proposal is generally satisfactory subject to the following conditions:

- Flood compatible materials are to be used for all construction below the flood planning level of 3.95m AHD.
- All electrical equipment is to be located above or water proofed to the flood planning level of 3.95m AHD.
- The lift well is to be protected to a flood planning level of 3.75m AHD.
- The underground car park is to be protected to a flood planning level of 3.75m AHD.
- The Knox Lane entry to the fire stairs shall be designed to prevent flood water inflow to a flood planning level of 3.64m AHD.
- The Cross Street entry to the fire stairs shall be designed to prevent flood water inflow to a flood planning level of 3.55m AHD.
- A flood emergency plan shall be prepared and flood advisory plaques shall be installed in frequently used areas including the car parking area and lift.

Planning to Note: the above requirement can be conditioned.

c. Impacts on Council Infrastructure comments

The plans shall clearly indicate the location and width of the proposed vehicular crossing on Council’s road reserve with all services shown. The vehicular crossing shall be perpendicular to the road carriageway from property boundary.

d. Traffic comments

Council’s Traffic Engineer has made the following comments:

‘It is recommended that the development not be supported at this stage until the following issues are addressed:

1. Further revision on the parking layout to accommodate additional parking spaces in lieu of the storage lockers or wherever feasible.
2. Allocation of staff parking associated with the retail use in lieu of visitor parking.
3. The straight ramps connecting the ground floor level and the basement levels be modified to comply with the minimum width required by AS/NZS 2890.1:2004 Clause 2.5.2.
4. Pedestrian splays be provided at the property line on both sides of the driveway in accordance with AS/NZS 2890.1:2004 Clause 3.2.4.
5. A minimum of 12 m (two car space) queuing area be provided between the vehicular control point (on-site) and the property boundary in accordance with AS/NZS 2890.1:2004 Clause 3.4.
6. Shared area and bollards associated with the disabled parking spaces be provided as per AS/NZS 2890.6:2009 Clause 2.2.1.’
As such amendments are required to address the above requirements. See attached TS Traffic comments, dated 17 May 2016 for further details.

**e. Vehicle Access & Accommodation comments**

The car parking layout is considered unsatisfactory and shall be amended to reflect the following:

- The majority of parking spaces on L1 - Basement and L2- Basement 2 do not measure to be wide enough. All car spaces shall be a minimum 2.4m wide (internal width) with an additional 300mm where adjacent to an obstruction in accordance with AS 2890.1-2004.
- The gradient of the access driveway inside property boundary shall be 5% for the first 6m and maybe increased to 12.5% if the grade is a downgrade for traffic leaving the property and entering the frontage road. The gradient for the second 3m of the ramp is 13% and shall be decreased to be 5% only with all required transitions in place. The design shall be in accordance with AS2890.1 - Gradients of Access Driveways.
- Where the vehicular entrance is proposed in conjunction with a fence of over 1.2m high, a 2x2m splay or its equivalent shall be provided on either side of the entrance to ensure driveway and pedestrian vision in accordance with Woollahra DCP Chapter E1 – Parking and Access.
- The proposed development does not fall within the ‘domestic driveway’ profile. The ramp grades are shown to be 25% and shall be amended to be a minimum of 16.7% for ramps longer than 20m in a public car park as per AS2890.1-2004.
- The radius of the curved ramp shall measure to be 11.8m minimum for the outside radius and 4m minimum for the inside radius for a two way ramp as per AS2890.1.
- Vehicle turning paths shall be provided showing how car space No.10 Level 2 Basement 2 can manoeuvre out of the proposed car space.

Note: Vehicle turning paths shall be determined in accordance with Australian Standard 2890.1.2004. The 85th percentile vehicle is a standardised vehicle based on the significant characteristics of various vehicle types operating on Australian roads. More information about the 85th percentile vehicle, including its dimensions, can be found in AS 2890.1.2004.

**f. Geotechnical, Hydrogeological and/or Structural comments**

Geotechnical Desktop Study, Project No. 84639.00, prepared by Douglas Partners, dated 30 September 2015 is unsatisfactory as per Council’s previous TS referral responses. Please note desktop study/visual inspection and use of geological mapping alone will not be satisfactory for geotechnical and hydrogeological reports in particular for the extent of the development proposed for the subject site.

In this regard the geotechnical and hydrogeological report shall be prepared in accordance with *all* aspects of Council’s DCP requirements, Attachment 6 - Guidelines for Geotechnical and Hydrogeological Reports. The report shall in particular include further information addressing the following in accordance with Councils document “Guidelines for Preparation of Geotechnical and Hydrogeological Reports”:

- Demonstrating that temporary changes to the groundwater level during construction will be kept within the historical range of natural groundwater fluctuation. The report shall also demonstrate that the changes in the natural water table will not exceed 0.3m unless calculations using the results of the site specific field testing, supporting a greater change
can be provided and can demonstrate no adverse impact to the surrounding properties and infrastructure.

- Demonstrating that permanent changes (if any) in the natural water table due to carrying out of the development will not exceed 0.2m unless calculations using the results of the site specific field testing, supporting a greater change can be provided.
- Demonstrating that ground settlement in areas adjacent to the development site resulting from temporary and permanent site support and retention measures will have no adverse impact on the surrounding properties and infrastructure.
- Show that permanent support and retention measures will be set back a minimum of 900mm (or minimum as advised in the relevant Development Control Plan) from the adjacent property boundaries. Please note it may be possible for the development to be built up to the boundary however it will require the geotechnical/hydrogeological report to confirm the structural adequacy of any adjacent structures.

4. **RECOMMENDATION**

Council’s Development Engineer has determined that the proposal is unsatisfactory for the following reasons:

- Provision of a stormwater concept plan as detailed under point ‘a. Stormwater Drainage plans’.
- Amendments required to address traffic issues as detailed under point ‘d. Traffic comments’.
- Amendments to the parking and access layout as detailed under points ‘c. Impacts on Council Infrastructure comments and e. Vehicle Access & Accommodation comments’.
- Provision of a revised Geotechnical Report as detailed under point ‘f. Geotechnical, Hydrogeological and/or Structural comments’.
Memorandum - Traffic

Date 17 May, 2016
File No. Development Applications: 571/2014/1
To Mr D Lukas
CC Ms M Jamali
From Ms Q Liu
Address 18 CROSS STREET DOUBLE BAY 2028

I refer to the memo from the Planning Department dated 12 May 2016 requesting comments in relation to the above.

Traffic Engineering has reviewed:

1. Statement of Environmental Effects (dated December 2014) by GSA Planning
2. Architectural Drawings Replacement 1 Part 1-6 (dated 18 February 2016) by JPR Architects Pty Ltd

Proposal

The proposal is for the demolition of the existing building and construction of a mixed use development at No. 16-18 Cross Street, Double Bay, including approximately 298.55m² of retail floor space, 13 residential units on the upper levels and basement car parking for 18 vehicles.

COMMENTS

Parking Provision

It is understood that the amended proposal increased number of residential units from 12 to 13. The car parking provision for the residential component therefore has been re-calculated in accordance with Council’s Double Bay Centre DCP and Parking DCP 2011.

<table>
<thead>
<tr>
<th>Component</th>
<th>Quantity</th>
<th>DCP Maximum</th>
<th>DCP</th>
</tr>
</thead>
</table>

Annexure 3  Referral Response - Technical Services  Page 331
<table>
<thead>
<tr>
<th></th>
<th>Requirement per Apartment</th>
<th>Maximum Required Parking</th>
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<tbody>
<tr>
<td>1 bedrooms</td>
<td>2</td>
<td>0.75</td>
</tr>
<tr>
<td>2 bedrooms</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>3 bedrooms</td>
<td>7</td>
<td>1.25</td>
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<tr>
<td>Visitor</td>
<td>13</td>
<td>0.25</td>
</tr>
<tr>
<td><strong>Total required</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The amended proposal makes provision for 18 car parking spaces including 2 disabled parking spaces which complies with the maximum requirement.

It is understood that the amended proposal contains the retail component of 298.55m$^2$. As per Parking DCP 2011 Clause 2.1.1, minimum 3.3 spaces per 100m$^2$ parking rate is adopted for calculation. The floor area of 298.55m$^2$ requires a minimum of 10 parking spaces. The proposal makes no parking provision for the retail component which results in a shortfall of 10 spaces.

In addition to the previous Traffic and Parking Report, justification for the shortfall of parking provision by the applicant is listed below:

- Compared to the current night club land use, the proposal will result in a substantial improvement in a number of car parking spaces provided on-site.
- The availability of parking in public carparks and surrounding street.

A.

It is acknowledged that the existing six commercial tenancies include a gym, office at the ground floor and a nightclub on the first floor which generate traffic at different times of the day and night. It is however considered that due to the distinct operating hours of night club and standard retail land use, the parking condition would not necessarily be improved post-development. The night club attracts parking demand after standard business hours, when the parking availability in the vicinity is high whereas the standard retail land use would rely on the on-street and public carpark parking supply during business hours when parking occupancy is in general close to saturation. In line with the comments from the previous memo dated 19 February 2015 and the compliance of the maximum parking requirement for the residential component, Traffic Section request the applicant to consider re-allocating the limited parking provision to at least accommodate staff parking generated from the retail component. It is recommended that visitor parking provision for the residential component be allocated to long-term staff parking generated from the retail component to minimise the impact on the surrounding road network. It is also recommended that the applicant undertake further revision to the parking layout to accommodate additional parking spaces wherever feasible to make full use of the limited basement floor space. The allocation of a significant area of the basement car park to storage lockers in lieu of parking spaces should be considered in light of the significant parking shortfall.

Resident permit parking schemes operate in close vicinity to the subject site and would assist to some extent neighbouring residents without off-street parking in terms of their ability to find on-street parking close to their homes were the development approved. Council’s Traffic Section raises concerns with any increased reliance on the on-street parking supply as these spaces are already highly utilised. To maintain the viability of the existing resident parking schemes, **should consent be considered it is recommended that a condition be imposed stating that tenants and residents of the proposed development will not be eligible for resident or visitor parking permits.**
Traffic Generation

It is agreed that the traffic generation difference between pre-development and post-development will be marginal and thus the proposed development will not generate unacceptable adverse traffic impact on the existing road network.

Car Park Layout

With reference to architectural drawing titled ‘Basement Floor Plan’ and ‘Ground Floor Plan’, a number of design deficiencies have been identified, as discussed below:

1. *AS/NZS 2890.1:2004 Clause 2.5.2* requires a minimum of 5.5m two-way ramp between kerbs. The straight ramp connecting the ground floor level and the basement appears to be noncompliant.
2. *AS/NZS 2890.1:2004 Clause 3.2.4* requires pedestrian splays be provided at the property line on both sides of the driveway to ensure adequate visibility between vehicles leaving the domestic driveway and pedestrians on the frontage road footpath. Such splays have not been provided.
3. *AS/NZS 2890.1:2004 Clause 3.4* requires a minimum of 12 m (two car space) queuing area be provided between the vehicular control point and the property boundary to allow a free influx of traffic which will not adversely affect traffic or pedestrian flows in the frontage road. Such queuing area has not been provided. Insufficient details have been provided on the vehicular control point.
4. *AS/NZS 2890.6:2009 Clause 2.2.1* requires a minimum of 2400 mm wide by 5400 mm shared area on one side of the dedicated disability parking space and bollards shall be provided to keep the shared area clear from parking. Such shared area and bollards have not be provided.

Off-street Loading and Servicing Facilities

Given the availability of on-street Loading Zones in the vicinity and site constraints, to continue utilising the on-street Loading Zones for future delivery services is considered acceptable. To minimise the impact on the surrounding network, future requests for additional on-street Loading Zones to service the proposed development will not be considered and supported by Traffic Section.

**RECOMMENDATION**

It is recommended that the development not be supported at this stage until the following issues are addressed:
1. Further revision on the parking layout to accommodate additional parking spaces in lieu of the storage lockers or wherever feasible.
2. Allocation of staff parking associated with the retail use in lieu of visitor parking.
3. The straight ramps connecting the ground floor level and the basement levels be modified to comply with the minimum width required by *AS/NZS 2890.1:2004 Clause 2.5.2*.
4. Pedestrian splays be provided at the property line on both sides of the driveway in accordance with *AS/NZS 2890.1:2004 Clause 3.2.4*.
5. A minimum of 12 m (two car space) queuing area be provided between the vehicular control point (on-site) and the property boundary in accordance with *AS/NZS 2890.1:2004 Clause 3.4*.
6. Shared area and bollards associated with the disabled parking spaces be provided as per *AS/NZS 2890.6:2009 Clause 2.2.1*.
Memorandum - Drainage

Date 16 May, 2016
File No. Development Applications: 571/2014/1
To Ms Mehrnaz Jamali
CC Mr D Lukas
From Michael Casteleyn
Address 18 CROSS STREET DOUBLE BAY 2028

I refer to the following documents received for this report:

- Stormwater Management Plan - DA2014-571 - 16-18 Cross Street Double Bay

RECOMMENDATION

Council’s drainage Engineer has determined that the development proposal is generally satisfactory subject to the following conditions;

- Flood compatible materials are to be used for all construction below the flood planning level of 3.95m AHD.
- All electrical equipment is to be located above or water proofed to the flood planning level of 3.95m AHD.
- The lift well is to be protected to a flood planning level of 3.75m AHD.
- The underground car park is to be protected to a flood planning level of 3.75m AHD.
- The knox lane entry to the fire stairs are to be designed to prevent flood water inflow to a flood planning level of 3.64m AHD.
- The Cross street entry to the fire stairs are to be designed to prevent flood water inflow to a flood planning level of 3.55m AHD.
- A flood emergency plan is to be prepared and flood advisory plaques are to be installed in frequently used areas including the car parking area and lift.
### SECTION 96 APPLICATION ASSESSMENT REPORT

<table>
<thead>
<tr>
<th>ITEM No.</th>
<th>D6</th>
</tr>
</thead>
<tbody>
<tr>
<td>FILE No.</td>
<td>DA 387/2012/5</td>
</tr>
<tr>
<td>ADDRESS</td>
<td>28 Bay Street Double Bay (Royal Oak Hotel)</td>
</tr>
<tr>
<td>SITE AREA</td>
<td>479m²</td>
</tr>
<tr>
<td>ZONING</td>
<td>General Business 3(a)/B2 Local Centre</td>
</tr>
<tr>
<td>TYPE OF CONSENT</td>
<td>Local development</td>
</tr>
<tr>
<td>EXISTING CONSENT</td>
<td>Alterations and additions to the rear of the Royal Oak including a new gaming and covered area and outdoor deck, footpath seating on Bay Street, removal of 1 tree and ancillary landscaping</td>
</tr>
<tr>
<td>DATE OF CONSENT</td>
<td>8 October 2013</td>
</tr>
<tr>
<td>CONSENT AUTHORITY</td>
<td>Woollahra Council</td>
</tr>
<tr>
<td>PROPOSED MODIFICATION</td>
<td>Deletion of Condition I11 in relation to hours of use of outdoor covered and uncovered areas (time limited consent) to permit trade in these areas from 8am- midnight (Mon-Sat) and 8am-11pm (Sun)</td>
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<tr>
<td>DATE S96 LODGED</td>
<td>22 May 2015</td>
</tr>
<tr>
<td>APPLICANT</td>
<td>Mr Ed Malouf</td>
</tr>
<tr>
<td>OWNER</td>
<td>Puruse Pty Ltd</td>
</tr>
<tr>
<td>AUTHOR/TEAM LEADER</td>
<td>Simon Taylor/David Waghorn</td>
</tr>
</tbody>
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### EXECUTIVE SUMMARY

1. **LOCALITY PLAN**

![Locality Plan Image]

Subject site

Objectors

North
2. **DELEGATIONS SUMMARY**

<table>
<thead>
<tr>
<th>Level of Delegation</th>
<th>Recommendation of Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>The application is to be determined by the Development Control Committee (DCC) because it involves changes to a licensed premises.</td>
<td>Approval with reviewable Condition II1</td>
</tr>
</tbody>
</table>

3. **SUMMARY OF APPROVED DEVELOPMENT**

DA 387/2012/1 was approved by DCC on 8 October 2013 and involved the following:

- Demolition of portions of the southern, eastern, northern and western glazed walls to the existing western gaming room addition, the ramp from South Avenue into the gaming room, removal of the existing timber decking in the outdoor courtyard along the western boundary and at the rear of the site and demolition of existing internal partition walls;
- Removal of one (1) mature *Ficus microcarpa var. ‘Hillii’* (Hills Weeping Fig) from the western courtyard;
- Construction of a new addition on the western side of the existing western extension by:
  - Reconstruction of its southern wall 1.3m to the south;
  - Construction of new glass and metal roofs over;
  - Construction of a new acoustic wall along its western elevation;
  - Construction of an addition to the western wall of the proposed structure to north, creating a new store room;
  - Construction of an internal ramp between the Cooper Street Bar and the new gaming room addition;
  - Construction of new stairs from South Avenue up into the new gaming room addition;
  - Construction of an elevated outdoor deck to the north-eastern side of the new addition at the same floor level;
  - Construction of roofs attached to the new acoustic wall over portions of the new outdoor deck;
  - Construction of a timber pergola over a portion of the new outdoor deck;
  - Installation of internal partition walls to create a new gaming room divided into entrance foyers, non-smoking and smoking areas, cashier booth, water features and a disabled person’s bathroom.
- Use of the gaming room addition and new outdoor covered and uncovered areas from 8am to 12pm, Monday to Saturday, and 8am to 11pm, Sunday on a 12 month trial period;
- Footpath seating area in the Bay and Cooper Street road reserves for 40m² of outdoor seating, with hours of between 8am and 10pm, Monday to Sunday.

The development consent included the following specific conditions:

**I.11 Hours of use of Outdoor Covered and Uncovered Areas – Time Limited Consent**

*The hours of use of the outdoor covered and uncovered areas on the site are limited to the following for a twelve (12) month period from the issue of any occupation certificate:*

a) Monday to Saturday: 8am to 12am (midnight)
b) Sunday: 8am to 11pm
This is a time limited development consent lasting twelve (12) months from the issue of any occupation certificate, in order to allow Council to review any adverse impacts upon the amenity of the neighbourhood of the hours of operation of the outdoor covered and uncovered areas approved by this consent.

The hours of operation approved by this condition must revert to the following, if no further development application or an application to delete this condition under Section 96(2) of the Act be lodged with Council before the end of that period.

a) Monday to Sunday: 8am to 10pm

Council’s consideration of any future application will take into account matters including, but not limited to, compliance with conditions of this consent, the approved Hotel Plan of Management and Security Procedures, and the number and nature of substantiated complaints to Council, the NSW Office of Liquor, Gaming and Racing, or the NSW Police Service.

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

Note: Deliveries to or dispatches from the site must not be made outside these hours. Trading Hours may be more onerous than these general hours of use. This condition does not apply to activities such as cleaning which takes place wholly within the building and which are not audible within any adjoining residential dwelling. If internal activities are audible within any adjoining residential dwelling such that they cause a nuisance to the occupiers of such dwelling than such internal activities must not occur outside these hours of use. This condition does not restrict the operation of noise pollution laws.

Standard Condition: I1

4. SUMMARY OF PREVIOUS SECTION 96 MODIFICATIONS

DA 387/2012/2 was approved by DCC on 16 March 2015. It involved the extension of the approved hours of footpath seating from 10am-10pm, 7 days to 10am-11:45pm (Monday to Saturday) and until 10:45pm (Sunday). Initially it was approved as a one (1) year trial period but has since been revised as a reviewable condition during Land and Environment Court proceedings.

DA 387/2012/3 was withdrawn at the applicant’s request. It involved the deletion of Condition I18 relating to the 'lock out' of patrons an hour before closing time on Friday and Saturday nights (i.e 12 midnight lockout with 1am closing time).

DA 387/2012/4 was lodged concurrently with the subject application. It involves the deletion of Condition I20 in relation to the closure of the windows and doors to Bay Street to permit their opening until midnight on Mondays to Saturdays and until 11pm on Sundays. The original condition is a time limited consent that allowed for extended trading for a period of one year from the commencement of trade before reverting back to the hours that this application seeks to change from. The application is currently under consideration by Council.

5. SUMMARY OF PROPOSED MODIFICATION

The Section 96 application involves the deletion of Condition I11 in relation to the hours of use of the outdoor covered and uncovered areas at the rear of the ground floor of the hotel to permit trade in these areas from 8am-midnight on Monday to Saturday and 8am to 11pm on Sunday.
The original condition is a time limited consent that allowed for extended trading for a period of one year from the commencement of trade before reverting back to the hours that this application seeks to change from.

Council’s records show the Occupation Certificate was issued on 2 June 2014. Therefore, the trial period to which this application relates extends from 2 June 2014-2 June 2015.

6. **ISSUES SUMMARY**

6.1. **Primary Issues/Submissions**

<table>
<thead>
<tr>
<th>Issue</th>
<th>Conclusion</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Noise and disruption to residents</td>
<td>Following the resolution of Court proceedings and additional acoustic testing and certification (as noted in Section 8), the proposal is considered to be acceptable on acoustic privacy and general neighbourhood amenity grounds. It is, however, subject to a reviewable condition in <strong>Condition 111</strong> in accordance with the Licensed Premises requirements of the DCP and comments provided by NSW Police. This will enable an ongoing review by Council if any issues arise in the future.</td>
<td>14.1, 15.4, 16 and 24</td>
</tr>
<tr>
<td>Traffic movements</td>
<td>The change in hours is not perceived to result in an unreasonable impact upon existing traffic movements or parking availability in the surrounding streets.</td>
<td>14.1</td>
</tr>
</tbody>
</table>

**PROPERTY DETAILS AND REFERRALS**

7. **SITE AND LOCALITY**
### Physical features
The site is located on the north-west corner of the junction of South Avenue, Cooper Street and Bay Street. It is irregular in shape and has an area of approximately 752.5m². The site has an eastern frontage of approximately 17.375 metres to Bay Street, a southern side boundary to Cooper Street measuring approximately 19.645 metres, a south-western side boundary to South Avenue of approximately 23.8 metres, a western side boundary to 3 South Avenue measuring approximately 24.575 metres and a northern side boundary to 30-39 Bay Street of approximately 44.15 metres.

### Topography
The site is relatively flat, with no significant fall across the land.

### Existing buildings and structures
The building on the site is a two storey hotel building of masonry construction with a tile roof and a basement level below which is utilised as a cellar. Indoor and outdoor public areas are located on both levels.

### Environment
The site is located within the Double Bay Centre, which forms a part of the mixed retail, commercial and residential precinct in the locality. There is a mix of residential properties to the south-west, west and north-west of the site, along Brooklyn Lane, Henrietta Lane, Cooper Street and South Avenue and the Cosmopolitan Apartments to the east along Knox Street. There are a range of commercial and retail uses along Bay Street. There are several licensed premises within the immediate vicinity of the site, including the Pelicano restaurant which is located opposite the site, on the south-western corner of Bay Street and Cooper Street, Peron’s Cafe to the east at the Cosmopolitan Centre, and Mrs Sippy to the south-east at 37 Bay Street, Double Bay.

### 8. RELEVANT PROPERTY HISTORY

#### Previous Relevant Applications

**BA 355/1920**
Details alterations and additions to the existing Royal Oak Hotel and was approved by Council on 14 October 1920.

**BA 559/1924**
Involved the rebuilding of the Royal Oak Hotel, including the first floor level containing bedroom accommodation and the rear area containing a “yard” and garage and was approved by Council on 29 November 1924.

**BA 257/1934**
Involved internal alterations to the ground floor level hotel and was approved by Council on 9 October 1934.

**BA 338/1951**
338/1951 involved alterations and additions to the rear of the premises for new toilets and a pergola, referring to the rear area as a “beer garden”. The application was approved by Council on 8 October 1951.

**BA 47/1953**
47/1953 involved alterations and additions to the ground floor level of the hotel and was approved by Council on 9 March 1953.

**BA 190/1959**
Involved alterations to the first floor level elevations and was approved by Council on 2 June 1959.

**BA 163/1963**
Involved alterations and additions to the existing hotel to comply with the licensing court requirement of moving patrons off the footpath.

The proposal involved a substantial basement level, a new lounge bar on the ground floor level (in the location of the previous “Beer Garden”) and a yard above the lounge bar that is accessible from the first floor level residential area and ground floor level bar. The application was approved by Council on 28 May 1963 subject to the deletion of the awning.

The applicant requested an amendment to the plans with internal reconfiguration works and deleting the new basement level to retain the existing basement, albeit enlarged. This application was approved by Council on 23 December 1963.

**BA 1185/1963**
Involved the installation of mechanical ventilation for the Royal Oak Hotel. The application was approved by Council under delegated authority on 31 January 1964.

**BA 18/1964**
Involved the construction of a class A Hoarding around the hotel. The application was approved by Council under delegated authority on 13 January 1964.
BA 507/1964 and DA 15/1964 involved the construction of a three storey commercial building containing a medical practice on land at 1 South Street (later purchased and incorporated into the Royal Oak). The application was approved by Council on 13 April 1964 and 23 July 1964.

BA 499/1964 involved the construction of an incinerator on the roof of the hotel. The application was approved by Council under delegated authority on 20 October 1964.

BA 183/1965 involved cutting back the existing awning and renewing the fascia. The application was approved by Council under delegated authority on 23 March 1965.

BA 716/1965 involved the installation of a mechanical exhaust system to the lounge/snack bar. The application was approved by Council under delegated authority on 23 March 1965.

BA 124/1968 was submitted by 1 South Street and involved the construction of a boundary wall between the Royal Oak and 1 South Street (listed as vacant land) consisting of a 6 foot high brick fence on the street. The application was referred to Council for determination where approval was granted on 7 March 1968.

BA 949/1964 and DA 112/1978 involved internal alterations to the existing hotel. The application was refused by Council at its meeting on 10 July 1978 and an advising requested the applicants to submit a BA for the works. BA 838/1978 followed, involving internal alterations to the existing hotel including the expansion of the bottle shop and the closure of some doorways. The application was approved by Council under delegated authority on 18 October 1978.

BA 131/1988 for internal alterations to the hotel was considered to be unsatisfactory and refused by Council on 15 March 1988.

DA 283/2000 involves alterations and additions to the Hotel to change the front section to a restaurant and modify the hours of operation that was approved by Council’s Development Control Committee on 7 August 2000. This application was taken up and largely reflects (subject to subsequent changes detailed below) what has been constructed on site.

DA 11/2001 relates to minor alterations and additions to an entry, window and new fencing to the garbage storage area and rear courtyard and was approved by Council on 19 March 2001.

DA 76/2001 relates to the approved bi-fold windows to the back bar fronting Cooper Street only, requiring them to be closed at 10pm each night to minimise the noise impact on existing residences located along Cooper Street. This application was approved by Council under staff delegation on 19 March 2001.

DA 776/2001 involved the construction of a covered outdoor structure in the courtyard at 1 South Avenue, including a BBQ and servery, construction of a Perspex/safety glass infill panel to the Cooper Street wall and extension of trading hours of the courtyard till 10pm. This DA was approved by Council’s Application Assessment Panel on 12 March 2002 and lapsed on 12 March 2007.

DA 642/2002 is very similar to the above DA 776/2001, involving the construction of a covered outdoor structure including a BBQ and servery, construction of a Perspex/safety glass infill panel to the Cooper Street wall and extension of trading hours of the courtyard till 10pm. The key difference is that the covered outdoor structure as part of this application is a glass structure and can be fully enclosed. This application was approved by Council’s Application Assessment Panel on 13 May 2002.

DA 765/2005 involved substantial demolition and alterations and additions to the existing hotel including new residential apartments above. This application was approved by Council’s Development Control Committee on 6 November 2006 and lapsed on 6 November 2011.

CDC 20/2013 was issued on 31 January 2013 for the construction of a small opening in a wall to create a doorway.

CDC61/2015 was issued on 14 May 2015 for the removal of an internal wall on Level 1.

The use and operation of the first floor of the hotel, including the first floor outdoor deck area at the rear, commenced in 2013 although it is unclear under what consent, if any, it was undertaken. The Land and Environment Court proceedings for DA387/2012/2 have made changes to this area, including the establishment of an acoustic enclosure around the outdoor deck, which will improve the acoustic performance of the hotel when constructed.
Requests for Additional Information

The hotel’s complaints register was requested on 27 May 2015 and provided on 9 June 2015. An updated version was provided on 23 May 2016. An updated Acoustic Report was also submitted on 21 March 2016 as part of the Land and Environment Court proceedings.

Land and Environment Court Appeal

Class 1 proceedings were commenced in the Land and Environment Court (10324 of 2015/Puruse Pty Ltd v Woollahra Municipal Council) on 15 April 2015. It related to the outdoor seating on Bay Street only.

The DCC had previously resolved to partially approve the application on 16 March 2015, allowing a one year trial of hours of operation in the Bay Street seating area from 10am-11pm Monday to Saturday and 10am to 10pm Sunday. The appeal was to seek consent for the extension of the approved hours of footpath seating from 10am until 11:45pm (Mon-Sat) and 10am until 10:45pm (Sun) for a 1 year trial period. Condition I21 was added to read:

> The hours of operation for the outdoor seating area in the Bay Street road reserve of the licensed premises are extended from 10pm to 11pm (Mon to Saturday), irrespective of the hours specified in Conditions I.2 and I.10.

The first Section 34 conference was set down for 25 June 2015 before being adjourned for further acoustic testing and noise mitigation measures. The acoustic testing eventually took into account any impacts arising from the outdoor seating, the windows opening onto Bay Street, the area at the rear of the ground floor and the first floor terrace area.

The matter was resolved consensually by agreement about physical works and operational measures to address noise from the hotel as whole. Council retained acoustic expert Renzo Tonin to assist it with identifying the impacts of the modification and also the impacts of existing operations of the hotel. Council also engaged planning expert Deborah Laidlaw to review and advise on the planning issues.

Renzo Tonin concluded that the noise generated by the outdoor seating area on Bay Street was acceptable, even if the use of that area were extended to midnight. This was because Bay Street is a very busy precinct at night and the noise from people in the street and passing traffic subsumes the noise from the outside seating area.

Mr Tonin, nevertheless confirmed that the primary acoustic issue arises from the noise emanating from the Level 1 rear outdoor terrace which is currently unregulated. This does not form part of DA387/2012/4, DA387/2012/5 or any other consent.

The experts prepared a joint Acoustic Report dated 31 July 2015 which provided recommendations to minimise the noise impact from the Level 1 terrace and a failsafe should the recommended works not solve the noise issues. The acoustic measures involve erecting acoustic screens around the Level 1 terrace.

Further measures were agreed, including the locations and operational conditions for live music and DJ music in specified areas on both levels of the hotel. It is expected that the implementation of the physical works and operational measures will significantly ameliorate noise impacts of the hotel on the local area.

After agreement between the parties, Commissioner Dixon upheld the appeal, subject to agreed conditions on 27 January 2016.

The final Acoustic Report confirming compliance with the relevant acoustic requirements is dated 9 March 2016 and was received by Council on 17 March 2016. In summary, it indicated that when subject to upgraded works as specified and agreed upon during the Court proceedings, the hotel currently meets the appropriate acoustic limitations in respect to the area at the rear of the ground floor.

The following relevant conditions were applied:

I.12 Outdoor Covered and Open Areas

Staff and security are to regularly patrol the outdoor covered and open areas on the site and this procedure shall be included in the Plan of Management. The subject areas must be monitored by CCTV cameras.
I.17 Live and Amplified Music

1. Definitions:
   In this condition, “Live Music” means the sound produced by amplified or non-amplified performers.
   “DJ Music” means the sound produced by the amplified reproduction of stored music or sound.
   “Qualified Acoustic Engineer” means a person having qualifications eligible for membership to the
   Association of Australian Acoustical Consultants or be a member of both the Australian Acoustical Society
   and Engineers Australia.

2. Live Music shall cease by midnight on any night Monday to Saturday and 11pm on Sunday.

3. The generation of Live Music shall be limited to the ground floor and first floor internal areas marked as
   “LM” respectively in Annexure A. The generation of DJ Music shall only occur in the area marked as “DJ” in
   Annexure A.

4. The generation of Live Music on the ground floor, Live Music on the first floor or DJ Music on the first floor
   shall not occur concurrently.

5. Prior to Live Music or DJ Music commencing, the doors and openable windows situated in any external
   façade bounding the area in which Live Music or DJ Music is to be generated shall be closed and key locked
   for the duration of the Live Music or DJ Music. This clause shall not pertain to any door required for access,
   however, those doors shall be fitted with door closers and shall be kept closed at all times except when used
   for access.

6. The following works, shall be completed prior to any Live Music commencing and thereafter be maintained.
   i) Install a double door at the location on the ground floor as shown in Annexure A. The double door shall
      incorporate 10mm toughened glass or 38mm solid core as a minimum and shall be fitted with door closers
      to both leaves and acoustically rated perimeter and drop seals as specified by a Qualified Acoustic
      Engineer.
   ii) Install a sound monitoring device in each room in the ground floor and first floor areas in which Live
       Music will be generated. Each device shall incorporate green/yellow/red lights which will cut out the
       power to the system for 60 seconds in the event that a pre-set sound level is exceeded (with the yellow
       light giving a warning of impending shut-down). Each device shall be physically secured to prevent
       tampering.

7. Prior to any Live Music of DJ Music commencing, a certification report is to be provided to Council by a
   Qualified Acoustic Engineer confirming that the works in 6(i) and 6(ii) have been carried out and that the
   sound monitoring device levels have been set and tested and so that Live Music or DJ Music generated at the
   premises will meet the noise criteria specified in this consent.

8. The double door referred to in 6(i) shall be kept closed at all times when Live Music or DJ Music is being
   generated in the ground floor area designated as “LM” other than at times when it is being used for access.

9. The requirements set out above shall be incorporated in the Plan of Management and submitted to Council for
   approval.

10. No entertainment or external speakers are permitted within the covered area or open area on the site or within
    the gaming room addition.

As well as the following additional definitions in Condition A2:

‘Covered area’ means the ‘Covered Area’ referred to in drawing DA1201 issue no. C, prepared by Kevin Snell
Architects, 15 January 2013.

‘Open area’ or ‘outdoor deck’ means the ‘Open Area’ referred to in drawing DA1201 issue no. C, prepared by
Kevin Snell Architects, 15 January 2013.

‘Upper level open air terrace’ means the first floor open air terrace.

Resolution of DA387/2012/4 and DA387/2012/5 was deferred until the suitable resolution of the Land and
Environment Court process.

9. REFERRALS

9.1. Acoustics

Environmental Health Officer
Council’s Health Officer provided the following comment:

*Noise assessment was conducted by Wilkinson Murray where the Royal Oak Hotel proposes to operate the partly open ground floor rear courtyard up to 12 midnight every night. Noise monitoring was conducted to assess compliance with the Casino, Liquor & Gaming Control Authority (CLGCA) Noise Criterion for licensed premises at the most exposed noise sensitive receivers being located at 10-12 Cooper Street and 7 South Avenue.*

The Project Specific Noise Criteria used is that provided by the CLGCA for licensed premises is:

“The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8k Hz inclusive) by more than 5dB(A) between 07:00 am and 12:00 midnight at the boundary of any affected residence.

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00 am”.

Background Noise Monitoring was conducted on Guilfoyle Avenue where noise from the Royal Oak Hotel was not audible; the measurements were conducted on Friday 14 April 2015 between the hours of 11.45pm and midnight. Table 3-1 presents the Background Noise Spectrum.

Attended measurements of noise generated within the ground floor rear partly open courtyard were conducted at 7 South Avenue and 10-12 Cooper Street on 17 April 2015 between the hours of 10.53pm and 11.08pm. Further night time measurements of noise generated within the ground floor rear partly open courtyard were conducted on Friday 15 May 2015; the upstairs courtyard was shut early from 11pm to enable the measurement to occur. An inspection of the courtyard revealed that it was very busy during both measurement nights. Results of the noise measurements for the downstairs rear courtyard are presented in Table 4-1 of the report.

Noise generated by the downstairs rear courtyard was found to be inaudible at all times; it should be noted that noise generated was influenced by noise emanating from the surrounding pub environment. Downstairs rear courtyard measurements are presented in Table 4-2 of the report.

Although a review of Table 4-1 shows that noise generated from the development site exceeds the CLGCA Noise Criterion in all octave bands for both residential locations, actual noise associated with the use of the downstairs rear courtyard was found to be inaudible at all times.

However deletion of Condition I.11 cannot be supported as the condition relates to all outdoor covered and uncovered areas of the Royal Oak Hotel. Consideration may be given in support of the section 96 application if Condition I.11 is amended to reflect exclusively the use of the downstairs rear courtyard area.
Peer review

Due to the complexities of the concurrent applications and the recently concluded Land and Environment Court proceedings, Council’s Assessment Officer considered it prudent to refer the application to the acoustic expert that represented Council in the Court proceedings for a peer review. Renzo Tonin provided the following comment:

_The rear covered and open areas of the rear courtyard are shown in the plans attached. As described in the Wilkinson Murray Report “Partly Open Rear Courtyard Noise Assessment”, the closest residential receivers are located at No 7 South Ave and 10-12 Cooper Street. The rear courtyard is acoustically shielded from the nearest residential receivers by the hotel boundary walls._

_In Table 4-2 of the Wilkinson Murray Report, it concludes that the emitted noise levels comply with the selected criteria. The noise criteria which now apply under the modified consent are in condition I.8. However, condition I.8 is in the same form as the criteria adopted in the report. The report concludes that noise associated with the rear courtyard is inaudible at any residential receiver._

_The referral response from Environmental Health is concerned that the section 96 application might apply to “all” outdoor covered and uncovered areas of the hotel, presumably meaning the upper level open air terrace as well. However, the definition of the outdoor covered and uncovered areas (as defined in A.2 of the modified consent) clearly relates only to those ground floor areas shown in the drawing attached which do not include the upper level open air terrace. Therefore, the concern of the health officer is unsubstantiated._

_For this reason I support the Section 96 application for condition I.11 to be made permanent._

Planning conclusion

The acoustic report is considered to be acceptable on the basis of the above comments. The conclusion reached by Renzo Tonin in the peer review that there is no issue with the reference to the outdoor area is concurred with.

9.2. Property and Compliance Officer

Council’s Compliance Officer provided the following comment in relation to the operations of the hotel (related to both DA387/2012/4 & DA387/2012/5) and any complaints received during the 12 month trial period:

_The hotel currently has approval to trade to midnight (Mon – Thu), 1am (Fri – Sat) and 11pm (Sun). The trial period...commenced on 8 June 2014._

_Throughout 2011, 2012 and up to September 2013 there were regular noise disturbance complaints to Council from residents in the area concerning the hotel. Between the period 1/1/2000 to 10/3/2015 there were 4 noise complaints received by the Office of Liquor Gaming & Racing, all in 2012._
The most sensitive receiver of noise is the Cosmopolitan Centre apartment building located directly opposite the Hotel on Bay Street. Submissions from residents of the mixed use building in respect of this application indicate that when the windows are closed, the noise generated from inside the premises is significantly reduced.

The acoustic report by Wilkinson Murray found that between the hours of 10pm and midnight the Cosmopolitan Centre apartments were exposed to relatively high and constant noise levels by traffic, pedestrian and pub noise, with pub noise dominating the acoustic environment. Noise monitoring conducted on Friday 3 October 2014 and Friday 17 April 2015 to assess compliance with the noise criterion for licensed premises imposed by the Casino, Liquor & Gaming Control Authority found noise levels from the hotel exceeded the noise criterion, ranging from 3-10 dB and 7-11 dB for October 2014 and April 2015 respectively (all doors and windows of the Royal Oak Hotel were left open during the measurements).

Despite the findings, there were only two noise disturbance complaints during the trial period. In November 2014 a resident reported that: “Lately they play extremely loud music on the weekend and some other days..... I live quite a distance from the pub but despite every window closed, noise and music can be heard.” In April 2015 a couple living at 285 NSH Rd reported excessive noise from the hotel on Saturday nights.

Planning conclusion

The above comment illustrates a largely orderly operation of the hotel at the rear of the ground floor.

9.3. NSW Police

Constable Phillip Street of Licensing at Rose Bay Police provided the following comment:

Licensing police have observed the Cooper and Bay Street area and the Royal Oak Hotel patronage has increased over the past twelve months with the outdoor areas being popular amongst patrons. On Friday and Saturday nights the outdoor areas of the Hotel have large numbers of patrons in them. The increase in patrons in these outdoor area's results in an increase in noise both indoors and outdoors at the hotel.

Rose Bay Licensing Police recently conducted a business inspection of the hotel, which was heavily crowded making it difficult for police or to move through the hotel. Empty glasses were stacked on tables and not removed. Several areas of the hotel had large amounts of broken glass on the floor and under tables and posed a serious safety risk to patrons and staff. This was not limited to outdoor areas however the worst affected area was the upstairs outdoor area adjacent to "Phil's Bar".

If Council were to approve DA387/2012/4 and DA387/2012/5, NSW Police request the council impose the following conditions:

- A limit to the number of patrons permitted in the upstairs outdoor area of the premises adjacent to the area known as "Phil's Bar"
- The outdoor dining area on Bay Street be for seated patrons only
The increased hours of trade for the outdoor area and the closure of the Bay street windows and doors be a reviewable consent being 12 months, two years and then at 5 years

Police believe these conditions will allow for a proper assessment of the impact noise from 10pm to midnight in the outdoor areas of the hotel will have on the immediate area and assist in the management of patrons in the outdoor area's and reduce the potential noise from those areas.

Planning conclusion

With respect to the conditions requested by NSW Police, the following is noted:

- There are no provisions relating to the upstairs outdoor area. However, this is outside the scope of this application and was discussed and suitably rectified between the relevant parties in the Land and Environment Court proceedings
- The outdoor seating was finalised during the Land and Environment Court proceedings
- The windows to Bay Street are discussed and assessed as part of DA387/2012/4
- The operations at the rear of the ground floor will be reviewable, as noted in Condition I11

9.4. Concluding comment

The comments from Council’s Environmental Health Officer, the peer review from Renzo Tonin, Council’s Compliance Officer and from NSW Police are generally supportive of the application in principle. Aside from those from Renzo Tonin, all comments were provided prior to the finalisation of the Court proceedings and the final Acoustic Report.

It is the view of Council’s Assessment Officer that since the satisfactory resolution of the Court proceedings and with the opportunity to impose reviewable conditions (that will allow Council to more appropriately manage any future management of the Royal Oak Hotel), the development represents a satisfactory amenity outcome and should be supported. NSW Police support the application of a reviewable condition in Condition I11. Further details are contained in Section 24.

ASSESSMENT UNDER SECTION 96

The application is assessed under Section 96 of the Environmental Planning and Assessment Act 1979.

10. SECTION 96(2): OTHER MODIFICATIONS

Section 96(2) relates to the modification of a development consent for all other modifications. The considerations in Section 96(2) require Council to consider the following:

a) It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all)

The proposal is substantially the same development.
b) It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent

Not applicable.

c) It has notified the application in accordance with:
   i) The regulations, if the regulations so require, or
   ii) A development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent

d) It has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be

Refer to Section 12.1.

11. SECTION 96AA: MODIFICATION OF A CONSENT GRANTED BY THE COURT

The Section 96 application does not seek to alter any component of the application that was modified via the Land and Environment Court. Nonetheless, all residents that objected to DA387/2012/2 have been notified of this application.

ENVIRONMENTAL ASSESSMENT UNDER SECTION 79C

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979 include the following:

1. The provisions of any environmental planning instrument
2. The provisions of any proposed instrument that is/has been the subject of public consultation
3. The provisions of any development control plan
4. Any planning agreement that has been entered into
5. Any draft planning agreement that a developer has offered to enter into
6. The regulations
7. Any coastal zone management plan
8. The likely impacts of that development:
   i) Environmental impacts on the natural and built environments
   ii) Social and economic impacts
9. The suitability of the site
10. Any submissions
11. The public interest

12. ADVERTISING AND NOTIFICATION

12.1. Submissions

In accordance with Parts 3 and 4 of the Woollahra Advertising and Notification DCP, the application was notified and advertised from 3 to 17 June 2015. Submissions were received from:
1. Gillian Ayers of 3B/2-22 Knox Street, Double Bay
2. Margaret Dowling of 3C/8 Knox Street, Double Bay
3. MJ Boland of 5A/2-22 Knox Street, Double Bay
4. Sunghee P Park of 5B/2-22 Knox Street, Double Bay
5. Julie Zamel of 5C/2-22 Knox Street, Double Bay
6. Very Boyarsky of 7A/2-22 Knox Street, Double Bay
7. Steven Stuy of 7C/2-22 Knox Street, Double Bay
8. Janine Adams of 7D/2-22 Knox Street, Double Bay
9. Thomas Pongrass of 7F/2-22 Knox Street, Double Bay
10. Charles and Christine Biscoe of 58 Cross Street, Double Bay
11. Abid Barlas and T Kacprzak of 8/4 Henrietta Street, Double Bay
12. Deborah Drexler of 3/8 Guilfoyle Avenue Double Bay
13. Robert McLean AM of 6/8 Guilfoyle Avenue, Double Bay
14. Martin Noonan and Hazel Stewart of 7/286 New South Head Road, Double Bay
15. Sara Jose of 10/290 New South Head Road, Double Bay

The submissions raised the following issues:

- Increased noise from hotel at a time when people are drunker
- Increased transmission of noise from inside to outside and vice versa
- The noise interrupts sleep patterns and forces people to sleep with the windows shut
- Increased unruly behaviour

A review of the operations of the hotel was undertaken by Council’s Assessment Officer, Environmental Health Officer and Compliance Officer and NSW Police in addition to a peer review of acoustics from Renzo Tonin. It also included a review of any complaints in relation to the operation of the hotel received in the past six years.

Concurrently, the proceedings in the Land and Environment Court reached a suitable compromise whereby the hotel was considered to operate in a satisfactory manner, subject to conditions.

It is considered that the proposed changes to **Condition 111** are satisfactory when considering the likely noise impacts for surrounding residents, the findings of the Acoustic Reports submitted as part of the Land and Environment Court proceedings and as it allows for improved management and control of the hotel. In effect, approval of this Section 96 with a reviewable condition would allow for the extended hours to be revoked at any point where Council deems it appropriate.

- Trial has not been successful

With respect to the comments outlined above, Council’s view is that the trial period has been satisfactory and provided sufficient information to inform the assessment of this application.

- There are excessive numbers of people standing outside on the footpath and road and this will increase
- The footpath area is intimidating to walk past

The use of the area at the rear of the ground floor has no implications upon the use of the footpath on Bay Street.

- Increased traffic congestion and noise from traffic
- Lack of parking
There is a very limited correlation between the extended hours applied to the rear of the ground floor and any perceived impact upon parking and traffic movement, one which would not bring about the conclusion that the proposed modification is unreasonable on these grounds.

- Motivated by greed and money

This is not a relevant planning consideration.

12.2. Statutory Declaration

The applicant has completed the statutory declaration dated 26 June 2015 declaring that the site notice for DA 387/2012/5 was erected and maintained during the notification period in accordance with the requirements of the DCP.

13. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014 AND WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

Woollahra LEP 2014 and Woollahra DCP 2015 commenced operation on 23 May 2015. This application was lodged on 22 May 2015. Savings and transitional provisions apply and the subject Section 96 application is to be assessed under the prior controls – Woollahra LEP 1995 and Double Bay Centre DCP 2002. Applications must still consider the controls in Woollahra LEP 2014 and Woollahra DCP 2015.

14. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995


The proposal is consistent with the aims and objectives of the Woollahra LEP 1995, including retaining a suitable relationship between different land uses in the same zoning of Double Bay.

14.2. Clause 8(5): Aims and Objectives of the Zone

The proposal is permissible and is consistent with the aims and objectives of the Business 3(a) zone, namely objective (d), which is to ‘to control the physical and functional characteristics of business centres in order to minimise their impact on neighbouring residential lands.’

15. DOUBLE BAY CENTRE DEVELOPMENT CONTROL PLAN 2002

15.1. Section 3.2: Objectives and Strategies

The proposal is acceptable with regard to the key objectives and strategies for the Double Bay Centre.

15.2. Section 4.5: Street Character (Bay Street (Centre))

The proposal is acceptable with regard to the street character and strategy for the Double Bay Centre.

15.3. Section 6.5.1: Visual Privacy

The proposal is acceptable with regard to Section 6.5.1.
15.4. Section 6.5.2: Acoustic Privacy

P2 aims to protect the acoustic privacy of residential neighbours adjacent to the centre. C4 states that restaurants and cafes should be designed to minimise the impact of noise associated with late night operation, on nearby residents. The proposal is acceptable with regard to Section 6.5.2, as noted in Section 16.

16. DRAFT AMENDMENTS TO STATUTORY CONTROLS

16.1. Licensed Premises DCP

The Licensed Premises provisions in Woollahra DCP 2015 were in draft form at the time of lodgement but now form the basis for the assessment of all applications involving licensed premises.

16.1.1. Rating

The premises comprise a hotel and have a rating level of HIGH in accordance with Table F3.2.

<table>
<thead>
<tr>
<th>Risk rating</th>
<th>Internal (fully enclosed)</th>
<th>External (not fully enclosed)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Base</td>
<td>Extended</td>
</tr>
<tr>
<td>8am – 10pm</td>
<td>8am - midnight</td>
<td>8am – 10pm</td>
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16.1.2. Assessment

The imposition of a condition requiring the closure of the rear area of the ground floor of the hotel at 10pm allowed for the mitigation of potential noise transmission to surrounding residents in the absence of acoustic data, primarily to properties in South Avenue, Giulfoyle Avenue and Cooper Street. The one year trial period allowing the area to be closed at midnight acknowledged the potential for a satisfactory amenity outcome. This application reviews this issue.

The Land and Environment Court proceedings relating to the outdoor seating in Bay Street (DA387/2012/2) were eventually expanded to encompass the overall operations of the hotel. The resulting Acoustic Reports that were conducted by the acoustic experts for the applicant and Council have since concluded satisfactory outcomes for the first floor terrace area (through additional building works including acoustic screens), rear ground floor area and other areas of the hotel.

The modification of **Condition I11** to permit extended hours is a satisfactory outcome on amenity grounds given that Council’s acoustic expert has concluded that the noise generated from the rear courtyard is inaudible at any residential receiver. It is not inconsistent with the original condition and Council’s Compliance Officer has reviewed past complaints and supported this move. By removing the trial period and replacing it with a reviewable condition (reviewable at any time) is seen as a better outcome for management of the hotel and for surrounding residents.

Weighing the overall concerns of all residents with the overall public interest and the operations of the hotel, it is considered that through the Land and Environment Court proceedings, a better outcome has been established on acoustic and amenity grounds. For this reason, the amendment of **Condition I11** is supported. This is assessed with respect to the public interest in Section 24.

In accordance with C1, assessment of the licensed premises must consider the following:
a) **The location of the premises and the proximity of residential and other sensitive uses**

C10 requires that outdoor areas must take into account the amenity of surrounding residents. C11 requires an acoustic report where relevant.

An Acoustic Report was submitted as part of the ongoing Land and Environment Court proceedings and acknowledges the large number of surrounding residential properties. As noted above, the report concluded that noise would be inaudible from surrounding residences, which is a satisfactory outcome.

b) **The type of licensed premises**

c) **The size and capacity of the premises**

The proposal does not seek to alter the type, size or capacity of the premises. It remains at 330 patrons.

d) **Trading hours**

Overall trading hours are unchanged. This application seeks to modify an ancillary aspect of the development, which is satisfactory in a reviewable form. See Section 16.1.3 below.

e) **Existing and likely cumulative impacts, including social impacts, of licensed premises on the amenity of surrounding areas**

Through the Land and Environment Court proceedings, a suitable approach has been established with respect to the Plan of Management and acoustic treatments to the building to ensure a satisfactory outcome. **Condition J1** requires a consolidated Plan of Management and **Condition I11** relating to the rear outdoor/indoor area is reviewable.

f) **The density of licensed premises in the vicinity of the proposed development**

The application has no adverse ramifications in terms of the density of other licensed premises in surrounding areas.

g) **Availability of car parking and proximity and access to public transport**

Allowing the area at the rear of the ground floor to remain open for a longer period is not perceived to result in any increased traffic or parking demand.

h) **Any recommendations/comments provided by NSW Police**

Comment from NSW Police is outlined in Section 9.3. It outlines support for the Section 96 application as it allows for better management of the premises, subject to a reviewable condition. This has been applied in **Condition I11**.

16.1.3. **Trading Hours**

C4 allows extended trading hours for internal and external hours, but only where assessment of the application with respect to C1 has been undertaken. If granted, they do not exceed the allowable hours specified in C2 and must form a reviewable condition.
In this instance, the space is partly uncovered and as such, must be considered as an external space. With a high rating, the permitted hours are base hours until 8pm, reviewable to 10pm. The approval granted to the rear area extends to 10pm, reviewable to midnight and the Section 96 seeks to allow use until midnight without review.

When balancing the existing approved two hour departure from what is allowed in C2 with the acceptable nature of the space in the acoustic report and existing trade, it is considered that the proposed modification is acceptable, but only when subject to a reviewable condition. See Condition 111.

16.1.4. Conclusion

The proposal is acceptable with regard to the objectives and controls and Condition 111 is modified to suit.

17. PARKING DEVELOPMENT CONTROL PLAN 2011

Implications with respect to parking are unchanged.

18. WASTE NOT DEVELOPMENT CONTROL PLAN 2010

The waste generation arising from the additional hours for the rear outdoor area can satisfactorily be accommodated within existing practices.

19. ACCESS DEVELOPMENT CONTROL PLAN 2004

Implications with respect to accessibility are unchanged.

20. SECTION 94 CONTRIBUTION PLANS

None applicable.

21. APPLICABLE ACTS/REGULATIONS

None applicable.

22. THE LIKELY IMPACTS OF THE PROPOSAL

All likely impacts have been addressed elsewhere in the report, or are considered to be satisfactory and not warrant further consideration.

23. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

24. THE PUBLIC INTEREST

In determining whether or not the proposal is in the public interest, both the wider public interest and the sectionalised public interest must be taken into consideration. In the event that the wider public interest outweighs the sectionalised public interest, the proposal can be determined to be in the public interest.
24.1. Licensed Premises Planning Principle - Extension of Trading Hours/Increase in Permitted Patron Numbers

The application involves an extension or intensification of a use, insofar as the later use of the rear of the ground floor allows an easing of existing trading limitations. It is therefore pertinent to consider the planning principle established by the Land and Environment Court in Vinson vs Randwick Council (2005) NSWLEC 142, which reinforces earlier principles established in Randall Pty Ltd vs Leichhardt Council (2004) NSWLEC 277 as there may be an adverse impact on residential amenity.

24.1.1. Is the impact of the operation of the existing use on residential amenity acceptable?

If the answer is no, then an extension or intensification, would be unacceptable unless there is no overall increase in impact or there are measures proposed which would mitigate the existing impact.

If the answer is yes, is the impact of the proposed extension or intensification still acceptable?

In answering the first question, it is not sufficient to assume that a use operating in compliance with its approval has an acceptable impact.

Impacts arising from the operation of the premises initially caused concern with Council’s Compliance Officer stating the following:

Throughout 2011, 2012 and up to September 2013 there were regular noise disturbance complaints to Council from residents in the area concerning the hotel. Between the period 1/1/2000 to 10/3/2015 there were 4 noise complaints received by the Office of Liquor Gaming & Racing, all in 2012.

The majority of the issues were resolved up to and during the aforementioned Land and Environment Court proceedings which dealt with the operations of the hotel, including live music on the ground and first floors.

During the trial period of 2 June 2014-2 June 2015, two complaints were received by Council. One on-going complaint was commenced on 4 November 2014 with a follow up as late as 1 December 2015. The second relates to a complaint lodged on 17 April 2015.

The Hotel Register notes nine complaints about noise during the same period and a further seven complaints to date since 2 June 2015. NSW Police have also noted in their response that:

Licensing police have observed the Cooper and Bay Street area and the Royal Oak Hotel patronage has increased over the past twelve months with the outdoor areas being popular amongst patrons. On Friday and Saturday nights the outdoor areas of the Hotel have large numbers of patrons in them. The increase in patrons in these outdoor area's results in an increase in noise both indoors and outdoors at the hotel.

On the basis of the more recent history and Land and Environment Court negotiations noted throughout the report, the answer to whether the impact upon residential amenity is acceptable is ‘yes’.
More recently, there is an absence of any ongoing or widespread complaints in relation to the operations of the hotel at the same level at which have been received in the past. Of the complaints received, it is Council’s view that the issues are mostly confined to issues in the front bar or in Bay Street.

Further, the proposed changes to the conditions bring about a more favourable outcome with respect to the on-going management of the hotel from the perspective of Council and NSW Police.

24.1.2. What are the adverse impacts of the present trading hours, permitted number of patrons and permitted activities?

Evidence of anti-social behaviour at or linked to the premises taken from records such as the police COPS system and/or other police records and/or diaries kept by local residents is preferable to generalised anecdotal evidence that cannot be tested by the applicant against any records kept by the operator of the premises.

A similar position applies to complaints about other amenity impacting behaviour such as noise from people on the premises or its plant and equipment; noise from entertainment provided on the premises or the noise necessarily arising from patrons such as car doors, engines starting or late-night conversations in residential streets in the vicinity. Demand for on-street parking may also be relevant.

In assessing the likely adverse impact of increased trading hours, permitted number of patrons or permitted activities for licensed premises, the objectors’ fears of adverse impacts, no matter how genuinely felt, are relevant only to the extent that there is a reasonable probability that impacts will occur.

Thirteen objections were received from surrounding residents, nine of which were concentrated in the Cosmopolitan Centre opposite the site in Bay Street and which relate primarily to noise emanating from the footpath and from the front bar area. See Sections 15.4 and 16.

For the purposes of the assessment of this application, the primary concern is excessive noise.

24.1.3. What measures are in place to address those impacts?

Measures include the number and times of engagement of security personnel, designated duties performed by them together with patrolling patterns. Identification of and responses to specific trouble spots should be considered. The method and timing of street litter collection are also relevant. For premises that provide entertainment, noise control measures that do not require intervention by an operator may also be relevant.

The measures implemented as part of the Land and Environment Court proceedings are intended to minimise noise impacts. They include noise amelioration works to the interior of the hotel. There is also a Plan of Management for the premises, although Condition J1 requires its updating. In addition, the subject application, as proposed to be modified and conditioned, allows for improved measures via a reviewable condition.
24.1.4. How are those measures documented?

A well-documented management plan for the premises and its availability to local residents is a positive factor. The measures that are currently in place to record and respond to complaints made by residents are also relevant.

A Plan of Management encompasses all aspects of the hotel operations and requires updating in Condition J1 to include the improvements agreed upon in the Land and Environment Court proceedings.

24.1.5. Have those measures been successful?

The period during which the control measures (for the current trading hours, permitted number of patrons and permitted activities) have been operating is relevant to enable assessment of the likely success of their being applied to extended hours.

If the present management regime has been in operation for a relatively short period, or has been unsuccessful or not fully implemented, less weight can be given to it than to a management regime which has succeeded in reducing antisocial behaviour.

The peer review from Renzo Tonin made reference to improved measures during the course of the Land and Environment Court proceedings and it is viewed that these proceedings have brought about a satisfactory resolution with respect to the rear area of the hotel.

Where the hotel has attracted numerous complaints in the past five years, which in part led to the refusal of DA387/2012/2 and instigation of Land and Environment Court proceedings, there are now fewer complaints. Two complaints were noted by Council’s Compliance Officer during the 12 month trial period to which this application pertains and the conclusion from Council’s Compliance Officer is that the modification to the application would be satisfactory.

24.1.6. What additional measures are proposed by the applicant or might otherwise be required?

If any extension of hours, numbers or activities is likely to be acceptable but only subject to additional measures to reduce noise or anti-social behaviour, a trial period may be appropriate to test those measures.

The Plan of Management is to be updated and consolidated to account for all the recent modifications. See Condition J1.

24.2. Conclusion

On the basis of the discussion throughout the report, it is considered that the proposed modification to the development application represents an acceptable outcome. Therefore, it is considered that the wider public interest outweighs the perceived impact upon surrounding residents.

25. CONCLUSION

The proposal is acceptable against the relevant considerations under Section 79C.
26. DISCLOSURE STATEMENTS

There have been no disclosure statements regarding political donations or gifts made to any Councillor or council employee by either the applicant or any person who made a submission.

RECOMMENDATION: PURSUANT TO SECTION 96 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

THAT the Council, as the consent authority, modify development consent to Development Application No. 387/2012/1 for alterations and additions to the rear of the Royal Oak including a new gaming and covered area and outdoor deck, footpath seating on Bay Street, removal of one tree and ancillary landscaping on land at 28 Bay Street, Double Bay, subject to the following:

The modification of Condition No. I.11 as follows:

I.11 Hours of use of Outdoor Covered and Uncovered Areas (Ground Floor)

To mitigate amenity impacts upon the neighbourhood, the base hours of use of the outdoor covered and uncovered areas at the rear of the ground floor are limited to:

Monday-Sunday: 8am to 10pm

I.11A Extended hours of operation for Outdoor Covered and Uncovered Areas (Ground Floor)

The hours of operation for the Outdoor Covered and Uncovered Areas (Ground Floor) of the licensed premises are extended as follows:

Monday-Saturday: 10pm to 12midnight
Sunday: 10pm to 11pm

This condition is a reviewable condition as referred to in Condition I.11A. The extended trading hours will be reviewed in accordance with Condition I.11B.

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

Note: Council’s consideration of the extended hours of operation of licensed premises will take into account:
   a) compliance of the premises in terms of security and its general management;
   b) the number and nature of substantiated complaints regarding the operation of the premises;
   c) compliance with the conditions of this consent; and
   d) any other matters considered relevant to the environmental evaluation of the premises.

Standard Condition: I4 (Autotext: I14)

I.11B Review of extended hours of operation for licensed premises

Council will review the extended trading hours as referred to in Condition I.11A generally as follows:

a) One (1) year following the issue of any occupation certificate applicable to this application (if works are proposed) or the date of development consent (if no works are proposed)

b) Two (2) years following the first review
c) Each five (5) years thereafter

The review will be undertaken in accordance with the Regulations, cl.124D. This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

Note: A review will only be undertaken if Council has satisfactory evidence to suggest the extended trading hours are unduly impacting on the amenity of the neighbourhood or NSW Police has requested a review.

Note: The review will be presented to the Council Committee that determined the application and all stakeholders will be notified of the meeting.

Note: As a result of a review a reviewable condition may be changed

Standard Condition: 15 (Autotext: I15)

The addition of Condition No. J.1:

J.1 Hotel Management Plan and Security Procedures

The approved Hotel Management Plan and Security Procedures referenced in Condition A9 is to be updated to reflect the changes in Condition C1 and all aspects of Section I of this development consent, as most recently modified.

A copy must be made available to Council within 28 days of the date of determination of this application. It is also to be provided to stakeholders, free of charge, upon request.

Annexures

1. Referral Response - Health
2. Peer Review of Acoustic Impact
3. Referral Response - Compliance
4. Referral Response - NSW Police
REFERRAL RESPONSE - ENVIRONMENTAL HEALTH

FILE NO: DA 387/2012/5
ADDRESS: 28 Bay Street DOUBLE BAY 2028
PROPOSAL: Deletion of Condition I11 in relation to hours of use of outdoor covered and uncovered areas (time limit consent) to permit trade in these areas from 8am- midnight (Mon-Sat) and 8am - 11pm (Sun)
FROM: Louie Salvatore, Environmental Health Officer
TO: Mr S Taylor

1. ISSUES

Acoustics: Noise impact upon residential premises from increase hours of use of rear courtyard up to midnight.

2. DOCUMENTATION

- Statement of Environment Effects for Royal Oak Hotel, 28 Bay Street, Double Bay: Section 96 Delete Condition I.11 of DA approval 387/2012 issued 8 October 2013.

3. ASSESSMENT

NSW Department of Environment & Climate Change: Construction Noise Guideline
NSW Industrial Noise Policy
Local Government Noise Guide


Noise assessment was conducted by Wilkinson Murray where the Royal Oak Hotel proposes to operate the partly open ground floor rear courtyard up to 12 midnight every night.

Noise monitoring was conducted to assess compliance with the Casino, Liquor & Gaming Control Authority (CLGCA) Noise Criterion for licensed premises at the most exposed noise sensitive receivers being located at 10-12 Cooper Street and 7 South Avenue.

The Project Specific Noise Criteria used is that provided by the CLGCA for licensed premises is:

“The $L_{10}$ noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8k Hz inclusive) by more than 5dB(A) between 07:00 am and 12:00 midnight at the boundary of any affected residence.
Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00 am”.

Background Noise Monitoring was conducted on Guilfoyle Avenue where noise from the Royal Oak Hotel was not audible; the measurements were conducted on Friday 14 April, 2015 between the hours of 11.45pm and midnight. Table 3-1 presents the Background Noise Spectrum.

Attended measurements of noise generated within the ground floor rear partly open courtyard were conducted at 7 South Avenue & 10-12 Cooper Street on 17 April, 2015 between the hours of 10.53pm & 11.08pm. Further night time measurements of noise generated within the ground floor rear partly open courtyard were conducted on Friday 15 May, 2015; the upstairs courtyard was shut early from 11pm to enable the measurement to occur. An inspection of the courtyard revealed that it was very busy during both measurement nights. Results of the noise measurements for the downstairs rear courtyard are presented in Table 4-1 of the report.

Noise generated by the downstairs rear courtyard was found to be inaudible at all times; it should be noted that noise generated was influenced by noise emanating from the surrounding pub environment. Downstairs rear courtyard measurements are presented in Table 4-2 of the report.

Conclusion

Although a review of Table 4-1 shows that noise generated from the development site exceeds the CLGCA Noise Criterion in all octave bands for both residential locations, actual noise associated with the use of the downstairs rear courtyard was found to be inaudible at all times.

However deletion of Condition I.11 cannot be supported as the condition relates to all outdoor covered and uncovered areas of the Royal Oak Hotel. Consideration may be given in support of the section 96 application if Condition I.11 is amended to reflect exclusively the use of the downstairs rear courtyard area.

Louie Salvatore
Environmental Health Officer  Date: 12/06/2015
Dear Simon,

I refer to consent DA387/2012/2 (modified consent) which was approved early this year by the Land & Environment Court.

You have requested I provide advice in respect of two Section 96 applications in relation to the Royal Oak Hotel (hotel).

1. Modification to condition I.20 to allow on a permanent basis the opening of windows to Bay Street until midnight (open windows application); and,

2. Modification to condition I.11 to allow on a permanent basis the use until midnight of the covered and uncovered area at the rear of the ground floor (rear courtyard application).

In particular, you have requested I undertaken a peer review of the SEE, acoustic reports and Health Comments relating to those applications. The acoustic reports were prepared by Wilkinson Murray dated 20th May 2015. I note that the SEE and acoustic reports were prepared prior to the approval of the modified consent.

**Rear Courtyard Application**

This relates to condition I.11 of the modified consent.

The rear covered and open areas of the rear courtyard are shown in the plans attached. As described in the Wilkinson Murray Report “Partly Open Rear Courtyard Noise Assessment”, the closest residential receivers are located at No 7 South Ave and 10-12 Cooper Street. The rear courtyard is acoustically shielded from the nearest residential receivers by the hotel boundary walls.

In Table 4-2 of the Wilkinson Murray Report, it concludes that the emitted noise levels comply with the selected criteria. The noise criteria which now apply under the modified consent are in condition I.8. However, condition I.8 is in the same form as the criteria adopted in the report. The report concludes that noise associated with the rear courtyard is inaudible at any residential receiver.

The referral response from Environmental Health is concerned that the section 96 application might apply to “all” outdoor covered and uncovered areas of the hotel, presumably meaning the upper level open air terrace as well. However, the definition of the outdoor covered and uncovered areas (as defined in A.2 of the modified consent) clearly relates only to those ground floor areas shown in the drawing attached which do not include the upper level open air terrace. Therefore, the concern of the health officer is unsubstantiated.

For this reason I support the Section 96 application for condition I.11 to be made permanent.

Regards,

Renzo Tonin  
Managing Director  
RENO TONIN & ASSOCIATES  
D +61 2 8218 0502  P +61 2 8218 0500  M +61 412 331 476
REFERRAL RESPONSE

FILE NO: DA 387/2012/4
ADDRESS: 28 Bay Street DOUBLE BAY 2028
PROPOSAL: Delete Condition I.20 in relation to the Bay Street windows & doors (time limit consent) to permit the windows and doors open till midnight (Mon-Sat) and 11pm (Sun)
FROM: M Easton, Compliance Officer
TO: Mr S Taylor

The hotel currently has approval to trade to midnight (Mon – Thu), 1am (Fri – Sat) and 11pm (Sun). The trial period for permitting the windows and doors to remain open until midnight (Mon-Sat) and 11 pm (Sun) commenced on 8 June 2014.

Throughout 2011, 2012 and up to September 2013 there were regular noise disturbance complaints to Council from residents in the area concerning the hotel. Between the period 1/1/2000 to 10/3/2015 there were 4 noise complaints received by the Office of Liquor Gaming & Racing, all in 2012.

The most sensitive receiver of noise is the Cosmopolitan Centre apartment building located directly opposite the Hotel. Submissions from residents of the apartment building in respect of this application indicate that when the windows are closed, the noise generated from inside the premises is significantly reduced.

The acoustic report by Wilkinson Murray found that between the hours of 10pm and midnight the Cosmopolitan Centre apartments were exposed to relatively high and constant noise levels by traffic, pedestrian and pub noise, with pub noise dominating the acoustic environment. Noise monitoring conducted on Friday 3 October 2014 and Friday 17 April 2015 to assess compliance with the noise criterion for licensed premises imposed by the Casino, Liquor & Gaming Control Authority found noise levels from the hotel exceeded the noise criterion, ranging from 3-10 dB and 7-11 dB for October 2014 and April 2015 respectively (all doors and windows of the Royal Oak Hotel were left open during the measurements).

Despite the findings, there were only two noise disturbance complaints during the trial period. In November 2014 a resident reported that: “Lately they play extremely loud music on the weekend and some other days..... I live quite a distance from the pub but despite every window closed, noise and music can be heard.” In April 2015 a couple living at 285 NSH Rd reported excessive noise from the hotel on Saturday nights.

In the circumstances, a reviewable condition is recommended to enable a review of condition I.20 if Council has satisfactory evidence to suggest the opening of windows and doors to Bay Street until midnight Mon-Sat and 11pm Sun are unduly impacting on the amenity of the neighbourhood.

M Easton
Compliance Officer
Dear Mr Simon Taylor,

RE: DA387/2012/4 and DA387/2012/5 Application

Proposal: Delete Condition I.20 in relation to the Bay Street windows & doors (time limit consent) to permit the windows and doors open till midnight (Mon- Sat) and 11pm (Sun) and Deletion of Condition I.11 in relation to hours of use of outdoor covered and uncovered areas (time limit consent) to permit trade in these areas from 8am-midnight (Mon-Sat) and 8am-11pm (Sun).

On Tuesday the 5th May 2015, Licensing Police attached to the Rose Bay Local Area Command received DA387/2012/4 and DA387/2012/5.

In accordance with Development Application (DA) Memorandum of Understanding with Woollahra Council, Rose Bay Local Area Command has been invited to make comment in relation to the above DA.

Police have considered the principles of Crime Prevention Through Environmental Design (CPTED) in making comment on this submission.

The proposed development is to remove the existing time limited consents I.11 and I.20 from DA387/2012. These conditions are time limited consents and allowed for the outdoor dining areas and the Bay Street Windows and Doors to be open from 8am to midnight (Mon-Sat) and 8am-11pm (Sun). The applicant proposes these operating times become permanent.

Police note Woollahra Council has provided a number of objections to the removal of the conditions from people who reside in the near vicinity of the hotel. The objections claim there has been an increase in noise from the Royal Oak Hotel in the past 12 months.
Licensing police have observed the Cooper and Bay Street area and the Royal Oak Hotel patronage has increased over the past twelve months with the outdoor areas being popular amongst patrons. On Friday and Saturday nights the outdoor areas of the Hotel have large numbers of patrons in them. The increase in patrons in these outdoor area’s results in an increase in noise both indoors and outdoors at the hotel.

Rose Bay Licensing Police recently conducted a business inspection of the hotel, which was heavily crowded making it difficult for police or to move through the hotel. Empty glasses were stacked on tables and not removed. Several areas of the hotel had large amounts of broken glass on the floor and under tables and posed a serious safety risk to patrons and staff. This was not limited to outdoor areas however the worst affected area was the upstairs outdoor area adjacent to “Phil’s Bar”.

If council were to approve Development Application DA387/2012/4 and DA387/2012/5, police request the council impose the following conditions

- A limit to the number of patrons permitted in the upstairs outdoor area of the premises adjacent to the area known as “Phil’s Bar”.
- The outdoor dining area on Bay Street be for seated patrons only.
- The increased hours of trade for the outdoor area and the closure of the Bay street windows and doors be a reviewable consent being 12months, two years and then at 5 years.

Police believe these conditions will allow for a proper assessment of the impact noise from 10pm to midnight in the outdoor areas of the hotel will have on the immediate area and assist in the management of patrons in the outdoor area's and reduce the potential noise from those areas.

Submitted for urgent attention and favourable consideration.

Philip Street
Constable/ Licensing Rose Bay

Michael Capon
Crime Coordinator Rose Bay

Mr Brad Hodder
Superintendent Rose Bay

NSW POLICE FORCE RECRUITING NOW 1800 222 122
WWW.POLICE.NSW.GOV.AU/RECRUITMENT
## SECTION 96 APPLICATION ASSESSMENT REPORT

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<th>D7</th>
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<td>FILE No.</td>
<td>DA710/2005/6</td>
</tr>
<tr>
<td>ADDRESS</td>
<td>5 Billong Avenue Vaucluse (Vaucluse Kinder Haven child care centre)</td>
</tr>
<tr>
<td>ZONING</td>
<td>R2 Low Density Residential</td>
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<tr>
<td>EXISTING CONSENT</td>
<td>Alterations and additions to a dwelling-house, the change of its use to a child care centre for 36 children at any one time and landscaping works</td>
</tr>
<tr>
<td>DATE OF CONSENT</td>
<td>22 May 2006</td>
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<tr>
<td>CONSENT AUTHORITY</td>
<td>Woollahra Council</td>
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<tr>
<td>PROPOSED MODIFICATION</td>
<td>The extension of the hours of operation from 8:30am - 5:00pm to 7:00am - 6:00pm Monday to Friday excluding public holidays</td>
</tr>
<tr>
<td>DATE S96 LODGED</td>
<td>12/04/2016</td>
</tr>
<tr>
<td>APPLICANT</td>
<td>Jane's Place Operations Pty Ltd</td>
</tr>
<tr>
<td>OWNER</td>
<td>V &amp; S Berk Family Pty Ltd &amp; Anibal 21 Pty Ltd</td>
</tr>
<tr>
<td>AUTHOR</td>
<td>Mr D Booth</td>
</tr>
<tr>
<td>TEAM LEADER</td>
<td>Ms E Smith</td>
</tr>
<tr>
<td>SUBMISSIONS</td>
<td>Nil</td>
</tr>
<tr>
<td>RECOMMENDATION</td>
<td>Approval</td>
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</tbody>
</table>

### LOCALITY PLAN

![Locality Plan of 5 Billong Avenue Vaucluse (Vaucluse Kinder Haven child care centre)](image-url)
2. LEVEL OF DELEGATION

The application is to be determined by the Development Control Committee as it involves modifications to a development consent involving a child care centre.

3. SUMMARY OF THE ORIGINALLY APPROVED DEVELOPMENT

Alterations and additions to a dwelling-house, the change of its use to a child care centre for 32 children at any one time and landscaping works.

4. SUMMARY OF PREVIOUS SECTION 96 MODIFICATIONS

DA710/2005/2 approved on 29 May 2006 involved the modification to acoustically attenuated fencing.

DA710/2005/3 approved on 14 June 2006 involved the correction of several erroneous conditions of consent.

DA710/2005/4 approved on 21 August 2006 involved the provision of additional outdoor play area.

DA710/2005/5 approved on 5 March 2007 involved the increase in the number of children from 32 to 36.

5. SUMMARY OF THE PROPOSED MODIFICATION

The modification of Condition 37 to extend the hours of operation from 8:30am - 5:00pm Monday to Friday, excluding public holidays, as approved, to 7:00am - 6:00pm Monday to Friday, excluding public holidays.

6. ISSUES

<table>
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<th>Issue</th>
<th>Conclusion</th>
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<tr>
<td>Noise impacts</td>
<td>Satisfactory</td>
<td>8 &amp; 11</td>
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<tr>
<td>Traffic/parking impacts</td>
<td>Satisfactory</td>
<td>8 &amp; 11</td>
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7. SITE AND LOCALITY

The subject site is located on the corner of Old South Head Road and Billong Ave. It has a south-eastern frontage to Old South Head Road 44.2m in length, a north-eastern frontage to Billong Ave 16.9m in length, a north-western side boundary 42.3m in length and a rear boundary 16.6m in length. The site area is approximately 709m². The adjoining property to the rear (88 Old South Head Road) is occupied by a 2 storey dwelling-house. The adjoining property to the north-west (3 Billong Ave) is occupied by a single storey dwelling-house.
8. REFERRALS

8.1 Environmental Health Officer

Council’s Environmental Health Officer has provided the following noise assessment:

*Noise from Drop-off of Children*

The number of children and staff will remain unchanged under the proposal and the number of traffic movements generated by the childcare is unchanged. A traffic report prepared by GTA Consultants dated 23 February 2016 described the traffic conditions on Old South Head Road and Billong Avenue; the traffic assessment concludes “the proposal will facilitate a spread of the existing parking demand and traffic generation over a broader time period and as such will slightly improve traffic activity and somewhat mitigate parking demand.” Because traffic will be spread out over a longer period, traffic noise generated by the childcare centre will be reduced.

The traffic report does not describe the traffic generation by the proposal; however, if it is assumed that all staff and children (36 children and 4 staff) arrive by car, up to 40 vehicle movements would be generated by the childcare centre. The traffic report notes that Old South Head Road carries approximately 860-975 vehicles per hour (2-way) during the am and pm peak hours respectively. The addition of an extra 40 vehicles on this traffic would result in a negligible change in noise.
The potential noise impact in Billong Avenue was discussed in Wilkinson Murray advice in 2006. In that report, it was assumed that only 6 vehicles would use Billong Avenue. Even on a more conservative estimate of 20 vehicles using Billong Avenue, the predicted noise level at the facades of residences along Billong Avenue is predicted to be 51dBA. Traffic noise criteria have been updated by the Environment Protection Authority (EPA) since 2005; appropriate traffic noise criteria for traffic generating developments are now described in the EPA’s Road Noise Policy (RNP). The appropriate criterion has not changed; however, for traffic noise generated by the childcare centre on Billong Avenue, the appropriate criterion is LAeq,1hr 55dBA. The traffic generated by the child care centre, even under very conservative assumptions, complies with the criterion.

Noise from Children Indoors

This aspect of noise emission was in 2005, Response to Issue 2 – Children Playing Indoors: In our experience, there is usually little impact to receivers from the noise breakout of children playing indoors. As can be seen by the internal layout, a deliberate attempt has been made to provide a buffer to the resident at the rear of the proposed Centre. All rooms that potentially involve activities with children are placed in rooms fronting Old South Head Road or Billong Avenue. Only a window faces the residence at 3 Billong Avenue. This window is small, approximately 0.25m² in size and located 1m away from the boundary fence.

In order to assess the potential impact from internal activities, a reverberant sound pressure level of 75dBA has been assumed, based on experience. This level is likely to be a result of singing / dance time; is dominated by music and will only occur on occasion as part of a structured program.

The resultant noise at the boundary fence has been calculated by WM considering:

- Reverberant to free field loss
- Radiation of the surface area of the window
- Distance loss from window to boundary fence

In a window fully open scenario, the calculated noise level will be in the region of 58dBA. This level is less than the criterion for the residence in the rear (3 Billong Avenue). Please note we have not allowed for the benefit of the acoustically attenuated fence. The predicted levels are unchanged. Council’s Environmental Health Officer has determined that the proposal is satisfactory.

8.2 Traffic Engineer

Council’s Traffic Engineer has provided the following comments in relation to parking and traffic issues:

It is understood that this S.96 does not seek for any increased staff or children numbers. Consequently, it is expected that there will be no additional parking demand or traffic generation associated with the proposed changes. The proposed change is to increase the operation hours of the child care centre from 8:30am – 5:00pm as approved to 7:00am-6:00pm.

It is agreed that parking demand and traffic generation distribution over a longer period of time will result in a flattening effect which will potentially improve the existing peak hour traffic and parking conditions in the surrounding network. In conclusion, Council’s Traffic section has no objection to the proposed modification.
9. ASSESSMENT UNDER SECTION 96

9.1 S.96 (1A) Modifications involving minimal environmental impact

Due to the absence of any potential significant adverse environmental impacts including noise, traffic and parking impacts, the proposed modification is considered to be within the ambit of S.96(1A).

9.2 Substantially the same development

The proposed modification together with those previously approved are considered to be cumulatively minor relative to the scope of the approved development such that the development consent, as proposed to be modified and as modified previously, is considered to be substantially the same.

9.3 Notification/Advertising

In accordance with Council’s Woollahra Advertising and Notification DCP, the application was notified and advertised from 20/04/2016 to 04/05/2016. No objections were received.

9.4 Statutory Declaration

The applicant has completed the statutory declaration declaring that the site notice was erected and maintained during the notification period in accordance with the requirements of the DCP.

ENVIRONMENTAL ASSESSMENT UNDER SECTION 79C

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979 include the following:

1. The provisions of any environmental planning instrument
2. The provisions of any proposed instrument that is/has been the subject of public consultation
3. The provisions of any development control plan
4. Any planning agreement that has been entered into
5. Any draft planning agreement that a developer has offered to enter into
6. The regulations
7. Any coastal zone management plan
8. The likely impacts of that development:
   i) Environmental impacts on the natural and built environments
   ii) Social and economic impacts
9. The suitability of the site
10. Any submissions
11. The public interest

10. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

10.1. Part 1.2: Aims of Plan

The proposal is considered to be consistent with the aims in Part 1.2(2) of Woollahra LEP 2014.
10.2. Land Use Table

The proposal relates to a child care centre use which is permissible and is considered to be consistent with the objectives of the R2 Low Density Residential zone.

11. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

11.1. Chapter B1: Vaucluse East Residential Precinct

The proposal satisfies the precinct objectives outlined in Part B1.1.3 of the Woollahra DCP 2015.

11.2. Chapter F1: Child Care Centres

F1.3.2 Visual and acoustic impacts

O1 To ensure that child care centres are designed and operated to minimise unreasonable noise impacts to adjoining properties and surrounding properties.

O2 To ensure that noise from outdoor play areas is not continuous, or of such long duration to have an unreasonable impact on residential amenity.

C1 The child care centre minimises disturbance to adjacent, nearby and surrounding properties by suitable:

   a) design and siting of the facility (including for example, the layout of building, maximising separation between active and open outdoor play areas and the façade of any neighbouring properties, soft close gates, noise barriers, fencing and the use of noise absorbing materials); and

   b) operational management, such as the programming of noise emitting activities.

The proposal seeks the extension of the hours of operation from 8:30am - 5:00pm Monday to Friday excluding public holidays, as approved, to 7:00am - 6:00pm Monday to Friday excluding public holidays.

As stated above under section 8.1 Environmental Health Officer, Council’s Environmental Health Officer has determined that the proposal is satisfactory in terms of noise impacts.

The following condition of the existing consent is relevant in terms of ensuring that the proposed extension of hours will not have any significant noise impacts upon adjoining properties including by limiting the hours of external play:

10. Noise and on-street parking impact mitigation measures

   In order to ensure that the amenity of surrounding residential properties is not compromised by excessive noise, the following restrictions shall apply:
• upon installation of the air conditioning units, the applicant shall commission a further acoustical assessment, to be undertaken by a suitably qualified acoustic engineer, clearly indicating that during the operation of the air conditioning units complies with Council’s Noise Criteria, in that, the level of noise emitted is not to exceed the background noise level at any time as measured at the boundaries of the subject property
• all external play shall occur in at least two time periods for a maximum of three hours per day
• all external play shall be supervised such that noisy activities occur in play areas that face Old South Head Road
• the childcare centre shall incorporate a system for logging complaints in relation to noise arising from the operation of the childcare centre so that such related complaints can be responded to and actioned upon
• the childcare centre shall incorporate a system for logging complaints, from either residents or members of the public wishing to park in the vicinity of the subject site, in relation to on-street car parking impacts associated with the operation of the childcare centre so that such related complaints can be responded to and actioned upon
• 1.8 m high (above ground level on the high side of the property boundaries), solid (without gaps) fencing with a surface density of at least 30 kg/m² is to be provided to the sections of the common boundaries to 3 Billong Ave and 88 Old South Head Road adjacent to the outdoor play areas prior to the commencement of the operation of the child care centre. Details are to be submitted with the construction certificate application.

It should be noted that the second bullet point limits the outdoor play times. As such, the proposed total of 2.5 additional hours of operation will not result in any increased outdoor playtime. The noise from additional periods of indoor activities will be adequately mitigated by the above-mentioned requirements of Condition 10. It is not proposed to modify this condition of consent which is considered adequate in terms of mitigating any potential noise impacts associated with the proposed extended hours of operation.

**F1.3.3 Pick-up, drop-off and parking**

O3 To ensure that drop-off, pick-up and parking activity does not detrimentally affect the availability of on-street parking and traffic flow in the local area.
O4 To ensure that vehicular access to and from the site does not detrimentally affect the traffic safety of surrounding properties.

As stated above under section 8.2 Traffic Engineer, Council’s Traffic Engineer has determined that the proposal is satisfactory in terms of traffic /parking impacts as it will have the effect of distributing parking demand and traffic generation over a longer period of time which will result in a flattening effect which will potentially improve the existing peak hour traffic and parking conditions in the surrounding network.

Accordingly, the proposal is considered to be satisfactory in terms of traffic and parking impacts upon the locality.

**12. THE LIKELY IMPACTS OF THE PROPOSAL**

It is considered that the proposed modification to the approved development will not result in any significant adverse environmental impact.
13. THE SUITABILITY OF THE SITE

The site is considered to be suitable for the proposed modification to the approved development.

14. CONCLUSION

The proposed modification to the approved development is considered to be acceptable against the relevant considerations under S.79C and S.96 of the Environmental Planning and Assessment Act 1979 and to be in the public interest.

15. DISCLOSURE STATEMENTS

Under S.147 of the Environmental Planning and Assessment Act 1979 there have been no disclosure statements regarding political donations or gifts made to any councillor or gifts made to any council employee submitted with this development application by either the applicant or any person who made a submission.

RECOMMENDATION: PURSUANT TO SECTION 96 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

THAT Council, as the consent authority, modify development consent to Development Application No. 710/2005 for alterations and additions to a dwelling-house, the change of its use to a child care centre for 36 children at any one time and landscaping works on land at 5 Billong Avenue Vaucluse, in the following manner:

The addition of the following condition:

1a. Approved Amended (s96) Plans and supporting documents

Those acting upon or under this amended consent must carry out all work and maintain the use and works in accordance with the approved plans and supporting documents listed in the original consent, as amended by the amended approved plans and supporting documents as submitted by the Applicant and to which is affixed a Council stamp “Approved Section 96 Plans” listed below otherwise than modified by further condition(s). Where the plans relate to amendments, alterations or additions only those works shown in colour or highlighted are approved.

<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
<th>Author/Drawn</th>
<th>Date(s)</th>
</tr>
</thead>
</table>

Note: These plans and supporting documentation may be subject to conditions modifying the development imposed under section 80A(1)(g) of the Act (refer to conditions which must be satisfied prior to the issue of any Construction Certificate.)

The modification of the following condition as follows:

37. Hours of operation

The hours of operation are limited to 7.00 am to 6.00 pm Monday to Friday, excluding public holidays.
Annexures

1. Environmental Health Referral
2. Traffic Referral
REFERRAL RESPONSE - ENVIRONMENTAL HEALTH

FILE NO: Development Applications/ 710/2005/6
ADDRESS: 5 Billong Avenue VAUCLUSE 2030
PROPOSAL: Alterations to the hours of operation of the child care centre from 8:30am - 5:00pm to 7:00am - 6:00pm.
FROM: Louie Salvatore, Environmental Health Officer
TO: Mr D Booth

1. DOCUMENTATION

I refer to the following documents received for this report:


2. SUMMARY OF PROPOSAL

In May 2006 Council granted development consent for a childcare centre on the subject site. In the time since the original development consent has been issued the development consent has been modified on four (4) separate occasions. The nature of the changes are considered minor and have related to the following:

a) Deletion of specific vehicular driveway access requirements;
b) Provision of an outdoor play area and new fencing; and
c) Increase in children enrolment numbers from 32 to 36;

The subject modification application seeks to amend one (1) condition of the development consent. There is to be no additional building or on-site works proposed.

Specifically, the following modifications are to Change the Hours of Operation (Condition 37 of the consent).

CONDITION 37 – Hours of Operation
The hours of operation are limited to 8:30am to 5:00pm Monday to Friday, excluding public holidays.

The Applicant proposes to increase the operation hours of the centre to better meet the needs of families enrolled in the centre. Accordingly, it is requested that Condition 37 be amended as follows:

The hours of operation are limited to 7:00am to 6:00pm Monday to Friday, excluding public holidays.
3. Noise Assessment

The childcare centre at 5 Billong Avenue, Vaucluse currently operates from 8.30am to 5.30pm. The childcare centre is proposing to extend these hours to 7.00am to 6.00pm. There will not be an increase to the number of children or the outside play time; furthermore the proposal excludes the need for building works and the air-conditioning will remain as is. On this basis, the following aspects were assessed with respect to noise impacts:

- Noise from drop off and pick up of children; and
- Noise from within the childcare centre to residential neighbours.

Wilkinson Murray (WM) assessed the childcare centre in 2006 (ref: D23 090306-SD) and some parts of that noise assessment have been referenced.

**Noise from Drop-off of Children**

The number of children and staff will remain unchanged under the proposal the number of traffic movements generated by the childcare is unchanged. A traffic report prepared by GTA Consultants dated 23 February 2016 described the traffic conditions on Old South Head Road and Billong Avenue; the traffic assessment concludes “the proposal will facilitate a spread of the existing parking demand and traffic generation over a broader time period and as such will slightly improve traffic activity and somewhat mitigate parking demand.” Because traffic will be spread out over a longer period, traffic noise generated by the childcare centre will be reduced.

The traffic report does not describe the traffic generation by the proposal; however, if it is assumed that all staff and children (36 children and 4 staff) arrive by car, up to 40 vehicle movements would be generated by the childcare centre. The traffic report notes that Old South Head Road carries approximately 860-975 vehicles per hour (2-way) during the am and pm peak hours respectively. The addition of an extra 40 vehicles on this traffic would result in a negligible change in noise.

The potential noise impact in Billong Avenue was discussed in Wilkinson Murray advice in 2006. In that report, it was assumed that only 6 vehicles would use Billong Avenue. Even on a more conservative estimate of 20 vehicles using Billong Avenue, the predicted noise level at the facades of residences along Billong Avenue is predicted to be 51dBA. Traffic noise criteria have been updated by the Environment Protection Authority (EPA) since 2005; appropriate traffic noise criteria for traffic generating developments are now described in the EPA’s Road Noise Policy (RNP). The appropriate criterion has not changed; however, for traffic noise generated by the childcare centre on Billong Avenue, the appropriate criterion is LAeq,1hr 55dBA. The traffic generated by the child care centre, even under very conservative assumptions, complies with the criterion.

**Noise from Children Indoors**

This aspect of noise emission was in 2005, Response to Issue 2 – Children Playing Indoors: In our experience, there is usually little impact to receivers from the noise breakout of children playing indoors. As can be seen by the internal layout, a deliberate attempt has been made to provide a buffer to the resident at the rear of the proposed Centre. All rooms that potentially involve activities with children are placed in rooms fronting Old South Head Road or Billong Avenue. Only a window faces the residence at 3 Billong Avenue. This window is small, approximately 0.25m² in size and located 1m away from the boundary fence.
In order to assess the potential impact from internal activities, a reverberant sound pressure level of 75dBA has been assumed, based on experience. This level is likely to be a result of singing / dance time; is dominated by music and will only occur on occasion as part of a structured program.

The resultant noise at the boundary fence has been calculated by WM considering:

- Reverberant to free field loss
- Radiation of the surface area of the window
- Distance loss from window to boundary fence

In a windows fully open scenario, the calculated noise level will be in the region of 58dBA. This level is less than the criterion for the residence in the rear (3 Billong Avenue). Please note we have not allowed for the benefit of the acoustically attenuated fence. The predicted levels are unchanged.

4. RECOMMENDATION

Council’s Environmental Health Officer has determined that the proposal is satisfactory.

A. General Conditions

A.1 Approved Plans and supporting documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with the plans and supporting documents listed below as submitted by the Applicant and to which is affixed a Council stamp “Approved DA Plans” unless modified by any following condition. Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
<th>Author/Drawn</th>
<th>Date(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project:05285</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: Warning to Accredited Certifiers – You should always insist on sighting the original Council stamped approved plans. You should not rely solely upon the plan reference numbers in this condition. Should the applicant not be able to provide you with the original copy Council will provide you with access to its files so you may review our original copy of the approved plan.

Note: These plans and supporting documentation may be subject to conditions imposed under section 80A(1)(g) of the Act modifying or amending the development (refer to conditions which must be satisfied prior to the issue of any Construction Certificate.)

Louie Salvatore  
Environmental Health Officer  
Date: 14 April 2016
Memorandum - Traffic

Date 21 April, 2016

File No. Development Applications: 710/2005/6

To Mr D Booth

CC

From Ms Q Liu

Address 5 BILLONG AVENUE VAUCLUSE 2030

I refer to the memo from the Planning Department dated 13 April 2016 requesting comments in relation to the above.

Traffic Engineering has reviewed:

1. Traffic Assessment by GTA Consultants dated 23 February 2016;

Proposal

Alterations to the hours of operation of the child care centre from 8:30am - 5:00pm to 7:00am - 6:00pm.

COMMENTS

It is understood that this S.96 does not seek for any increased staff or children numbers. Consequently, it is expected that there will be no additional parking demand or traffic generation associated with the proposed changes. The proposed change is to increase the operation hours of the child care centre from 8:30am – 5:00pm as approved to 7:00am-6:00pm.

It is agreed that parking demand and traffic generation distribution over a longer period of time will result in a flattening effect which will potentially improve the existing peak hour traffic and parking conditions in the surrounding network. In conclusion, Council’s Traffic section has no objection to the proposed modification.
DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No. D8
FILE No. DA133/2016/1
ADDRESS 1/75 Birriga Road BELLEVUE HILL
SITE AREA 311m²
ZONING R3 Medium Density Residential
PROPOSAL Alterations and additions
TYPE OF CONSENT Local development
COST OF WORKS $95,000.00
DATE LODGED 12 April 2016
APPLICANT Mr B J Teudt & Ms L Dotchin
OWNER Ms L Dotchin & Mr B J Teudt
AUTHOR Mr Dylan Sargent
TEAM LEADER Mr David Waghorn
SUBMISSIONS None
RECOMMENDATION Approval

SUMMARY

1. LOCALITY PLAN

(Map showing subject site and objectors with north indicated)
2. **LEVEL OF DELEGATION**

<table>
<thead>
<tr>
<th>Level of Delegation</th>
<th>Recommendation of Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>The application is referred to the Development Control Committee as it involves a departure of more than 10% with the statutory FSR planning control.</td>
<td>Approval, subject to <strong>Condition C.1</strong></td>
</tr>
</tbody>
</table>

**Note:** The FSR of the existing building exceeds the statutory limit by more than 10%. The proposal seeks to increase the FSR by 20.5m$^2$ and will not extend beyond the footprint of the existing building.

3. **PROPOSAL**

The proposal involves the following works:

- Excavation to the sub-floor storage area at lower ground level to create additional habitable areas
- Enclosure of a section of the partially covered patio area to the north of the lower ground level
- Internal alterations to the existing lower ground level to create an additional bedroom and bathroom
- Installation of windows to the north-western façade and new external walls

4. **ISSUES**

4.1. **Exceptions to Development Standards in Woollahra Local Environmental Plan 2014**

<table>
<thead>
<tr>
<th>Clause</th>
<th>Development Standard</th>
<th>Departure from Control</th>
<th>Conclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part 4.4</td>
<td>Floor Space Ratio</td>
<td>101m$^2$ or 36% departure from the 281m$^2$ control</td>
<td>Satisfactory</td>
</tr>
</tbody>
</table>

**Note:** The FSR of the existing building exceeds the statutory limit by 80.5m$^2$. The proposal seeks to increase the FSR by 20.5m$^2$ and will not extend beyond the footprint of the existing building.

4.2. **Primary Issues**

<table>
<thead>
<tr>
<th>Issue</th>
<th>Conclusion</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Floor space ratio</td>
<td>The proposal exceeds the floor space ratio standard established for the subject site in Clause 4.4 of the Woollahra LEP 2014 but satisfies the relevant objectives of the LEP and DCP.</td>
<td>12.4, 12.5</td>
</tr>
<tr>
<td></td>
<td>A full assessment of the FSR of the proposal is provided in Sections 12.4 and 12.5 of this report.</td>
<td></td>
</tr>
</tbody>
</table>

4.3. **Summary of Submissions**

No submissions were received regarding the proposal.

**PROPERTY DETAILS AND REFERRALS**

5. **SITE AND LOCALITY**

**Physical features**

The subject site is located towards the eastern end of Birriga Road and has an area of 310m$^2$. The site is rectangular and has a frontage to Birriga Road of approximately 11.7m and a depth of approximately 25m.
Topography
The site falls approximately 4.5m from the Birriga Road frontage to the rear of the site.

Existing buildings and structures
The site contains a three storey Residential Flat Building comprising four units.

Surrounding Environment
The surrounding area is predominantly residential and contains a mix of Residential Flat Buildings and dwelling houses.

6. RELEVANT PROPERTY HISTORY

Current use
The site currently contains a three storey Residential Flat Building containing four units.

Relevant Application History
DA484/2004/1 – This application involved alterations and additions to 1/ 75 Birriga Road, Bellevue Hill, including a minor increase in the total FSR of approximately 9m².

This application was approved under delegated authority.

Relevant Compliance History
None

Pre-DA
Not applicable

Requests for Additional Information and Replacement Applications
A Stop the Clock letter was sent to the applicant on 13 April requesting the following additional information:

1. A BASIX Certificate
2. A request under Clause 4.6 of the WLEP 2014 to justify the non-compliance of the proposal with the Floor Space Ratio development standard in Clause 4.4 of the WLEP 2014.

The applicant provided the additional information on 24 April 2016.

Land and Environment Court Appeal(s)
Not applicable
7. REFERRALS

<table>
<thead>
<tr>
<th>Referral</th>
<th>Summary of Referral Response</th>
<th>Annexure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fire Safety</td>
<td>Acceptable, subject to conditions recommended in Annexure 2</td>
<td>2</td>
</tr>
</tbody>
</table>

ENVIRONMENTAL ASSESSMENT UNDER SECTION 79C

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979 include the following:

1. The provisions of any environmental planning instrument
2. The provisions of any proposed instrument that is/has been the subject of public consultation
3. The provisions of any development control plan
4. Any planning agreement that has been entered into
5. Any draft planning agreement that a developer has offered to enter into
6. The regulations
7. Any coastal zone management plan
8. The likely impacts of that development:
   i) Environmental impacts on the natural and built environments
   ii) Social and economic impacts
9. The suitability of the site
10. Any submissions
11. The public interest

8. ADVERTISING AND NOTIFICATION

8.1. Submissions

The application was advertised and notified from 20 April 2016 to 6 May 2016 in accordance with Chapters A2.2.1, A2.3.1 and A2.8 of the Woollahra DCP 2015. No submissions were received regarding the proposal.

8.2. Statutory Declaration

The applicant has completed the statutory declaration dated 6 May 2016 declaring that the site notice for DA133/2016/1 was erected and maintained during the notification period in accordance with Chapter A2.3.5 of the Woollahra DCP 2015.

9. STATE ENVIRONMENTAL PLANNING POLICY 65: DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT

The existing Residential Flat Building at the site is three storeys and contains four units but the proposal does not constitute substantial redevelopment or refurbishment of the existing building.

SEPP 65 therefore does not apply to the proposal.
10. STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

SEPP (Building Sustainability Index: BASIX) 2004 applies to the proposed development. It relates to commitments within the proposed development in relation to thermal comfort, water conservation and energy efficiency sustainability measures.

The development application was accompanied by BASIX Certificate A247351 demonstrating compliance with the SEPP. These requirements are imposed in Conditions C.3, H.1 and I.1.

11. SYDNEY REGIONAL ENVIRONMENTAL PLAN (SYDNEY HARBOUR CATCHMENT) 2005

The subject site is within the area to which the SREP applies.

In relation to Part 2 - Planning Principles and Part 3 - Division 2: Matters for Consideration, the proposed works have no detrimental impact on the watercourse, wetlands, significant vegetation or rock shelves along the foreshore. The site is far removed from the foreshore and forms part of the urban landscape. Accordingly it does not result in any adverse visual impact to or from the harbour.

The proposal satisfies the relevant criteria prescribed by the SREP.

12. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

12.1. Part 1.2: Aims of Plan

The proposal is consistent with the aims in Part 1.2(2) of the Woollahra LEP 2014.

12.2. Land Use Table

The proposal is defined as alterations and additions to a Residential Flat Building. The proposal is permissible in the R3 Medium Density Residential zone and is consistent with the objectives for development in the zone.

12.3. Part 4.3: Height of Buildings

Part 4.3 limits development to a maximum height of 13.5m.

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<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum Building Height</td>
<td>Unknown</td>
<td>2.5m</td>
<td>13.5m</td>
<td>YES</td>
</tr>
</tbody>
</table>

The proposal complies with the maximum building height prescribed by Part 4.3 of Woollahra LEP 2014.

12.4. Part 4.4: Floor Space Ratio

Clause 4.4 of the Woollahra LEP 2014 limits development at the subject site to a maximum floor space ratio of 0.9:1 for a residential flat building.
The proposal does not comply with Part 4.4 of Woollahra LEP 2014, but satisfies the relevant objectives of the FSR standard as detailed and assessed in Section 12.5 of this report.

12.5. Part 4.6: Exceptions to Development Standards

12.5.1 Departure

The proposal involves a non-compliance with the floor space ratio statutory control under Part 4.4 of the Woollahra LEP 2014.

12.5.2 Purpose

Part 4.6 allows a contravention of a development standard with the objectives being to allow an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

12.5.3 Written Request

Part 4.6(3) stipulates that a written request is required from the applicant that justifies the contravention of the development standard by demonstrating that compliance with is unreasonable or unnecessary and there are sufficient environmental planning grounds to justify the contravention.

The applicant has provided the following written request in relation to the departure:

- Compliance with this standard is unfair and unreasonable as the existing building FSR does not and never has complied with this standard and therefore there is no allowance to make any changes or modifications to the existing building without complying with the standard.
- The previous DA approval in September 2004 was based on a similar proposal and DA Consent was granted and FSR standard not enforced or applied in that proposal. Please note this previous DA although approved by Council was not proceeded with by the applicant for personal reasons.
- In addition, the proposed development to unit 1 does not add to the bulk and scale of the existing building.
- The proposed development is contained within the existing building footprint and only using areas that are currently void spaces i.e. sub floor area and under croft area.
- The proposed development is located on the lower ground floor and does not impact on privacy of adjoining buildings.
- The proposed development does not have any impact on overshadowing or visual impact on adjoining properties.
- The proposed development has no impact on the streetscape or character of the building.
12.5.4 Assessment

Part 4.6(4) requires Council to be satisfied that the written request has adequately addressed the relevant matters, the proposed development will be in the public interest because it is consistent with the relevant objectives of the particular standard and zone. Concurrence with the Director General is outlined as follows:

The Department issued Planning Circular No.PS08-003 which notified Councils of arrangements “…where the Director General’s concurrence may be assumed for exceptions to development standards under environmental planning instruments which adopt clause 4.6 …of the Standard Instrument…” Clause 64 of the EPA Regulations provides that Council may assume the Director-General’s [Secretary’s] concurrence for exceptions to development standards, thus satisfying the terms of this clause.

The applicant’s written request has adequately addressed the relevant matters.

The objectives of Part 4.4 for development in the R3 Medium Density Residential zone are:

i) To ensure the bulk and scale of new development is compatible with the desired future character of the area

All proposed works will be contained within the footprint of the existing external walls of the Residential Flat Building at 75 Birriga Road. The works will not be readily visible from the public domain or adjoining dwellings and will not materially increase the bulk or scale of the existing building.

The proposal is consistent with the desired future character objectives of the Bellevue Hill South residential precinct, described in Part B1.7.2 of the Woollahra DCP 2015.

The proposal is therefore compatible with the desired future character of the area.

ii) To minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain

Subject to the privacy screening to the new bedroom and bathroom windows required by **Condition C.1**, the proposal will not result in adverse environmental impacts to adjoining properties or the public domain.

iii) To ensure that development allows adequate provision on site for deep soil planting and areas of private open space

The proposal complies with the private open space controls in Part B3.7 of the Woollahra DCP 2015 and will not alter any existing deep soil landscaped areas of the site.

The proposal satisfies the relevant objectives of Clause 4.4 of the Woollahra LEP 2014.

The development is also consistent with the objectives applying to the R3 Medium Density Residential zone as follows:

- To provide for the housing needs of the community within a medium density residential environment
Response: The proposal is for alterations and additions to a dwelling within an existing Residential Flat Building. The proposal is consistent with and reflects the housing needs of the community in the Bellevue Hill South residential precinct.

- To provide a variety of housing types within a medium density residential environment

Response: The proposal is for minor alterations and additions to an existing Residential Flat Building. The proposed additions will improve the liveability of the existing unit and will contribute to the provision of a variety of housing types within the medium density residential area.

- To enable other land uses that provide facilities or services to meet the day to day needs of residents

Response: Although the proposal does not seek to provide other services or facilities to meet the day to day needs of residents, it will not prejudice their provision at other suitable locations within the R3 Medium Density Residential zone.

- To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood

Response: The proposal is generally consistent with the desired future character of the Bellevue Hill South Residential precinct, as outlined in Section 13.1 of this report.

12.5.5 Conclusion

The proposal seeks to make minor additions to one unit of a non-compliant Residential Flat Building.

The proposal will not materially increase the bulk or scale of the existing building as all proposed works will be contained within the footprint of the existing external walls.

The proposal is in the public interest as it is consistent with the relevant objectives of the floor space ratio development standard and the objectives of the R3 Medium Density Residential zone.

Departure from the control is supported in this instance.

12.6. Part 5.9: Preservation of Trees or Vegetation

Part 5.9(1) seeks to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation where there are works to any tree or other vegetation.

The proposal satisfies the requirements of Part 5.9 of the Woollahra LEP 2014.

12.7. Part 5.10: Heritage Conservation

The subject site is not identified as a heritage item and is not located within a heritage conservation area.

The proposed works are at the rear of the site and will not be readily visible from the public domain. The proposal therefore will not impact on the nearby heritage items at 81 and 81A Birriga Road.
The proposal satisfies the relevant criteria prescribed by Clause 5.10 of the Woollahra DCP 2014.

12.8. Part 6.1: Acid Sulfate Soils

The subject site is within a Class 5 area as specified in the Acid Sulfate Soils Map. The subject works are not likely to lower the water table below 1.0m AHD on any land within 500m of a Class 1, 2 and 3 land classifications. Accordingly, preliminary assessment is not required and there is unlikely to be any acid sulfate affectation. It is therefore acceptable with regard to Part 6.1.

12.9. Part 6.2: Earthworks

Part 6.2(1) requires Council to ensure that any earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The proposal involves excavation in order to convert the sub-floor storage area into part of an additional bedroom. The depth of excavation is minor and will not have an adverse impact on the amenity or stability of adjoining properties.

The proposal satisfies the requirements of Part 6.2 of the Woollahra LEP 2014.

13. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015


The proposal satisfies the precinct objectives outlined in Part B1.1.3 of the Woollahra DCP 2015.

The proposal meets the streetscape character and key elements of the precinct and desired future character objectives of the Bellevue Hill South precinct, described in Part B1.7.2 of the Woollahra DCP 2015.

13.2. Chapter B3: General Development Controls

Part B3.2: Building Envelope

<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front Setback</td>
<td>6.4m</td>
<td>No change</td>
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<td>YES</td>
</tr>
<tr>
<td>Rear Setback</td>
<td>3.45m</td>
<td>4.9m</td>
<td>3.48m-4.0m</td>
<td>YES</td>
</tr>
<tr>
<td>Side Boundary Setbacks (north-west)</td>
<td>0.8m</td>
<td>No change</td>
<td>1.2m</td>
<td>NO*</td>
</tr>
<tr>
<td>Side Boundary Setbacks (south-east)</td>
<td>1.0m</td>
<td>No change</td>
<td>1.2m</td>
<td>NO*</td>
</tr>
<tr>
<td>Maximum Wall Height</td>
<td>Unknown</td>
<td>2.7m (new work)</td>
<td>13.5m</td>
<td>YES</td>
</tr>
</tbody>
</table>

* existing non-compliance not altered by the proposal

Part B3.2.3 – Side Setbacks

C1 requires that the side setbacks do not exceed 10% of the lot width, being 1.2m in this instance.
The proposal will not alter the side setbacks of the proposal but will introduce a new window along the north-western side elevation of the lower ground level.

Given that the new window satisfies the relevant privacy controls in Part B3.5.2, the proposal is considered to satisfy Objectives O1 to O6 regarding side setbacks.

Conclusion

The proposal satisfies the relevant building envelope controls and objectives in Part B3.2 of the Woollahra DCP 2015.

Part B3.3: Floorplates

Not Applicable – The proposal is for alterations and additions to a Residential Flat Building and consequently is not subject to the floorplate controls in Part B3.3 of the Woollahra DCP 2015.

Part B3.4: Excavation

<table>
<thead>
<tr>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum Volume of Excavation</td>
<td>N/A</td>
<td>Approx 26m³</td>
<td>309m³</td>
</tr>
<tr>
<td>Excavation, Piling and Subsurface Wall Setback</td>
<td>N/A</td>
<td>0.8m</td>
<td>1.2m</td>
</tr>
</tbody>
</table>

C6 requires a minimum setback of excavation of 1.2m.

The proposed excavation will not extend beyond the external façade of the existing building. The volume of excavation proposed is minor and any potential adverse impacts can be adequately mitigated by the following conditions:

- **Condition E.9** which states that the applicant must not do anything on or in relation to the site that removes support provided to any other adjoining sites or buildings.
- **Condition E.15** requiring the applicant to protect and support the adjoining premises from damage from excavation, including underpinning where necessary.

C7 does not permit excavation under common party walls or their footings and freestanding boundary walls or their footings.

The proposed area of excavation is separated from the common party wall of the dwelling by an existing staircase, and therefore complies with C7. **Condition D.2** nevertheless requires a dilapidation report to be prepared for all adjoining dwellings within the existing Residential Flat building, in accordance with the recommendations of the SEE provided by the applicant.

Conclusion

The proposal satisfies the relevant controls and objectives of Part B3.4 of the Woollahra DCP 2015.
## Part B3.5: Built Form and Context

<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Siting of Development</td>
<td>Stepped down with slope of the site</td>
<td>No change</td>
<td>Stepped Down with the Slope</td>
<td>YES</td>
</tr>
<tr>
<td>Solar Access to Open Space of Adjacent Properties</td>
<td>&gt;50% of private open space between 9am and 3pm on 21 June</td>
<td>No change</td>
<td>50% for 2 hours on 21 June</td>
<td>YES</td>
</tr>
<tr>
<td>Solar Access to Nth Facing Living Areas of Adjacent Properties</td>
<td>&gt;3 hours between 9am and 3pm on 21 June</td>
<td>No change</td>
<td>3 hours on 21 June</td>
<td>YES</td>
</tr>
<tr>
<td>Bedroom Walls Adjoining Adjacent Dwellings</td>
<td>Not adjoining living room or garage of adjoining dwellings</td>
<td>Not adjoining living room or garage of adjoining dwellings</td>
<td>Not Adjoining Living Room/Garage</td>
<td>YES</td>
</tr>
<tr>
<td>Setback of Bedroom Windows from Streets/Parking of Other Dwellings</td>
<td>&gt;3.0m</td>
<td>&gt;3.0m</td>
<td>3.0m</td>
<td>YES</td>
</tr>
<tr>
<td>Distance of Habitable Room Windows to Adjacent Dwellings</td>
<td>Approx 4.3m</td>
<td>4.5m</td>
<td>9.0m</td>
<td>NO</td>
</tr>
</tbody>
</table>

### Part B3.5.1: Streetscape Character

The proposal will not alter the front elevation of the building and therefore will have negligible impact of the presentation of the existing building to Birriga Road.

The proposal satisfies the relevant controls and objectives in Part B3.5.1 of the Woollahra DCP 2015.

### Part B3.5.2: Overshadowing

The proposal satisfies the relevant controls and objectives regarding overshadowing in Part B3.5.2 of the Woollahra DCP 2015.

### Part B3.5.3: Public and Private Views

The proposal will not extend beyond the footprint of the existing building and therefore will not impact on public or private views.

The proposal satisfies the relevant controls and objectives in Part B3.5.3 of the Woollahra DCP 2015.

### Part B3.5.4: Acoustic and Visual Privacy

C4 states that there should not be any sightlines from a habitable room window to a habitable room window in an adjoining property within 9.0m. This can be achieved via window location, layout and separation, screens or translucent glazing to 1.5m sill height.

The proposal will not result in any additional sight lines from a habitable room window to a habitable room window in an adjoining property due to the following:

- Proposed window W3 on the north-west elevation will be partially screened from the adjoining property by the existing boundary fence.
• Window W3 is horizontally and vertically offset from windows of adjoining dwelling at 77 Birriga Road. As the proposed window will be lower than the windows of the adjoining dwelling, opportunities for overlooking are minimal.

• Proposed windows W1 and W2, orientated towards the patio area shared with Unit 2, are required to have translucent glazing to minimise overlooking in accordance with **Condition C.1**.

C5 requires that windows to bathrooms and toilet areas have translucent glazing where these windows have direct view to, and from, habitable rooms and private open space on adjoining and adjacent properties.

Subject to **Condition C.1**, the new bathroom window at the lower ground floor will have fixed translucent glazing in accordance with C5.

**Conclusion**

The proposal is therefore satisfies the relevant controls and objectives with regard to the built form and context controls in Part B3.5 of the Woollahra DCP 2015.

**Part B3.6: On-Site Parking**

The proposal will not alter the existing car parking or vehicular access arrangements at the subject site. The proposal is therefore satisfies the relevant objectives and controls of Part B3.6 of the Woollahra DCP 2015.

**Part B3.7: External Areas**

<table>
<thead>
<tr>
<th>Control Description</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deep Soil Landscaping – Front Setback</td>
<td>&lt;10% (&lt;5m²)</td>
<td>No change</td>
<td>40% (23.2m²)</td>
<td>NO*</td>
</tr>
<tr>
<td>Deep Soil Landscaping – Front Setback (Consolidated Area)</td>
<td>&lt;5m²</td>
<td>No change</td>
<td>20m²</td>
<td>NO*</td>
</tr>
<tr>
<td>Deep Soil Landscaping – Rear Setback</td>
<td>38% (16m²)</td>
<td>No change</td>
<td>50% of Rear Setback (21m²)</td>
<td>NO*</td>
</tr>
<tr>
<td>Minimum Area of Private Open Space at Ground Level</td>
<td>40m²</td>
<td>32m²</td>
<td>Minimum 4.94m dimension</td>
<td>YES</td>
</tr>
<tr>
<td>Private Open Space at Ground Level – Maximum Gradient</td>
<td>Approx 1:100</td>
<td>No change</td>
<td>1:10</td>
<td>YES</td>
</tr>
<tr>
<td>Location of Private Open Space</td>
<td>To the north</td>
<td>To the north</td>
<td>To the North</td>
<td>YES</td>
</tr>
<tr>
<td>Existing Trees</td>
<td>Within front and rear setback</td>
<td>Retained</td>
<td>Incorporated Into Landscaping</td>
<td>YES</td>
</tr>
</tbody>
</table>

**Part 3.7.1: Landscaped Areas and Private Open Space**

The existing Residential Flat Building does not comply with the requirements of Controls C1 to C4, regarding the extent of deep soil landscaping within the front and rear setbacks and outside the buildable area.

The proposal will not alter the existing deep soil landscape areas at the site, as all proposed works are contained within the footprint of the existing building.
The proposal is therefore considered to be acceptable with regard to Controls C1 to C4.

**Part 3.7.2: Fences**

The proposal will not alter the existing front fence.

**Part 3.7.3: Site Facilities**

The proposal will not alter the existing site facilities.

**Part 3.7.4: Ancillary Development – Swimming Pools, Tennis Courts and Outbuildings**

The proposal does not involve any new, or any alterations to existing ancillary buildings and structures.

**Conclusion**

The proposal satisfies the relevant objectives and controls of Part B3.7 of the Woollahra DCP 2015.

**Part B3.8: Additional Controls for Development Other Than Dwelling Houses**

<table>
<thead>
<tr>
<th>Control</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Lot Width</td>
<td>12.3m</td>
<td>No change</td>
<td>21m</td>
<td>NO*</td>
</tr>
<tr>
<td>RFB Ventilation – Kitchen in RFB</td>
<td>0m</td>
<td>No change</td>
<td>Maximum 8.0m from a Window</td>
<td>YES</td>
</tr>
<tr>
<td>Lightwells Used for Light and Ventilation</td>
<td>N/A</td>
<td>No lightwells</td>
<td>Not Used as Main Source</td>
<td>YES</td>
</tr>
</tbody>
</table>

* existing non-compliance not altered by the proposal

**Residential Flat Buildings and Multi Dwelling Housing**

C1 requires window and room layout to ensure good natural ventilation.

The proposal will increase the number of windows and openings to habitable rooms, and therefore will improve opportunities for natural cross-ventilation.

C5 requires habitable windows to be orientated to the north.

Habitable windows and openings are orientated to the north where practicable.

C7 requires that each dwelling has access to its own private open space.

The dwelling has direct access to private open space at lower ground and ground floor levels.

C8 states that private open space must not be overlooked by adjoining dwellings.

The proposal will not alter the location of the existing private open space and will not increase overlooking to private open space areas of adjoining Unit 3.
Conclusion

The proposal satisfies the relevant objectives and controls relating to Residential Flat Buildings in Part B3.8 of the Woollahra DCP 2015.

13.3. Chapter E1: Parking and Access

<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Bedroom</td>
<td>4</td>
<td>3</td>
<td>3 x 1.5 spaces = 4.5</td>
<td>NO</td>
</tr>
<tr>
<td>3+ Bedroom</td>
<td>0</td>
<td>1</td>
<td>1 x 2 spaces = 2</td>
<td></td>
</tr>
<tr>
<td>Visitor</td>
<td>0</td>
<td>0</td>
<td>4 x 0.25 spaces = 1</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>4</strong></td>
<td><strong>4</strong></td>
<td><strong>7.5 Spaces</strong></td>
<td></td>
</tr>
</tbody>
</table>

Parking for residential uses is calculated using the generation rates specified in E1.4.2.

In this instance, the development has a maximum parking generation rate of 7.5 spaces and provides 4 spaces.

Despite the shortfall in on-site parking from the maximum parking generation rates, the proposal is considered to satisfy the intent of Part E1.4.2 of the Woollahra DCP due to the following:

- The current maximum parking generation rate is 7 spaces. The proposal will increase the maximum car parking generation rate by half a space to 7.5 spaces.
- Each dwelling within the Residential Flat Building is allocated one off-street parking space.
- The proposal will increase on-street parking demand by a maximum of half a space and is therefore unlikely to result in significant additional demand for on-street parking. The locality has ample on-street parking availability, including kerbside parking immediately in front and to the east and west of the subject site and perpendicular parking bays on either side of the northern section of Birriga Road.
- The proposal will not alter the existing car parking areas in front of the Residential Flat Building. Any increase to on-site car parking is likely to require substantial modifications to the existing building or site excavation.
- Given the minor scale of the proposal and limited impact on on-street parking demand, the proposal is considered acceptable with regard to the relevant criteria for the provision of on-site parking in Part E1.2.2 of the Woollahra DCP 2015.

The proposal will not alter vehicular access arrangements or any other relevant requirements in Part E1.8 of the Woollahra DCP 2015.

The proposal is therefore acceptable with regard to the requirements of Chapter E1 of the Woollahra DCP 2015.

13.4. Chapter E2: Stormwater and Flood Risk Management

The proposal will not increase the impervious area of the existing building and surrounds and therefore the proposed works may be connected to the existing stormwater drainage system.

The proposal therefore satisfies the relevant criteria in Chapter E2 of the Woollahra DCP 2015.
13.5. Chapter E5: Waste Management

The applicant has provided a SWMMP with the development application and it was found to be acceptable.

Part E5.2: Demolition and Construction Phase

The proposal satisfies the requirements of Part E5.2 of the Woollahra DCP 2015.

Part E5.3: On-Site Waste and Recycling Controls for all Development

<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Garbage and Recycling Areas</td>
<td>Separated</td>
<td>No change</td>
<td>Separated</td>
<td>YES</td>
</tr>
<tr>
<td>Location of Garbage and Recycling Areas</td>
<td>Behind building line</td>
<td>No change</td>
<td>Behind Building Line or Non-Habitable Areas</td>
<td>YES</td>
</tr>
</tbody>
</table>

The proposal is acceptable with regard to Part E5.3 of the Woollahra DCP 2015.

14. SECTION 94 CONTRIBUTION PLANS

14.1. Section 94A Contributions Plan 2011

The proposal is not subject to contributions under the Section 94A Contributions Plan 2011 as the cost of the proposed works is less than $100,000.

15. APPLICABLE ACTS/REGULATIONS

15.1. Environmental Planning and Assessment Regulation 2000

Clause 92: Demolition of Structures

Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires Council to consider Australian Standard AS 2601-2004: The demolition of structures. The proposal is considered to be acceptable, subject to Condition E.2.

Clause 94: Building Upgrades for Fire Safety

Clause 94 of the Environmental Planning and Assessment Regulation 2000 requires an assessment of the development application against the Building Code of Australia (BCA), with particular respect to the fire provisions within the development.

Council’s Fire Safety Officer has undertaken an assessment of the application, as detailed in Annexure 2. Building upgrade is required in Condition C.7 and an annual fire safety schedule is required to be submitted as detailed in Condition I.2.

16. THE LIKELY IMPACTS OF THE PROPOSAL

All likely impacts have been addressed elsewhere in the report, or are considered to be satisfactory and not warrant further consideration.
17. **THE SUITABILITY OF THE SITE**

The site is suitable for the proposed development for the following reasons:

18. **THE PUBLIC INTEREST**

The proposal is considered to be in the public interest.

19. **CONCLUSION**

The proposal is acceptable with regard to the relevant considerations under Section 79C.

20. **DISCLOSURE STATEMENTS**

There have been no disclosure statements regarding political donations or gifts made to any Councillor or to any council employee associated with this development application by the applicant or any person who made a submission.

**RECOMMENDATION: PURSUANT TO SECTION 80(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

THAT Council, as the consent authority, is of the opinion that the written request from the applicant under Part 4.6 of the Woollahra Local Environmental Plan 2014 regarding the floor space ratio development standard under Clause 4.4 of Woollahra LEP 2014 has adequately addressed the relevant matters and the proposed development will be in the public interest because it is consistent with the relevant objectives of the particular standard.

AND That Council, as the consent authority, grant development consent to Development Application No. 133/2016/1 for alterations and additions on land at 1/75 Birriga Road Bellevue Hill, subject to the following conditions:

**A. General Conditions**

**A.1 Conditions**

Consent is granted subject to the following conditions imposed pursuant to section 80 of the Environmental Planning & Assessment Act 1979 (“the Act”) and the provisions of the Environmental Planning and Assessment Regulation 2000 (“the Regulation”) such conditions being reasonable and relevant to the development as assessed pursuant to section 79C of the Act.

Standard Condition: A1 (Autotext AA1)

**A.2 Definitions**

Unless specified otherwise, words have the same meaning as defined by the Act, the Regulation and the Interpretation Act 1987 as in force at the date of consent.

*Applicant* means the applicant for this Consent.

*Approved Plans* mean the plans endorsed by Council referenced by this consent as amended by conditions of this consent.
AS or AS/NZS means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.

BCA means the Building Code of Australia as published by the Australian Building Codes Board as in force at the date of issue of any Construction Certificate.

Council means Woollahra Municipal Council

Court means the Land and Environment Court

Local native plants means species of native plant endemic to Sydney’s eastern suburbs (see the brochure titled “Local Native Plants for Sydney’s Eastern Suburbs published by the Southern Sydney Regional Organisation of Councils).

Stormwater Drainage System means all works, facilities and documentation relating to:

- The collection of stormwater,
- The retention of stormwater,
- The reuse of stormwater,
- The detention of stormwater,
- The controlled release of stormwater; and
- Connections to easements and public stormwater systems.

Owner means the owner of the site and successors in title to the site.

Owner Builder has the same meaning as in the Home Building Act 1989.

PCA means the Principal Certifying Authority under the Act.

Principal Contractor has the same meaning as in the Act or where a principal contractor has not been appointed by the owner of the land being developed Principal Contractor means the owner of the land being developed.

Professional Engineer has the same meaning as in the BCA.

Public Place has the same meaning as in the Local Government Act 1993.

Road has the same meaning as in the Roads Act 1993.

SEE means the final version of the Statement of Environmental Effects lodged by the Applicant.

Site means the land being developed subject to this consent.

WLEP 1995 means Woollahra Local Environmental Plan 1995

WLEP 2014 means Woollahra Local Environmental Plan 2014

Work for the purposes of this consent means:

- the use of land in connection with development,
- the subdivision of land,
Item No. D8

- the erection of a building,
- the carrying out of any work,
- the use of any site crane, machine, article, material, or thing,
- the storage of waste, materials, site crane, machine, article, material, or thing,
- the demolition of a building,
- the piling, piering, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- the delivery to or removal from the site of any machine, article, material, or thing, or
- the occupation of the site by any person unless authorised by an occupation certificate.

Note: Interpretation of Conditions - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.

Standard Condition: A2 (Autotext AA2)

A.3 Approved Plans and supporting documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with the plans and supporting documents listed below as submitted by the Applicant and to which is affixed a Council stamp “Approved DA Plans” unless modified by any following condition. Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
<th>Author/Drawn</th>
<th>Date(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A01, A02, A03, A04</td>
<td>Architectural Plans</td>
<td>NY Project Services Pty Ltd</td>
<td>07/04/16</td>
</tr>
<tr>
<td>A247351</td>
<td>BASIX Certificate</td>
<td>NSW Department of Planning and Infrastructure</td>
<td>20 April 2016</td>
</tr>
</tbody>
</table>

Note: Warning to Accredited Certifiers – You should always insist on sighting the original Council stamped approved plans. You should not rely solely upon the plan reference numbers in this condition. Should the applicant not be able to provide you with the original copy Council will provide you with access to its files so you may review our original copy of the approved plan.

Note: These plans and supporting documentation may be subject to conditions imposed under section 80A(1)(g) of the Act modifying or amending the development (refer to conditions which must be satisfied prior to the issue of any Construction Certificate.)

Standard Condition: A5 (Autotext AA5)

A.4 Ancillary Aspect of the Development (s80A(2) of the Act)

The owner must procure the repair, replacement or rebuilding of all road pavement, kerb, gutter, footway, footpaths adjoining the site or damaged as a result of work under this consent or as a consequence of work under this consent. Such work must be undertaken to Council's satisfaction in accordance with Council’s “Specification for Roadworks, Drainage and Miscellaneous Works” dated February 2012 unless expressly provided otherwise by these conditions at the owner’s expense.

Note: This condition does not affect the principal contractor's or any sub-contractors obligations to protect and preserve public infrastructure from damage or affect their liability for any damage that occurs.

Standard Condition: A8 (Autotext AA8)

B. Conditions which must be satisfied prior to the demolition of any building or construction
B.1 Construction Certificate required prior to any demolition

Where demolition is associated with an altered portion of, or an extension to an existing building the demolition of any part of a building is "commencement of erection of building" pursuant to section 81A(2) of the Act. In such circumstance all conditions in Part C and Part D of this consent must be satisfied prior to any demolition work. This includes, but is not limited to, the issue of a Construction Certificate, appointment of a PCA and Notice of Commencement under the Act.


B.2 Public Road Assets prior to any work/demolition

To clarify the condition of the existing public infrastructure prior to the commencement of any development (including prior to any demolition), the Applicant or Owner must submit to Council a full record of the condition of the Public Road infrastructure adjacent to the development site.

The report must be submitted to Council prior to the commencement of any work and include photographs showing current condition and any existing damage fronting and adjoining the site to the:

- road pavement,
- kerb and gutter,
- footway including footpath pavement and driveways,
- retaining walls within the footway or road, and
- drainage structures/pits.

The reports are to be supplied in both paper copy and electronic format in Word. Photographs are to be in colour, digital and date stamped.

If the required report is not submitted then Council will assume there was no damage to any infrastructure in the immediate vicinity of the site prior to the commencement of any work under this consent.

Note: If the Applicant or Owner fails to submit the Asset condition report required by this condition and damage is occasioned to public assets adjoining the site, Council will deduct from security any costs associated with remedying, repairing or replacing damaged public infrastructure. Nothing in this condition prevents Council making any claim against security held for this purpose.

Standard Condition: B7

C. Conditions which must be satisfied prior to the issue of any construction certificate

C.1 Modification of details of the development (Section 80A(1)(g) of the Act)

The approved plans and the Construction Certificate plans and specification, required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation, must detail the following amendments:

a) The windows to the proposed bathroom and Bedroom 3 at lower ground level must have translucent glazing or fixed privacy screening.
Note: The effect of this condition is that it requires design changes and/or further information to be provided with the Construction Certificate drawings and specifications to address specific issues identified during assessment under section 79C of the Act.

Note: Clause 146 of the Regulation prohibits the issue of any Construction Certificate subject to this condition unless the Certifying Authority is satisfied that the condition has been complied with.

Note: Clause 145 of the Regulation prohibits the issue of any Construction Certificate that is inconsistent with this consent.

C.2 Payment of Long Service Levy, Security, Contributions 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, subdivision certificate or occupation certificate, as will apply.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Indexed</th>
<th>Council Fee Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Long Service Levy</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><a href="http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm">http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm</a></td>
<td>Contact LSL Corporation or use online calculator</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>SECURITY under section 80A(6) of the Environmental Planning and Assessment Act 1979</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Property Damage Security Deposit -making good any damage caused to any property of the Council</td>
<td>$4,481.00</td>
<td>No</td>
<td>T115</td>
</tr>
<tr>
<td>INSPECTION FEES under Section 608 of the Local Government Act 1993</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Security Administration Fee</td>
<td>$180.00</td>
<td>No</td>
<td>T16</td>
</tr>
<tr>
<td>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</td>
<td>$4,661.00 plus any relevant indexed amounts and long service levy</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Building and Construction Industry Long Service Payment

The Long Service Levy under Section 34 of the Building and Construction Industry Long Service Payment Act, 1986, must be paid and proof of payment provided to the Certifying Authority prior to the issue of any Construction Certificate. The Levy can be paid directly to the Long Services Payments Corporation or to Council. Further information can be obtained from the Long Service Payments Corporation’s website http://www.lspc.nsw.gov.au/ or the Long Service Payments Corporation on 13 14 41.

How must the payments be made?

Payments must be made by:

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

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

- The guarantee is by an Australian bank for the amount of the total outstanding contribution;
- 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 [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable];
- 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;
- The bank guarantee is lodged with the Council prior to the issue of the construction certificate; and
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.

C.3 BASIX commitments

The applicant must submit to the Certifying Authority BASIX Certificate No A247351 with 
any application for a Construction Certificate.

Note: Where there is any proposed change in the BASIX commitments the applicant must submit of a new 
BASIX Certificate to the Certifying Authority and Council. If any proposed change in the BASIX commitments are inconsistent with development consent (See: Clauses 145 and 146 of the Regulation) the applicant will be required to submit an amended development application to Council pursuant to section 96 of the Act.

All commitments in the BASIX Certificate must be shown on the Construction Certificate 
plans and specifications prior to the issue of any Construction Certificate.

Note: Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying 
authority must not issue a construction certificate for building work unless it is satisfied of the following 
matters: (a1) that the plans and specifications for the building include such matters as each relevant 
BASIX certificate requires."
Standard Condition: C7

C.4 Structural Adequacy of Existing Supporting Structures

A certificate from a professional engineer (Structural Engineer), certifying the adequacy of 
the existing supporting structure to support the additional loads proposed to be imposed by the 
development, must be submitted with the Construction Certificate application.

Note: This condition is imposed to ensure that the existing structure is able to support the additional loads 
proposed.
Standard Condition: C35 (Autotext CC35)

C.5 Professional Engineering Details

The Construction Certificate plans and specifications, required by clause 139 of the 
Regulation, must include detailed professional engineering plans and/or specifications for all 
structural, electrical, hydraulic, hydro-geological, geotechnical, mechanical and civil work 
complying with this consent, approved plans, the statement of environmental effects and 
supporting documentation.

Detailed professional engineering plans and/or specifications must be submitted to the 
Certifying Authority with the application for any Construction Certificate.

Note: This does not affect the right of the developer to seek staged Construction Certificates.
Standard Condition: C36

C.6 Stormwater discharge to existing Stormwater Drainage System

The Construction Certificate plans and specifications required by clause 139 of the 
Regulation, must detail:

a) The location of the existing Stormwater Drainage System including all pipes, inspection 
openings, surface drains, pits and their discharge location,
b) The state of repair of the existing Stormwater Drainage System,
c) Any remedial works required to upgrade the existing Stormwater Drainage System to comply with the BCA,
d) Any remedial works required to upgrade the existing Stormwater Drainage System crossing the footpath and any new kerb outlets,
e) Any new Stormwater Drainage System complying with the BCA,
f) Interceptor drain(s) at the site boundary to prevent stormwater flows from the site crossing the footpath,
g) Any rainwater tank (See Note Below) required by BASIX commitments including their overflow connection to the Stormwater Drainage System, and
h) General compliance with the Council’s Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management

Where any new Stormwater Drainage System crosses the footpath area within any road, separate approval under section 138 of the Roads Act 1993 must be obtained from Council for those works prior to the issue of any Construction Certificate.

All Stormwater Drainage System work within any road or public place must comply with Woollahra Municipal Council’s Specification for Roadworks, Drainage and Miscellaneous Works dated February 2012.

Note: Clause F1.1 of Volume 1 and Part 3.1.2 of Volume 2 of the BCA provide that stormwater drainage complying with AS/NZS 3500.3 Plumbing and drainage - Part 3: Stormwater drainage is deemed-to-satisfy the BCA. Council’s specifications apply in relation to any works with any road or public place.

Note: The collection, storage and use of rainwater is to be in accordance with Standards Australia HB230-2008 “Rainwater Tank Design and Installation Handbook”.

Note: Stormwater Drainage Systems must not discharge to any Sewer System. It is illegal to connect stormwater pipes and drains to the sewerage system as this can overload the system and cause sewage overflows. See: http://www.sydneywater.com.au/Publications/Factsheets/SewerfixLookingAfterYourSewerPipes


Standard Condition: C49

C.7 Building upgrade (Clause 94 of the Regulation)

Council considers pursuant to clause 94 of the Regulation that it is appropriate to require the existing building to be brought into total or partial conformity with the BCA.

The Construction Certificate plans and specification required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation must detail building upgrade works required by this condition.

The Certifying Authority must be satisfied that such work, to be implemented as part of the development, will upgrade the building to bring it into compliance with the following provisions of the BCA as in force at the date of the Construction Certificate application:

a) That smoke alarms shall be installed throughout the building in accordance with the requirements of Specification E2.2a Clause 3 of the BCA.
b) That the sole occupancy 1 shall be separated in fire resisting construction from other sole occupancy units adjoining or above, in accordance with the requirements of Specification C1.1 of the BCA.
c) Window openings on the external walls of the sole occupancy unit within three (3) metres of the boundary shall be protected in accordance with the requirements of Clause C3.4 of the BCA or an alternative solution shall be proposed by an accredited C10 fire engineer meeting performance requirement CP2 of the BCA.

Note: The Certifying Authority issuing the Construction Certificate has no power to remove the requirement to upgrade the existing building as required by this condition. Where this conditions specifies compliance with performance requirements of the BCA the Certifying Authority, subject to their level of accreditation, may be satisfied as to such matters. Where this condition specifies compliance with prescriptive (deemed-to-satisfy) provisions of the BCA these prescriptive requirements must be satisfied and cannot be varied unless this condition is reviewed under section 82A or amended under section 96 of the Act.

Note: This condition does not set aside the Certifying Authority’s responsibility to ensure compliance with clause 143 of the Regulation in relation to Fire Protection and Structural Adequacy.

Note: AS 4655 Guidelines for fire safety audits for buildings (or any succeeding AS) should form the basis of any fire upgrade report.

Standard Condition: C10

D. Conditions which must be satisfied prior to the commencement of any development work

D.1 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

For the purposes of section 80A (11) of the Act, the following conditions are prescribed in relation to a development consent for development that involves any building work:

a) that the work must be carried out in accordance with the requirements of the Building Code of Australia,
b) in the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

a) to the extent to which an exemption is in force under the Home Building Regulation 2004,
b) to the erection of a temporary building.

In this condition, a reference to the BCA is a reference to that code as in force on the date the application for the relevant construction certificate is made.

Note: This condition must be satisfied prior to commencement of any work in relation to the contract of insurance under the Home Building Act 1989. This condition also has effect during the carrying out of all building work with respect to compliance with the Building Code of Australia.

Note: All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.

Standard Condition: D1 (Autotext DD1)

D.2 Dilapidation Reports for existing buildings

Dilapidation surveys must be conducted and dilapidation reports prepared by a professional engineer (structural) of all buildings on land whose title boundary abuts the site and of such further buildings located within the likely “zone of influence” of any excavation, dewatering and/or construction induced vibration.
These properties must include (but are not limited to)

a) All units at 75 Birriga Road

The dilapidation reports must be completed and submitted to Council with the Notice of Commencement prior to the commencement of any development work.

Where excavation of the site will extend below the level of any immediately adjoining building the principal contractor or owner builder must give the adjoining building owner(s) a copy of the dilapidation report for their building(s) and a copy of the notice of commencement required by s81A(2) of the Act not less than two (2) days prior to the commencement of any work.

Note: The reasons for this condition are:
- To provide a record of the condition of buildings prior to development being carried out
- To encourage developers and its contractors to use construction techniques that will minimise the risk of damage to buildings on neighbouring land

Note: Also refer to the Dilapidation Report Advising for more information regarding this condition

Standard Condition: D4 (Autotext DD4)

D.3 Security Fencing, Hoarding and Overhead Protection

Security fencing must be provided around the perimeter of the development site, including any additional precautionary measures taken to prevent unauthorised entry to the site at all times during the demolition, excavation and construction period. Security fencing must be the equivalent 1.8m high chain wire as specified in AS 1725.

Where the development site adjoins a public thoroughfare, the common boundary between them must be fenced for its full length with a hoarding, unless the least horizontal distance between the common boundary and the nearest parts of the structure is greater than twice the height of the structure. The hoarding must be constructed of solid materials (chain wire or the like is not acceptable) to a height of not less than 1.8 m adjacent to the thoroughfare.

Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure and the facing facade protected by heavy-duty scaffolding, unless either:
a) The vertical height above footpath level of the structure being demolished is less than 4.0 m; or
b) The least horizontal distance between footpath and the nearest part of the structure is greater than half the height of the structure.

The overhead structure must consist of a horizontal platform of solid construction and vertical supports, and the platform must:

a) Extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary;
b) Have a clear height above the footpath of not less than 2.1 m;
c) Terminate 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than 0.5 m above the platform surface; and
d) Together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa.

The principal contractor or owner builder must pay all fees associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

The principal contractor or owner builder must ensure that Overhead Protective Structures are installed and maintained in accordance with WorkCover NSW Code of Practice - Overhead Protective Structures, gazetted 16 December 1994, as commenced 20 March 1995. This can be downloaded from: http://www.workcover.nsw.gov.au/formspublications/publications/Pages/WC00017_OverheadProtectiveStructuresCodeofPractice.aspx

Security fencing, hoarding and overhead protective structure must not obstruct access to utilities services including but not limited to man holes, pits, stop valves, fire hydrants or the like.

Note: The principal contractor or owner must allow not less than two (2) weeks from the date of making a hoarding application for determination. Any approval for a hoarding or overhead protection under the Roads Act 1993 will be subject to its own conditions and fees.

Standard Condition: D11 (Autotext DD11)

D.4 Site Signs

The Principal Contractor or owner builder must ensure that the sign/s required by clauses 98A and 227A of the Regulation is/are erected and maintained at all times.

Clause 98A of the Regulation provides:
Erection of signs

- For the purposes of section 80A (11) of the Act, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  a. showing the name, address and telephone number of the principal certifying authority for the work, and
  b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  c. stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State’s building laws.

Clause 227A of the Regulation provides:

Signs on development sites

If there is a person who is the PCA or the principal contractor for any building work, subdivision work or demolition work authorised to be carried out on a site by a development consent or complying development certificate:

- Each such person MUST ensure that a rigid and durable sign showing the person’s identifying particulars so that they can be read easily by anyone in any public road or other public place adjacent to the site is erected in a prominent position on the site before the commencement of work, and is maintained on the site at all times while this clause applies until the work has been carried out.

Note: Clause 227A imposes a penalty exceeding $1,000 if these requirements are not complied with.

Note: If Council is appointed as the PCA it will provide the sign to the principal contractor or owner builder who must ensure that the sign is erected and maintained as required by Clause 98A and Clause 227A of the Regulation.

Standard Condition: D12 (Autotext DD12)

D.5 Erosion and Sediment Controls – Installation

The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:

a) The Soil and Water Management Plan if required under this consent;

b) “Do it Right On Site, Soil and Water Management for the Construction Industry” published by the Southern Sydney Regional Organisation of Councils, 2001; and

c) “Managing Urban Stormwater - Soils and Construction” published by the NSW Department of Housing 4th Edition” ('The Blue Book').

Where there is any conflict The Blue Book takes precedence.

Note: The International Erosion Control Association – Australasia (http://www.austieca.com.au/) lists consultant experts who can assist in ensuring compliance with this condition. Where Soil and Water Management Plan is required for larger projects it is recommended that this be produced by a member of the International Erosion Control Association – Australasia.

Note: The “Do it Right On Site, Soil and Water Management for the Construction Industry” publications can be downloaded free of charge from www.woollahra.nsw.gov.au.
Note: A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the Protection of the Environment Operations Act 1997 without any further warning. It is a criminal offence to cause, permit or allow pollution.

Note: Section 257 of the Protection of the Environment Operations Act 1997 provides inter alia that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”

Warning: Irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of their occupation of the land being developed.

Standard Condition: D14 (Autotext DD14)

D.6 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)

The erection of the building in accordance with this development consent must not be commenced until:

a) A construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited Certifier, and

b) The person having the benefit of the development consent has:
   - Appointed a principal certifying authority for the building work, and
   - Notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and

c) The principal certifying authority has, no later than 2 days before the building work commences:
   - Notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
   - Notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and

d) The person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
   - Appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
   - Notified the principal certifying authority of any such appointment, and
   - Unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
   - Given at least 2 days’ notice to the council of the person’s intention to commence the erection of the building.

Note: building has the same meaning as in section 4 of the Act and includes part of a building and any structure or part of a structure.

Note: new building has the same meaning as in section 109H of the Act and includes an altered portion of, or an extension to, an existing building.

Note: The commencement of demolition works associated with an altered portion of, or an extension to, an existing building is considered to be the commencement of building work requiring compliance with section 82A(2) of the Act (including the need for a Construction Certificate) prior to any demolition work. See: Over our Dead Body Society Inc v Byron Bay Community Association Inc [2001] NSWLEC 125.
Note: Construction Certificate Application, PCA Service Agreement and Notice of Commencement forms can be downloaded from Council’s website www.woollahra.nsw.gov.au.

Note: It is an offence for any person to carry out the erection of a building in breach of this condition and in breach of section 81A(2) of the Act.

D.7 Notification of *Home Building Act 1989* requirements

a) For the purposes of section 80A (11) of the Act, the requirements of this condition are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the *Home Building Act 1989*.

b) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

- In the case of work for which a principal contractor is required to be appointed:
  - the name and licence number of the principal contractor, and
  - the name of the insurer by which the work is insured under Part 6 of that Act,

- In the case of work to be done by an owner-builder:
  - the name of the owner-builder, and
  - if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

c) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

d) This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State’s building laws.

E. Conditions which must be satisfied during any development work

E.1 Compliance with Building Code of Australia and insurance requirements under the *Home Building Act 1989*

For the purposes of section 80A (11) of the Act, the following condition is prescribed in relation to a development consent for development that involves any building work:

a) That the work must be carried out in accordance with the requirements of the Building Code of Australia,

b) In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:
a) To the extent to which an exemption is in force under clause 187 or 188, subject to the
terms of any condition or requirement referred to in clause 187 (6) or 188 (4) of the
Regulation, or
b) To the erection of a temporary building.

In this clause, a reference to the BCA is a reference to that Code as in force on the date the
application for the relevant construction certificate is made.

Note: All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.

E.2 Compliance with Australian Standard for Demolition

Demolition of buildings and structures must comply with Australian Standard AS 2601—
2001: The Demolition of Structures, published by Standards Australia, and as in force at 13

E.3 Requirement to notify about new evidence

Any new information which comes to light during remediation, demolition or construction
works which has the potential to alter previous conclusions about site contamination, heritage
significance, threatened species or other relevant matters must be immediately notified to
Council and the Principal Certifying Authority.

E.4 Critical Stage Inspections

Critical stage inspections must be called for by the principal contractor or owner builder as
required by the PCA, any PCA service agreement, the Act and the Regulation.

Work must not proceed beyond each critical stage until the PCA is satisfied that work is
proceeding in accordance with this consent, the Construction Certificate(s) and the Act. Critical
stage inspections means the inspections prescribed by the Regulations for the
purposes of section 109E(3)(d) of the Act or as required by the PCA and any PCA Service
Agreement.

Note: The PCA may require inspections beyond mandatory critical stage inspections in order that the PCA be
satisfied that work is proceeding in accordance with this consent.

Note: The PCA may, in addition to inspections, require the submission of Compliance Certificates, survey
reports or evidence of suitability in accordance with Part A2.2 of the BCA in relation to any matter
relevant to the development.

E.5 Hours of Work –Amenity of the neighbourhood

a) No work must take place on any Sunday or public holiday,
b) No work must take place before 7am or after 5pm any weekday,
c) No work must take place before 7am or after 1pm any Saturday,
d) The following work must not take place before 9am or after 4pm any weekday, or
before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday;
   i) Piling;
   ii) Piering;
   iii) Rock or concrete cutting, boring or drilling;
iv) Rock breaking;
v) Rock sawing;
vi) Jack hammering; or
vii) Machine excavation,

e) No loading or unloading of material or equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday

f) No operation of any equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday

g) No rock excavation being cutting, boring, drilling, breaking, sawing, jack hammering or bulk excavation of rock, must occur without a 15 minute break every hour.

This condition has been imposed to mitigate the impact of work upon the amenity of the neighbourhood. Impact of work includes, but is not limited to, noise, vibration, dust, odour, traffic and parking impacts.

Note: The use of noise and vibration generating plant and equipment and vehicular traffic, including trucks in particular, significantly degrade the amenity of neighbourhoods and more onerous restrictions apply to these activities. This more invasive work generally occurs during the foundation and bulk excavation stages of development. If you are in doubt as to whether or not a particular activity is considered to be subject to the more onerous requirement (9am to 4pm weekdays and 9am to 1pm Saturdays) please consult with Council.

Note: Each and every breach of this condition by any person may be subject to separate penalty infringement notice or prosecution.

Note: The delivery and removal of plant, equipment and machinery associated with wide loads subject to RTA and Police restrictions on their movement outside the approved hours of work will be considered on a case by case basis.

Note: Compliance with these hours of work does not affect the rights of any person to seek a remedy to offensive noise as defined by the Protection of the Environment Operations Act 1997, the Protection of the Environment Operations (Noise Control) Regulation 2000.


E.6 Public Footpaths – Safety, Access and Maintenance

The principal contractor or owner builder and any other person acting with the benefit of this consent must:

a) Not erect or maintain any gate or fence swing out or encroaching upon the road or the footway.
b) Not use the road or footway for the storage of any article, material, matter, waste or thing.
c) Not use the road or footway for any work.
d) Keep the road and footway in good repair free of any trip hazard or obstruction.
e) Not stand any plant and equipment upon the road or footway.
f) Provide a clear safe pedestrian route a minimum of 1.5m wide.
g) Protect street name inlays in the footpath which are not to be removed or damaged during development.
This condition does not apply to the extent that a permit or approval exists under the section 73 of the *Road Transport (Safety and Traffic Management) Act* 1999, section 138 of the *Roads Act* 1993 or section 94 of the *Local Government Act* 1993 except that at all time compliance is required with:

a) Australian Standard AS 1742 (Set) Manual of uniform traffic control devices and all relevant parts of this set of standards.

b) Australian Road Rules to the extent they are adopted under the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation* 1999.

Note: Section 73 of the *Road Transport (Safety and Traffic Management) Act* 1999 allows the Police to close any road or road related area to traffic during any temporary obstruction or danger to traffic or for any temporary purpose. Any road closure requires Police approval.

Note: Section 138 of the *Roads Act* 1993 provides that a person must not:

- erect a structure or carry out a work in, on or over a public road, or
- dig up or disturb the surface of a public road, or
- remove or interfere with a structure, work or tree on a public road, or
- pump water into a public road from any land adjoining the road, or
- connect a road (whether public or private) to a classified road, otherwise than with the consent of the appropriate roads authority.

Note: Section 68 of the *Local Government Act* 1993 provides that a person may carry out certain activities only with the prior approval of the council including:

- Part C Management of Waste:
  - a. For fee or reward, transport waste over or under a public place
  - b. Place waste in a public place
  - c. Place a waste storage container in a public place.”

- Part E Public roads:
  - a. Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway
  - b. Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.”
  - c. Any work in, on or over the Road or Footway requires Council Approval and in the case of classified roads the NSW Roads and Traffic Authority. Road includes that portion of the road uses as a footway.

Standard Condition: E7 (Autotext EE7)

### E.7 Maintenance of Environmental Controls

The principal contractor or owner builder must ensure that the following monitoring, measures and controls are maintained:

a) Erosion and sediment controls,

b) Dust controls,

c) Dewatering discharges,

d) Noise controls;

e) Vibration monitoring and controls;

f) Ablutions;


Standard Condition: E11

### E.8 Maintenance of Environmental Controls

The principal contractor or owner builder must ensure that the following monitoring, measures and controls are maintained:
a) Erosion and sediment controls,
b) Dust controls,
c) Dewatering discharges,
d) Noise controls;
e) Vibration monitoring and controls;
f) Ablutions;


Standard Condition: E11

E.9 Support of adjoining land and buildings

A person must not to do anything on or in relation to the site (the supporting land) that removes the support provided by the supporting land to any other land (the supported land) or building (the supported building).

For the purposes of this condition, supporting land includes the natural surface of the site, the subsoil of the site, any water beneath the site, and any part of the site that has been reclaimed.

Note: This condition does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is considered necessary upon any adjoining or supported land by any person the principal contractor or owner builder must obtain:

a. the consent of the owners of such adjoining or supported land to trespass or encroach, or
b. an access order under the Access to Neighbouring Land Act 2000, or
c. an easement under section 88K of the Conveyancing Act 1919, or
d. an easement under section 40 of the Land & Environment Court Act 1979 as appropriate.

Note: Section 177 of the Conveyancing Act 1919 creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).

Note: Clause 20 of the Roads (General) Regulation 2000 prohibits excavation in the vicinity of roads as follows: “Excavations adjacent to road - A person must not excavate land in the vicinity of a road if the excavation is capable of causing damage to the road (such as by way of subsidence) or to any work or structure on the road.” Separate approval is required under the Roads Act 1993 for any underpinning, shoring, soil anchoring (temporary) or the like within or under any road. Council will not give approval to permanent underpinning, shoring, soil anchoring within or under any road.

Note: The encroachment of work or the like is a civil matter of trespass or encroachment and Council does not adjudicate or regulate such trespasses or encroachments except in relation to encroachments upon any road, public place, crown land under Council’s care control or management, or any community or operational land as defined by the Local Government Act 1993.

Standard Condition: E13 (Autotext EE13)

E.10 Erosion and Sediment Controls – Maintenance

The principal contractor or owner builder must maintain water pollution, erosion and sedimentation controls in accordance with:

a) The Soil and Water Management Plan required under this consent;
b) “Do it Right On Site, Soil and Water Management for the Construction Industry” published by the Southern Sydney Regional Organisation of Councils, 2001; and
Where there is any conflict *The Blue Book* takes precedence.

**Note:** A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the Protection of the Environment Operations Act 1997 without any further warning. It is a criminal offence to cause, permit or allow pollution.

**Note:** Section 257 of the Protection of the Environment Operations Act 1997 provides that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”.

**Warning:** Irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of the occupation of the land being developed whether or not they actually cause the pollution.

Standard Condition: E15 (Autotext EE15)

### E.11 Placement and use of Skip Bins

The principal contractor or owner builder must ensure that all waste storage containers, including but not limited to skip bins, must be stored within the site unless:

a) Activity Approval has been issued by Council under section 94 of the *Local Government Act* 1993 to place the waste storage container in a public place, and

b) Where located on the road it is located only in a positions where a vehicle may lawfully park in accordance with the Australian Road Rules to the extent they are adopted under the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation* 1999.

**Note:** Waste storage containers must not be located on the footpath without a site specific activity approval. Where such site specific activity approval is granted a 1.5m wide clear path of travel is maintained free of any trip hazards.

Standard Condition: E21 (Autotext EE21)

### E.12 Dust Mitigation

Dust mitigation must be implemented in accordance with “*Dust Control - Do it right on site*” published by the Southern Sydney Regional Organisation of Councils. This generally requires:

a) Dust screens to all hoardings and site fences.

b) All stockpiles or loose materials to be covered when not being used.

c) All equipment, where capable, being fitted with dust catchers.

d) All loose materials being placed bags before placing into waste or skip bins.

e) All waste and skip bins being kept covered when not being filled or emptied.

f) The surface of excavation work being kept wet to minimise dust.

g) Landscaping incorporating trees, dense shrubs and grass being implemented as soon as practically possible to minimise dust.
Note: “Dust Control - Do it right on site” can be downloaded free of charge from Council’s web site www.woollahra.nsw.gov.au or obtained from Council’s office.

Note: Special precautions must be taken when removing asbestos or lead materials from development sites. Additional information can be obtained from www.workcover.nsw.gov.au and www.epa.nsw.gov.au. Other specific condition and advice may apply.

Note: Demolition and construction activities may affect local air quality and contribute to urban air pollution. The causes are dust, smoke and fumes coming from equipment or activities, and airborne chemicals when spraying for pest management. Precautions must be taken to prevent air pollution.

Standard Condition: E23 (Autotext EE23)

E.13 Site waste minimisation and management – Demolition

In order to maximise resource recovery and minimise residual waste from demolition activities:

a) The provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work

b) An area is to be allocated for the storage of materials for use, recycling and disposal (giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation and access and handling requirements)

c) Provide separate collection bins and/or areas for the storage of residual waste

d) Clearly ‘signpost’ the purpose and content of the bins and/or storage areas

e) Implement measures to prevent damage by the elements, odour, health risks and windborne litter

f) Minimise site disturbance, limiting unnecessary excavation

When implementing the SWMMP the applicant must ensure:

a) Footpaths, public reserves and street gutters are not used as places to store demolition waste or materials of any kind without Council approval

b) Any material moved offsite is transported in accordance with the requirements of the Protection of the Environment Operations Act (1997)

c) Waste is only transported to a place that can lawfully be used as a waste facility

d) Generation, storage, treatment and disposal of hazardous waste and special waste (including asbestos) is conducted in accordance with relevant waste legislation administered by the EPA and relevant Occupational Health and Safety legislation administered by Workcover NSW

e) Evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained

Note: Materials that have an existing reuse or recycling market should not be disposed of in a landfill. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.

Standard Condition: E31 (Autotext EE31)

E.14 Site waste minimisation and management – Construction

In order to maximise resource recovery and minimise residual waste from construction activities:

a) The provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work
b) Arrange for the delivery of materials so that materials are delivered ‘as needed’ to prevent the degradation of materials through weathering and moisture damage

c) Consider organising to return excess materials to the supplier or manufacturer

d) Allocate an area for the storage of materials for use, recycling and disposal (considering slope, drainage, location of waterways, stormwater outlets and vegetation)

e) Clearly ‘signpost’ the purpose and content of the storage areas

f) Arrange contractors for the transport, processing and disposal of waste and recycling. Ensure that all contractors are aware of the legal requirements for disposing of waste.

g) Promote separate collection bins or areas for the storage of residual waste

h) Implement measures to prevent damage by the elements, odour and health risks, and windborne litter

i) Minimise site disturbance and limit unnecessary excavation

j) Ensure that all waste is transported to a place that can lawfully be used as a waste facility

k) Retain all records demonstrating lawful disposal of waste and keep them readily accessible for inspection by regulatory authorities such as council, Department of Environment and Climate Change (DECC) or WorkCover NSW

E.15 Shoring and adequacy of adjoining property

For the purposes of section 80A (11) of the Act, the following condition is prescribed in relation to a development consent for development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land.

The person having the benefit of the development consent must, at the person’s own expense;

a) Protect and support the adjoining premises from possible damage from the excavation, and

b) Where necessary, underpin the adjoining premises to prevent any such damage

Note: This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

Standard condition: E33 (Autotext: EE33)

F. Conditions which must be satisfied prior to any occupation or use of the building (Part 4A of the Act and Part 8 Division 3 of the Regulation)

F.1 Occupation Certificate (section 109M of the Act)

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.

Standard Condition: F1 (Autotext: FF1)
F.2 Commissioning and Certification of Systems and Works

The principal contractor or owner builder must submit to the satisfaction of the PCA works-as-executed (“WAE”) plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA confirming that the works, as executed and as detailed, comply with the requirement of this consent, the Act, the Regulations, any relevant construction certificate, the BCA and relevant Australian Standards.

Works-as-executed (“WAE”) plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA must include but may not be limited to:

a) Certification from the supervising professional engineer that the requirement of the Geotechnical/Hydrogeological conditions and report recommendations were implemented and satisfied during development work.

b) All flood protection measures.

c) All garage/car park/basement car park, driveways and access ramps comply with Australian Standard AS 2890.1 – “Off-Street car parking.”

d) All stormwater drainage and storage systems.

e) All mechanical ventilation systems.

f) All hydraulic systems.

g) All structural work.

h) All acoustic attenuation work.

i) All waterproofing.

j) Such further matters as the Principal Certifying Authority may require.

Note: This condition has been imposed to ensure that systems and works as completed meet development standards as defined by the Act, comply with the BCA, comply with this consent and so that a public record of works as executed is maintained.

Note: The PCA may require any number of WAE plans, certificates, or other evidence of suitability as necessary to confirm compliance with the Act, Regulation, Development Standards, BCA, and relevant Australia Standards. As a minimum WAE plans and certification is required for stormwater drainage and detention, mechanical ventilation work, hydraulic services (including but not limited to fire services).

Note: The PCA must submit to Council, with any Occupation Certificate, copies of works-as-executed (“WAE”) plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA upon which the PCA has relied in issuing any Occupation Certificate.

Standard Condition: F7 (Autotext FF7)

F.3 Fire Safety Certificates

In the case of a final occupation certificate to authorise a person:

a) to commence occupation or use of a new building, or

b) to commence a change of building use for an existing building,

a certifying authority must be satisfied that a final fire safety certificate has been issued for the building.

In the case of an interim occupation certificate to authorise a person:

a) to commence occupation or use of a partially completed new building, or

b) to commence a change of building use for part of an existing building,
a certifying authority must be satisfied that a final fire safety certificate or an interim fire safety certificate has been issued for the relevant part of the building.

Note: This condition does not apply to a class 1a or class 10 building within the meaning of clause 167 of the Regulation.

Note: In this condition:
interim fire safety certificate has the same meaning as it has in Part 9 of the Regulation.
final fire safety certificate has the same meaning as it has in Part 9 of the Regulation.
new building has the same meaning as it has in section 109H of the Act.

G. Conditions which must be satisfied prior to the issue of any Subdivision Certificate
Nil

H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (s109C(1)(c))

H.1 Fulfillment of BASIX commitments – Clause 154B of the Regulation

All BASIX commitments must be effected in accordance with the BASIX Certificate No. A247351.

Note: Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."

Standard Condition: H7 (Autotext HH7)

H.2 Removal of Ancillary Works and Structures

The principal contractor or owner must remove from the land and any adjoining public place:

a) The site sign;
b) Ablutions;
c) Hoarding;
d) Scaffoldiing; and
e) Waste materials, matter, article or thing.

Note: This condition has been imposed to ensure that all ancillary matter is removed prior to the issue of the Final Occupation Certificate.

Standard Condition: H12 (Autotext HH12)

I. Conditions which must be satisfied during the ongoing use of the development

I.1 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No. A247351.

Note: This condition affects successors in title with the intent that environmental sustainability measures must be maintained for the life of development under this consent.

Standard Condition: I24
I.2 Annual Fire Safety Statements (Class 1b to 9c buildings inclusive)

Each year, the owner of a building to which an essential fire safety measure is applicable must provide an annual fire safety statement to Council and the Commissioner of the NSW Fire Brigades. The annual fire safety statement must be prominently displayed in the building.

Note: Essential fire safety measure has the same meaning as in clause 165 of the Regulation. Annual fire safety statement has the same meaning as in clause 175 of the Regulation. Part 9 Division 5 of the Regulation applies in addition to this condition at the date of this consent. Visit Council’s web site for additional information in relation to fire safety www.woollahra.nsw.gov.au.

J. Miscellaneous Conditions

Nil

K. Advisings

K.1 Criminal Offences – Breach of Development Consent and Environmental laws

Failure to comply with this development consent and any condition of this consent is a criminal offence. Failure to comply with other environmental laws is also a criminal offence.

Where there is any breach Council may without any further warning:

a) Issue Penalty Infringement Notices (On-the-spot fines);

b) Issue notices and orders;

c) Prosecute any person breaching this consent; and/or

d) Seek injunctions/orders before the courts to restrain and remedy any breach.

Warnings as to potential maximum penalties

Maximum Penalties under NSW Environmental Laws include fines up to $1.1 Million and/or custodial sentences for serious offences.

Warning as to enforcement and legal costs

Should Council have to take any action to enforced compliance with this consent or other environmental laws Council’s policy is to seek from the Court appropriate orders requiring the payments of its costs beyond any penalty or remedy the Court may order. This consent and this specific advice will be tendered to the Court when seeking costs orders from the Court where Council is successful in any necessary enforcement action.

Note: The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of the Crimes (Sentencing Procedure) Act 1999, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious. You can obtain further information from the following web sites: http://www.theshopfront.org/documents/ConvictionsCriminalRecords.pdf and the Attorney General’s www.agd.nsw.gov.au.

Standard Advising: K1 (Autotext KK1)
K.2 Dial before you dig

The principal contractor, owner builder or any person digging may be held financially responsible by the asset owner should they damage underground pipe or cable networks. Minimise your risk and Dial 1100 Before You Dig or visit www.dialbeforeyoudig.com.au.

When you contact Dial Before You Dig you will be sent details of all Dial Before You Dig members who have underground assets in the vicinity of your proposed excavation.

K.3 Commonwealth Disability Discrimination Act 1992 (“DDA”)

The Disability Discrimination Act 1992 (DDA) makes it against the law for public places to be inaccessible to people with a disability. Compliance with this development consent, Council’s Access DCP and the BCA does not necessarily satisfy compliance with the DDA.

The DDA applies to existing places as well as places under construction. Existing places must be modified and be accessible (except where this would involve "unjustifiable hardship").

Further detailed advice can be obtained from the Human Rights and Equal Opportunity Commission (“HEROC”):


If you have any further questions relating to the application of the DDA you can send an email to HEROC at disabdis@humanrights.gov.au.

K.4 NSW Police Service and Road Closures

The Rose Bay Local Area Command closely aligns with the boundaries of the Woollahra local government area.

Council and Police approval is required prior to a partial or full temporary road closure. If you are seeking a partial or full temporary road closure you must comply with the relevant conditions of this consent and you must also gain the approval of the Traffic Sergeant, Paddington Police Station, 16 Jersey Road, Paddington. Phone No.: 0283568299 or Fax No.: 0283568211.

Warning: If you partial or full close a road without compliance with Council and Police requirements Council Rangers or the Police can issue Penalty Infringement Notices or Court Attendance Notices leading to prosecution.

Standard Advising: K2 (Autotext KK2)

Standard Advising: K3 (Autotext KK3)

Standard Advising: K4 (Autotext KK4)
K.5 Builder’s Licences and Owner Builders Permits

Section 81A of the *Act* requires among other matters that the person having the benefit of the development consent, if not carrying out the work as an *owner-builder*, must appointed a *principal contractor* for residential building work who must be the holder of a contractor licence.

Further information can be obtained from the NSW Office of Fair Trading website about how you obtain an owner builders permit or find a principal contractor (builder):

The Owner(s) must appoint the PCA. The PCA must check that Home Building Act insurance is in place before the commencement of building work. The Principal Contractor (Builder) must provide the Owners with a certificate of insurance evidencing the contract of insurance under the Home Building Act 1989 for the residential building work.

Standard Condition: K5 (Autotext KK5)

K.6 Building Standards - Guide to Standards and Tolerances

The PCA does not undertake detailed quality control inspections and the role of the PCA is primarily to ensure that the development proceeds in accordance with this consent, Construction Certificates and that the development is fit for occupation in accordance with its classification under the Building Code of Australia. Critical Stage Inspections do not provide the level of supervision required to ensure that the minimum standards and tolerances specified by the “Guide to Standards and Tolerances©” ISBN 0 7347 6010 8 are achieved.

The quality of any development is a function of the quality of the *principal contractor’s* or *owner builder’s* supervision of individual contractors and trades on a daily basis during the development. The PCA does not undertake this role.

The NSW Office of Fair Trading have published a “Guide to Standards and Tolerances©” ISBN 0 7347 6010 8. The guide can be obtained from the Office of Fair Trading by calling 13 32 20 or by Fax: 9619 8618 or by post to: Marketing Branch, PO Box 972, Parramatta NSW 2124.

The Guide can be downloaded from:

Council, as the PCA or otherwise, does not adjudicate building contract disputes between the *principal contractor*, contractors and the owner.

Standard Condition: K6 (Autotext KK6)

K.7 Workcover requirements

The *Occupational Health and Safety Act 2000 No 40* and subordinate regulations, codes of practice and guidelines control and regulate the development industry.

*Note:* Further information can be obtained from Workcover NSW’s website:
http://www.workcover.nsw.gov.au/Industry/Construction/default.htm or through their head office:
Location: Workcover NSW, 92-100 Donnison Street, GOSFORD 2250 Postal address: WorkCover NSW, Locked Bag 2906, LISAROW 2252, Phone (02) 4321 5000, Fax (02) 4325 4145.

Standard Condition: K7 (Autotext KK7)
K.8 Asbestos Removal, Repair or Disturbance

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Workcover NSW.

Before starting work, a work site-specific permit approving each asbestos project must be obtained from Workcover NSW. A permit will not be granted without a current Workcover licence.

All removal, repair or disturbance of or to asbestos material must comply with:

a) The Occupational Health and Safety Act 2000;

b) The Occupational Health and Safety Regulation 2001;


Note: The Code of Practice and Guide referred to above are known collectively as the Worksafe Code of Practice and Guidance Notes on Asbestos. They are specifically referenced in the Occupational Health and Safety Regulation 2001 under Clause 259. Under the Occupational Health and Safety Regulation 2001, the Worksafe Code of Practice and Guidance Notes on Asbestos are the minimum standards for asbestos removal work. Council does not control or regulate the Worksafe Code of Practice and Guidance Notes on Asbestos. You should make yourself aware of the requirements by visiting www.workcover.nsw.gov.au or one of Workcover NSW’s offices for further advice.

Standard Advising: K8 (Autotext KK8)

K.9 Lead Paint


Industrial paints may contain lead. Lead is used in some specialised sign-writing and artist paints, and road marking paints, and anti-corrosive paints. Lead was a major ingredient in commercial and residential paints from the late 1800s to 1970. Most Australian commercial buildings and residential homes built before 1970 contain lead paint. These paints were used both inside and outside buildings.

Lead particles are released when old lead paint flakes and peels and collects as dust in ceiling, wall and floor voids. If dust is generated it must be contained. If runoff contains lead particles it must be contained. Lead is extremely hazardous, and stripping of lead-based paint and the disposal of contaminated waste must be carried out with all care. Lead is a cumulative poison and even small levels in the body can have severe effects.

Standard Advising: K9 (Autotext KK9)

K.10 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Dylan Sargent, Assessment Officer, on (02) 9391 7157.
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, site hearings and the use of Court Appointed Experts, 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 commissioner having the full authority to completely determine the matter at the conference.

**Standard Condition: K14 (Autotext KK14)**

**K.11 Release of Security**

An application must be made to Council by the person who paid the security for release of the securities held under section 80A of the *Act*.

The securities will not be released until a *Final Occupation Certificate* has lodged with Council, Council has inspected the site and Council is satisfied that the public works have been carried out to Council’s requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council’s requirements.

Council will only release the security upon being satisfied that all damage or all works, the purpose for which the security has been held have been remedied or completed to Council’s satisfaction as the case may be.

Council may retain a portion of the security to remedy any defects in any such public work that arise within 6 months after the work is completed.

Upon completion of each section of road, drainage and landscape work to Council’s satisfaction, 90% of the Bond monies held by Council for these works will be released upon application. 10% may be retained by Council for a further 6 month period and may be used by Council to repair or rectify any defects or temporary works during the 6 month period.


**Standard Condition: K15 (Autotext KK15)**

**K.12 Dilapidation Report**

Please note the following in relation to the condition for a dilapidation report:

a) The dilapidation report will be made available to affected property owners on requested and may be used by them in the event of a dispute relating to damage allegedly due to the carrying out of the development.

b) This condition cannot prevent neighbouring buildings being damaged by the carrying out of the development.

c) Council will not be held responsible for any damage which may be caused to adjoining buildings as a consequence of the development being carried out.

d) Council will not become directly involved in disputes between the Developer, its contractors and the owners of neighbouring buildings.
e) In the event that access for undertaking the dilapidation survey is denied the applicant is to demonstrate in writing to the satisfaction of the PCA that all reasonable steps were taken to obtain access to the adjoining property. The dilapidation report will need to be based on a survey of what can be observed externally.

Annexures

1. Annexure 1 - Plans and Elevations

2. Annexure 2 - Fire Safety Referral Response
Completion Date: 28 April 2016

REFERRAL RESPONSE – FIRE SAFETY

FILE NO: DA 133/2016/1
ADDRESS: 1/75 Birriga Road BELLEVUE HILL 2023
PROPOSAL: Alterations and additions
FROM: Richard Smith - Fire Safety Officer
TO: Mr R Hedstrom

1. ISSUES

   • The building is not submitting annual fire safety statements, which indicates that it is deficient in fire safety/life safety.

2. DOCUMENTATION

   I refer to the following documents received for this report:

   • Statement of Environment Effects, referenced excavation of sub floor area on the lower ground floor & demolition of internal wall to create 2 new bedrooms & bathroom prepared by unknown, dated undated.
   • Architectural Plans, referenced A01, A02, A03 & A04, prepared by NY Project Services Pty Ltd, dated 7 April 2016.

3. RESEARCH

   The following research was undertaken in the preparation of this assessment:

   • A site inspection was carried out on the following date: 27 April 2016

4. LEGISLATION

   A Building Code of Australia (BCA) assessment of this development application is required to satisfy the following statutory provisions of the Environmental Planning & Assessment Regulation 2000.

   ☑ Clause 94 – ‘Consent authority may require buildings to be upgraded’

   • Compliance with the BCA if more than 50% of the volume has been changed in the last 3 years
   • Fire safety - to protect persons using the building and facilitate their egress from the building as well as restricting the spread of fire from the building to other buildings
5. **BUILDING DESCRIPTION**

- Type of Construction: A
- Class: 2
- Number of Storeys: 3
- Rise in Storeys: 3

6. **ASSESSMENT**

Comments have been prepared on the following. Where Approval is recommended, Conditions of Consent follow at the end of the comments.

6.1 **Clauses of BCA referenced:**

- Smoke alarms - Specification E2.2a Clause 3 of the BCA
- Fire separation between sole occupancy units Specification C1.1 Table 3 of the BCA.
- Protection of openings within external walls – Clause C3.2 of the BCA.

7. **RECOMMENDATION**

Council’s Fire Safety Officer has determined that the proposal is satisfactory, subject to the following conditions:

A. **General Conditions**

B. **Conditions which must be satisfied prior to the demolition of any building or construction**

C. **Conditions which must be satisfied prior to the issue of any construction certificate**

C.1 **Building upgrade (Clause 94 of the Regulation)**

_Council_ considers pursuant to clause 94 of the _Regulation_ that it is appropriate to require the existing building to be brought into total or partial conformity with the _BCA_.

The _Construction Certificate_ plans and specification required to be submitted to the _Certifying Authority_ pursuant to clause 139 of the _Regulation_ must detail building upgrade works required by this condition.

The _Certifying Authority_ must be satisfied that such work, to be implemented as part of the development, will upgrade the building to bring it into compliance.
with the following provisions of the BCA as in force at the date of the
Construction Certificate application:

a) That smoke alarms shall be installed throughout the building in
accordance with the requirements of Specification E2.2a Clause 3 of the
BCA.

b) That the sole occupancies 1 & 3 shall be separated in fire resisting
construction from the adjoining sole occupancy units in accordance with
the requirements of Specification C1.1 of the BCA.

c) Window openings on the external walls of the sole occupancy unit within
three (3) metres of the boundary shall be protected in accordance with the
requirements of Clause C3.4 of the BCA or an alternative solution shall be
proposed by an accredited C10 fire engineer meeting performance
requirement CP2 of the BCA.

Note: The Certifying Authority issuing the Construction Certificate has no power to remove the
requirement to upgrade the existing building as required by this condition. Where this
condition specifies compliance with performance requirements of the BCA the
Certifying Authority, subject to their level of accreditation, may be satisfied as to such
matters. Where this condition specifies compliance with prescriptive (deemed-to-satisfy)
provisions of the BCA these prescriptive requirements must be satisfied and cannot be
varied unless this condition is reviewed under section 82A or amended under section 96
of the Act.

Note: This condition does not set aside the Certifying Authorities responsibility to ensure
compliance with clause 143 of the Regulation in relation to Fire Protection and Structural
Adequacy.

Note: AS 4655 Guidelines for fire safety audits for buildings (or any succeeding AS) should
form the basis of any fire upgrade report.

Standard Condition: C10

D. Conditions which must be satisfied prior to the commencement of any
development work

E. Conditions which must be satisfied during any development work

F. Conditions which must be satisfied prior to any occupation or use of the
building (Part 4A of the Act and Part 8 Division 3 of the Regulation)

F.1 Fire Safety Certificates

In the case of a final occupation certificate to authorise a person:

a) to commence occupation or use of a new building, or

b) to commence a change of building use for an existing building,

a certifying authority must be satisfied that a final fire safety certificate has been
issued for the building.

In the case of an interim occupation certificate to authorise a person:

a) to commence occupation or use of a partially completed new building, or

b) to commence a change of building use for part of an existing building,
a certifying authority must be satisfied that a final fire safety certificate or an interim fire safety certificate has been issued for the relevant part of the building.

Note: This condition does not apply to a class 1a or class 10 building within the meaning of clause 167 of the Regulation.

Note: In this condition:
interim fire safety certificate has the same meaning as it has in Part 9 of the Regulation.
final fire safety certificate has the same meaning as it has in Part 9 of the Regulation.
new building has the same meaning as it has in section 109H of the Act.
Standard Condition: F4

G. Conditions which must be satisfied prior to the issue of any Subdivision Certificate

H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (s109C(1)(c))

I. Conditions which must be satisfied during the ongoing use of the development

I.1 Annual Fire Safety Statements (Class 1b to 9c buildings inclusive)

Each year, the owner of a building to which an essential fire safety measure is applicable must provide an annual fire safety statement to Council and the Commissioner of the NSW Fire Brigades. The annual fire safety statement must be prominently displayed in the building.

Note: Essential fire safety measure has the same meaning as in clause 165 of the Regulation.
Annual fire safety statement has the same meaning as in clause 175 of the Regulation.
Part 9 Division 5 of the Regulation applies in addition to this condition at the date of this consent. Visit Council’s web site for additional information in relation to fire safety
Standard Condition: E22

J. Miscellaneous Conditions

K. Advisings

Nil

Richard Smith
Fire Safety Officer

Date: 28 April 2016
## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<table>
<thead>
<tr>
<th>ITEM No.</th>
<th>D9</th>
</tr>
</thead>
<tbody>
<tr>
<td>FILE No.</td>
<td>DA53/2016/1</td>
</tr>
<tr>
<td>ADDRESS</td>
<td>13 Manning Road DOUBLE BAY</td>
</tr>
<tr>
<td>SITE AREA</td>
<td>632m²</td>
</tr>
<tr>
<td>ZONING</td>
<td>R3 Medium Density Residential</td>
</tr>
<tr>
<td>PROPOSAL</td>
<td>Alterations and additions to existing residential flat building comprising infill of an existing lightwell</td>
</tr>
<tr>
<td>TYPE OF CONSENT</td>
<td>Local development</td>
</tr>
<tr>
<td>COST OF WORKS</td>
<td>$84,000.00</td>
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<tr>
<td>DATE LODGED</td>
<td>25/02/2016</td>
</tr>
<tr>
<td>APPLICANT</td>
<td>Rory Brooks Architects</td>
</tr>
<tr>
<td>OWNER</td>
<td>The Owners - Strata Plan No. 46923</td>
</tr>
<tr>
<td>AUTHOR</td>
<td>Mr Wilson Perdigao</td>
</tr>
<tr>
<td>TEAM LEADER</td>
<td>Mr David Waghorn</td>
</tr>
<tr>
<td>SUBMISSIONS</td>
<td>Nil</td>
</tr>
<tr>
<td>RECOMMENDATION</td>
<td>Approval</td>
</tr>
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</table>

### SUMMARY

#### 1. LOCALITY PLAN

[Locality Plan Diagram]

- Subject site
- Objectors
- North
2. LEVEL OF DELEGATION

The application is referred to the Development Control Committee as it involves a departure of more than 10% with the statutory floor space ratio planning control.

Note: The existing development already exceeds the FSR control by 10% attaining a floor space ratio of 1.11:1 (703m²) or an 11.2% departure.

3. PROPOSAL

The proposal involves the construction of an infill addition to the existing light-well via extending each floor while retaining the tradesman stairs at the rear of the existing inter-war flat building. The area formed by the infill addition is to provide additional internal amenity such as a bathroom, laundry or storage area to each of the units.

4. ISSUES

4.1. Exceptions to Development Standards in Woollahra Local Environmental Plan 2014

<table>
<thead>
<tr>
<th>Clause</th>
<th>Development Standard</th>
<th>Departure from Control</th>
<th>Conclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part 4.4</td>
<td>Floor Space Ratio of 1:1</td>
<td>A 117m² or a 19.1% departure from the 1:1 (610m²) FSR control</td>
<td>Satisfactory</td>
</tr>
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</table>

4.2. Primary Issues

The primary issues are as follows:

- FSR non-compliance

PROPERTY DETAILS AND REFERRALS

5. SITE AND LOCALITY

<table>
<thead>
<tr>
<th>Physical features</th>
<th>The site has a rectangular shape with a frontage to Manning Road of approximately 19.05 metres. The site has a depth of 32.9 metres and a total area of 632m².</th>
</tr>
</thead>
<tbody>
<tr>
<td>Topography</td>
<td>The site has a slope with the western side being approximately 7 metres higher than the eastern side.</td>
</tr>
<tr>
<td>Existing buildings and structures</td>
<td>Presently erected on the site is a three storey walk up multi-residential building. There is off-street parking at the lower ground floor and a landscaped area to the rear.</td>
</tr>
<tr>
<td>Surrounding Environment</td>
<td>The surrounding environment is characterised by a mix of detached dwellings, multi storey residential flat buildings and commercial properties ranging in a variety of architectural styles. The building to the immediate north is also an inter-war building of a similar style to that of the subject building.</td>
</tr>
</tbody>
</table>
6. RELEVANT PROPERTY HISTORY

<table>
<thead>
<tr>
<th>Current use</th>
<th>Residential</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relevant Application History</td>
<td>N/A</td>
</tr>
<tr>
<td>Relevant Compliance History</td>
<td>N/A</td>
</tr>
<tr>
<td>Pre-DA</td>
<td></td>
</tr>
<tr>
<td>DA 26/2015/1 – A Pre-DA consultation meeting was undertaken on 8 September 2015 for new Juliet balconies to the Manning Road elevation, including new doors and in filling the void on the eastern (rear) side of the building to provide new internal amenity to apartments. The removal of the tradesmen’s stairs, enlargement of the existing street front windows and construction of Juliette balconies to the street front was not supported by Council’s Heritage Department. The infill addition to the light-well was however generally supported by Council’s Heritage Department provided the tradesman stairs were retained.</td>
<td></td>
</tr>
<tr>
<td>Requests for Additional Information and Replacement Applications</td>
<td>N/A</td>
</tr>
<tr>
<td>Land and Environment Court Appeal(s)</td>
<td>N/A</td>
</tr>
</tbody>
</table>

7. REFERRALS

No referrals were deemed to be required. The issues raised by Council’s Heritage Officer in the Pre-DA meeting have been adequately addressed as part of this application. The proposed infill addition of the light-well including retention of the tradesman stairs was supported by Council’s Heritage Department at the Pre-DA stage. The works not supported including removal of the tradesmen’s stairs, enlargement of the existing street front windows and construction of Juliette balconies to the street front have been deleted and do not form part of this application.
ENVIRONMENTAL ASSESSMENT UNDER SECTION 79C

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979 include the following:

1. The provisions of any environmental planning instrument
2. The provisions of any proposed instrument that is/has been the subject of public consultation
3. The provisions of any development control plan
4. Any planning agreement that has been entered into
5. Any draft planning agreement that a developer has offered to enter into
6. The regulations
7. Any coastal zone management plan
8. The likely impacts of that development:
   i) Environmental impacts on the natural and built environments
   ii) Social and economic impacts
9. The suitability of the site
10. Any submissions
11. The public interest

8. ADVERTISING AND NOTIFICATION

8.1. Submissions

The application was advertised and notified from 09/03/2016 to 23/03/2016 in accordance with Chapters A2 of the Woollahra DCP 2015. No submissions were received.

8.2. Statutory Declaration

The applicant has completed the statutory declaration declaring that the site notice for DA53/2016/1 was erected and maintained during the notification period in accordance with Chapter A2 of the Woollahra DCP 2015.

9. STATE ENVIRONMENTAL PLANNING POLICY 65: DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT

The provisions of SEPP 65 are not applicable to the proposed development as it comprises of alterations and additions which are not considered to be a substantial redevelopment.

10. STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

SEPP (Building Sustainability Index: BASIX) 2004 applies to the proposed development. It relates to commitments within the proposed development in relation to thermal comfort, water conservation and energy efficiency sustainability measures.

The development application was accompanied by BASIX Certificate No. A240294 demonstrating compliance with the SEPP. These requirements are imposed in standard Conditions.
11. SYDNEY REGIONAL ENVIRONMENTAL PLAN (SYDNEY HARBOUR CATCHMENT) 2005

The subject site is within the area to which the SREP applies.

In relation to Part 2 - Planning Principles and Part 3 - Division 2: Matters for Consideration, the proposed works have no detrimental impact on the watercourse, wetlands, significant vegetation or rock shelves along the foreshore. The site is far removed from the foreshore and forms part of the urban landscape. Accordingly it does not result in any adverse visual impact to or from the harbour.

The proposal satisfies the relevant criteria prescribed by the SREP.

12. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

12.1. Part 1.2: Aims of Plan

The proposal is consistent with the aims in Part 1.2(2) of the Woollahra LEP 2014.

12.2. Land Use Table

The proposal is defined as development for a residential purpose which is permitted and consistent with the objectives of the R3 Medium Density Residential zone.

12.3. Part 4.3: Height of Buildings

Part 4.3 limits development to a maximum height of 10.5m.

<table>
<thead>
<tr>
<th>Maximum Building Height</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>14m</td>
<td>Works to 9m</td>
<td>10.5m</td>
<td>YES</td>
</tr>
</tbody>
</table>

The proposal complies with the maximum building height prescribed by Part 4.3 of Woollahra LEP 2014. It is also satisfactory with regard to the relevant objectives under Part 4.3(1) of Woollahra LEP 2014.

12.4. Part 4.4: Floor Space Ratio

Part 11 limits development to a maximum floor space ratio of 1:1 for a residential flat building development.

<table>
<thead>
<tr>
<th>Site Area: 610m²</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Floor Space Ratio</td>
<td>1.11:1 (703m²)</td>
<td>1.15:1 (727m²)</td>
<td>1:1 (610m²)</td>
<td>NO</td>
</tr>
</tbody>
</table>

The proposal does not comply with the maximum floor space ratio prescribed by Part 4.4(2) of Woollahra LEP 2014. The proposal attains a floor space ratio of 1.15:1 (727m²), which exceeds the floor space control by 117m² which equates to a 19.1% departure.

Notwithstanding this, it is considered acceptable with regard to the relevant objectives under Part 4.4(1) of Woollahra LEP 2014 as detailed in the Part 4.6 – Exception to Development Standard contained below.
The applicant has submitted a written request pursuant to Part 4.6 – Exception to Development Standards in relation to the non-compliance with Part 4.4 of the Woollahra LEP 2014, justifying the contravention of the development standard by demonstrating compliance with such a control is unreasonable or unnecessary given there are sufficient environmental planning grounds to justify the contravention.

12.5. Part 4.6: Exceptions to Development Standards

Departure

The proposal involves a non-compliance with the floor space ratio statutory control under Part 4.4 of the Woollahra LEP 2014, as detailed above.

Purpose

Part 4.6 allows a contravention of a development standard with the objectives being to allow an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Written Request

Part 4.6(3) stipulates that a written request is required from the applicant that justifies the contravention of the development standard by demonstrating that compliance with is unreasonable or unnecessary and there are sufficient environmental planning grounds to justify the contravention.

The applicant has provided the following (in part) as a written request in relation to the departure:

“Objective (a) The additional floor space sought will not result in any visual change to the streetscape and retains the desired character of the locality.

Objective (b) is considered to be satisfied as all the additions are within the existing building setback and height. The additional floor space sought has negligible and reasonable environmental impacts on the adjoining properties and the public domain.

Objective (c) this objective is not relevant

Furthermore, the additions are considered to be consistent with the site’s zone objectives:

“To provide for the housing needs of the community within a medium density residential environment.” The additions proposed enhance the amenity and provides for the needs of the residents.

The additions are acceptable in terms of the zone and floor space ratio control objectives and provide for enhanced amenity for the existing commercial property. The proposed development will be in the public interest”

Annexure 2 of this report contains the provided Clause 4.6 document in its entirety.
Assessment

Part 4.6(4) requires Council to be satisfied that the written request has adequately addressed the relevant matters, the proposed development will be in the public interest because it is consistent with the relevant objectives of the particular standard and zone and the concurrence of the Director-General has been obtained.

The Department issued Planning Circular No.PS08-003 which notified Councils of arrangements “…where the Director General’s concurrence may be assumed for exceptions to development standards under environmental planning instruments which adopt clause 4.6 …of the Standard Instrument…” Clause 64 of the EPA Regulations provides that Council may assume the Director-General’s [Secretary’s] concurrence for exceptions to development standards, thus satisfying the terms of this clause.

The following assessment considers the written request made by the applicant against the objectives of Part 4.4 of the Woollahra LEP 2014 and the objectives applying to the Medium Density Residential (R3) zone. It gives consideration to whether the objectives are achieved irrespective of the non-compliance as follows:

Objective (i) seeks “to ensure the bulk and scale of new development is compatible with the desired future character of the area” The proposal satisfies the intent of this objective as follows:

- The proposed works are not visible from the street and there are no works proposed to the external front or side elevations;
- The additional bulk as a result of the infill addition is recessed 4.8m behind the rear building alignment of the existing building;
- The proposal achieves the desired future character of the Wallaroy Residential Precinct, as assessed in Part 13.1 of this report;

Objective (ii) seeks “to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain” The proposal satisfies the intent of this objective as follows:

- There are no additional or adverse impacts upon the amenity of adjoining properties in relation to privacy, solar access and views;

Objective (iii) seeks “to ensure that development allows adequate provision on the land for deep soil planting and areas of private open space” The proposal satisfies the intent of this objective as follows:

- The proposed infill addition is to be located to an existing impervious paved area and therefore there is no further reduction in deep-soil landscaped areas and no impacts upon existing vegetation and trees.

The development is also consistent with the objectives applying to the Residential Medium Density (R3) zone as follows:

Objective a) and c) seeks “To provide for the housing needs of the community within a medium density residential environment” and “To enable other land uses that provide facilities or services to meet the day to day needs of residents”. The proposal satisfies the intent of the aforementioned objectives as follows:
• The provision of an infill addition to the light-well will contribute to increased amenity via the additional floor space available to each unit and an increased level of amenity for its occupants without adversely compromising the character of the surrounding locality;

Objective b) and d) seeks “To provide a variety of housing types within a medium density residential environment” and “To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood”. The proposal satisfies the intent of the aforementioned objectives as follows:

• The proposal would retain the existing residential use of the building;
• The proposal would not result in an increase to the height of the existing building and would not result in any significant amount of visual bulk upon the surrounding locality given its location in an existing light-well;
• The proposal achieves the desired future character of the Wallaroy Residential Precinct, as assessed in Part 13.1 of this report

The departure from the control is in the public interest in the following manner:

• The above assessment has found the proposal is consistent with the objectives of the floor space ratio for a building development standard; and
• The above assessment has deemed the proposal is consistent with the objectives of the Medium Density Residential (R3) zone in which the development is to be carried out upon.

Conclusion

The proposal is in the public interest and consistent with the objectives of the floor space ratio development standard. Departure from the control is supported.

12.6. Part 5.9: Preservation of Trees or Vegetation

Part 5.9(1) seeks to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation where there are works to any tree or other vegetation.

The proposed works are limited the light-well of an existing building and given its location would not result in any adverse impacts to on-site or surrounding trees and vegetation. The proposal is satisfactory with regard to Part 5.9 of the Woollahra LEP 2014.

12.7. Part 5.10: Heritage Conservation

Part 5.10 requires Council to consider any likely impacts upon heritage items or items of heritage significance. The subject site is not listed as a heritage item or within a Heritage Conservation Area. The subject site is on the boundary of the Woollahra Heritage Conservation Area and in close proximity to several heritage items to the west.

The proposed development is satisfactory with regard to the objectives in Parts 5.10 of the Woollahra LEP 2014 in the following manner:

• This proposal enhances the existing units internal amenity with additional floor space while having negligible impact on the existing streetscape and heritage significance of the inter-war flat building;
Due consideration of the relevant controls in Part B3.8.7 of the WDCP 2015 with regard to inter-war flat buildings have been taken into account during the assessment of this application. The proposal is deemed to be satisfactory in this regard;

There are no proposed works that are visible from the public domain as all the works are located to the rear of the property, within the existing light-well and setback behind the existing rear building alignment; and

The proposal satisfies all the relevant controls or objectives in the Woollahra DCP 2015 and the Woollahra LEP 2014.

The proposal is therefore satisfactory with regard to Part 5.10 of the Woollahra LEP 2014.

12.8. Part 6.1: Acid Sulfate Soils

Part 6.1 requires Council to consider any potential acid sulfate soil affectation so that it does not disturb, expose or drain acid sulfate soils and cause environmental damage.

The subject site is within a Class 5 area as specified in the Acid Sulfate Soils Map. However, the subject works are not likely to lower the water table below 1.0m AHD on any land within 500m of a Class 1, 2 and 3 land classifications. Accordingly, preliminary assessment is not required and there is unlikely to be any acid sulfate affectation. It is therefore acceptable with regard to Part 6.1.

12.9. Part 6.2: Earthworks

The proposal involves excavation to accommodate the footings for the additions.

In terms of ESD principles, the extent of soil being removed from the site is considered to be minor. The proposed excavation is limited to footings in the middle of the subject site and therefore is unlikely to have adverse impacts on the amenity or structural stability of adjoining properties. There are sufficient mitigating measures imposed in standard conditions to ensure the maintenance of amenity on the surrounding neighbourhood and structural integrity of any existing and supporting structures during the excavation/construction phase of the development.

The proposal is therefore satisfactory with regard to Part 6.2 of the Woollahra LEP 2014.

13. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015


The proposal meets the relevant Objectives O1 through O8 in the following manner:

- The proposed works are not visible from the street and there are no works proposed to the external front or side elevations which would therefore retain the existing streetscape character of the precinct;
- There is a negligible impact on the adjoining heritage conservation area to the west of the subject site as the proposed additions are recessed 4.8m from the existing rear building line and behind the existing tradesman stairs. This would result in a negligible visible change to the western elevation of the existing inter-war flat building;
- There are no impacts upon existing trees and vegetation on the site or surrounding sites.

The proposal satisfies the streetscape character and key elements of the precinct and desired future character objectives of the Wallaroy precinct, as noted in Part B1.1.3 of the Woollahra DCP 2015.
13.2. Chapter B3: General Development Controls

13.2.1. Part B3.2: Building Envelope

<table>
<thead>
<tr>
<th>Site Area: 632m²</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front Setback</td>
<td>3.2-3.8m</td>
<td>No change</td>
<td>2.26m</td>
<td>YES</td>
</tr>
<tr>
<td>Rear Setback</td>
<td>3.2-9.2m</td>
<td>Works to 9.1m</td>
<td>12m</td>
<td>NO*</td>
</tr>
<tr>
<td>Side Boundary Setbacks (northern)</td>
<td>1.4-1.75m</td>
<td>Works to 8m</td>
<td>2.47m</td>
<td>YES</td>
</tr>
<tr>
<td>Side Boundary Setbacks (southern)</td>
<td>0.1-4m</td>
<td>Works to 8m</td>
<td>2.47m</td>
<td>YES</td>
</tr>
</tbody>
</table>

*Existing non-compliance

The proposed new infill addition represents a non-compliance with the rear setback control as detailed in the table above.

Notwithstanding this, the non-compliance with the rear setback control would not result in any adverse amenity impacts upon solar access, views and privacy. The proposed additional bulk as a result of the infill addition is limited to the light-well at the rear of the existing building and setback 4.8m from the rear building alignment. The proposed works would therefore not be visible from the public domain ensuring the retention of the streetscape character of Manning Road.

The proposal is satisfactory with regard to the building envelope controls in Part B3.2 of the Woollahra DCP 2015.

13.2.2. Part B3.3: Floorplates

The floorplate controls do not apply to land or development types where an FSR applies, such as residential flat buildings on land zoned R3 Medium Density Residential. Refer to Part 12.4 of the report for assessment against the applicable floor space ratio control.

As such, there are no relevant matters of consideration with regard to Part B3.3 of the Woollahra DCP 2015.

13.2.3. Part B3.4: Excavation

Refer to Part 12.9 – Excavation of the report for discussion. The proposal is satisfactory with regard to the excavation controls in Part B3.4 of the Woollahra DCP 2015.

13.2.4. Part B3.5: Built Form and Context

<table>
<thead>
<tr>
<th>Significant Trees</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solar Access to Open Space of Adjacent Properties</td>
<td>&gt; 50% for 2 hours</td>
<td>&gt; 50% for 2 hours</td>
<td>50% for 2 hours on 21 June</td>
<td>YES</td>
</tr>
<tr>
<td>Solar Access to Nth Facing Living Areas of Adjacent Properties</td>
<td>&gt; 3 hours</td>
<td>No change</td>
<td>3 hours on 21 June</td>
<td>YES</td>
</tr>
</tbody>
</table>
Part 3.5.1: Streetscape Character

The proposal satisfies the intent of the objectives and controls in Part 3.5.1 of the WDCP 2015, as discussed in the report above.

Part B3.5.4: Acoustic and Visual Privacy

The proposed new west facing windows to the new additions do not present any direct overlooking sightlines to the private open space or habitable room windows of surrounding sites given the infill addition is recessed 4.8m into the existing building at the rear and also located behind existing access stairs which limit sightlines. The use of these rooms in each unit is unlikely to give rise to any significantly adverse acoustic impacts given they are not accessed off a main living area and they are each relatively small in area (1m x 4.1m) and to be used as a non-habitable area providing additional internal amenity such as a bathroom, laundry or storage.

Conclusion

The proposal is satisfactory with regard to the built form and context controls in Part B3.5 of the Woollahra DCP 2015.

13.2.5. Part B3.6: On-Site Parking

There are no changes to the car parking requirements. The proposal is satisfactory with regard to the parking controls in Part B3.6 of the Woollahra DCP 2015.

13.2.6. Part B3.7: External Areas

There are no changes to the external front and side elevations of the existing building. The proposed works are limited to the light-well of an existing inter-war flat building. The proposed infill addition is to be located to an existing impervious paved area and therefore there is no further reduction in deep-soil landscaped areas and no impacts upon existing vegetation and trees.

The proposal is satisfactory with regard to the external controls in Part B3.7 of the Woollahra DCP 2015.

13.2.7. Part B3.8: Additional Controls for Development Other Than Dwelling Houses

<table>
<thead>
<tr>
<th>Site Area: 632m²</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>RFB Ventilation – Maximum Depth for Single Aspect Units</td>
<td>Tri aspect units</td>
<td>Tri aspect units</td>
<td>8.0m from a Window</td>
<td>YES</td>
</tr>
<tr>
<td>RFB Ventilation – Kitchen in RFB</td>
<td>3.6m</td>
<td>3.6m</td>
<td>Maximum 8.0m from a Window</td>
<td>YES</td>
</tr>
</tbody>
</table>

13.2.8. Residential Flat Buildings and Multi Dwelling Housing

The light-well area provides light and ventilation to non-habitable areas including the WC and corridor of each unit. The light and ventilation to the WC will be borrowed from the new windows of the infill addition. Control C6 states ‘light wells as the main source of lighting and ventilation to dwellings is avoided’ as such it is unreasonable to refuse the application on such grounds. The internal light and ventilation provided to each unit will be continued to be achieved via the windows to each of the tri-aspect units.
13.2.9. Inter-War Flat Buildings

The proposed infill addition of the light-well including the retention of the tradesman stairs was supported by Council’s Heritage Department at Pre-DA stage. The works not supported included the removal of the tradesmen’s stairs, enlargement of the existing street front windows and construction of Juliette balconies to the street front. The elements not supported have been deleted and do not form part of this application.

Furthermore, the proposed infill addition of the light-well is satisfactory with Part B3.8 in the following manner:

- It would retain and conserve the significant characteristics and elements of the principal building elevations;
- There are no proposed works to the front or side elevations of the inter-war flat building including no changes to the existing window openings or any proposed balconies to these elevations;
- The proposed works are limited to the rear of the building set behind the existing tradesman stairs and therefore would not detract from the original character of the building;
- The proposed materials (rendered brick and aluminium windows) to the new infill addition are appropriate given their location which is not highly visible from the public domain; and
- The proposed roof/skylights does not extend above the existing roof line of the inter-war flat building ensuring they are not visible from the street or surrounding areas.

Conclusion

The proposal is satisfactory with regard to the additional controls in Part B3.8 of the Woollahra DCP 2015.

13.3. Chapter E1: Parking and Access

The proposal is satisfactory with regard to the objectives and controls in Chapter E1 of the Woollahra DCP 2015.

13.4. Chapter E2: Stormwater and Flood Risk Management

The proposal is satisfactory with regard to the objectives and controls in Chapter E2 of the Woollahra DCP 2015.

13.5. Chapter E3: Tree Management

The proposal is satisfactory with regard to the objectives and controls in Chapter E3 of the Woollahra DCP 2015.

13.6. Chapter E4: Contaminated Land

The site is not known to be contaminated land as shown on Council’s contaminated land map. The scope of works requires minimal excavation to accommodate the footings of the infill addition and therefore no further consideration is required.

The proposal is satisfactory with regard to the objectives and controls in Chapter E4 of the Woollahra DCP 2015.
13.7. Chapter E5: Waste Management

Chapter E5 is applicable to all development and seeks to establish waste minimisation and sustainable waste management during demolition and construction phases and throughout the ongoing use of the building.

The SWMMP addresses volume and type of waste and recyclables to be generated, storage and treatment of waste and recyclables on site, disposal of residual waste and recyclables and operational procedures for ongoing waste management once the development is complete.

The applicant provided a SWMMP with the development application and it was found to be satisfactory.

14. SECTION 94 CONTRIBUTION PLANS

14.1. Section 94A Contributions Plan 2011

A S94A levy has not been applied given the estimated cost of works is below $100,000.

15. APPLICABLE ACTS/REGULATIONS

15.1. Demolition of Structures

Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires Council to consider Australian Standard AS 2601-2004: The demolition of structures. Compliance with this requirement is enforced by standard condition.

15.2. Building Code of Australia

The proposal is required to comply with the relevant provisions of the Building Code of Australia. Compliance with these requirements is enforced by standard condition.

16. THE LIKELY IMPACTS OF THE PROPOSAL

All likely impacts have been addressed elsewhere in the report, or are considered to be satisfactory and not warrant further consideration.

17. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

18. THE PUBLIC INTEREST

The proposal is considered to be in the public interest.

19. CONCLUSION

The proposal is acceptable against the relevant considerations under Section 79C.
20. DISCLOSURE STATEMENTS

There have been no disclosure statements regarding political donations or gifts made to any Councillor or to any council employee associated with this development application by the applicant or any person who made a submission.

RECOMMENDATION: PURSUANT TO SECTION 80(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

THAT Council, as the consent authority, is of the opinion that the written request from the applicant under Part 4.6 of the Woollahra Local Environmental Plan 2014 to the Floor Space Ratio development standard of 1:1 under Clause 4.4 of Woollahra LEP 2014 has adequately addressed the relevant matters and the proposed development will be in the public interest because it is consistent with the relevant objectives of the particular standard.

AND That Council, as the consent authority, grant development consent to Development Application No. 53/2016/1 for alterations and additions to existing residential flat building comprising infill of an existing light-well on land at 13 Manning Road Double Bay, subject to the following conditions:

A. General Conditions

A.1 Conditions

Consent is granted subject to the following conditions imposed pursuant to section 80 of the Environmental Planning & Assessment Act 1979 (“the Act”) and the provisions of the Environmental Planning and Assessment Regulation 2000 (“the Regulation”) such conditions being reasonable and relevant to the development as assessed pursuant to section 79C of the Act.

Standard Condition: A1 (Autotext AA1)

A.2 Definitions

Unless specified otherwise, words have the same meaning as defined by the Act, the Regulation and the Interpretation Act 1987 as in force at the date of consent.

Applicant means the applicant for this Consent.

Approved Plans mean the plans endorsed by Council referenced by this consent as amended by conditions of this consent.

AS or AS/NZS means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.

BCA means the Building Code of Australia as published by the Australian Building Codes Board as in force at the date of issue of any Construction Certificate.

Council means Woollahra Municipal Council

Court means the Land and Environment Court
Local native plants means species of native plant endemic to Sydney’s eastern suburbs (see the brochure titled “Local Native Plants for Sydney’s Eastern Suburbs published by the Southern Sydney Regional Organisation of Councils).

Stormwater Drainage System means all works, facilities and documentation relating to:
- The collection of stormwater,
- The retention of stormwater,
- The reuse of stormwater,
- The detention of stormwater,
- The controlled release of stormwater; and
- Connections to easements and public stormwater systems.

Owner means the owner of the site and successors in title to the site.

Owner Builder has the same meaning as in the Home Building Act 1989.

PCA means the Principal Certifying Authority under the Act.

Principal Contractor has the same meaning as in the Act or where a principal contractor has not been appointed by the owner of the land being developed Principal Contractor means the owner of the land being developed.

Professional Engineer has the same meaning as in the BCA.

Public Place has the same meaning as in the Local Government Act 1993.

Road has the same meaning as in the Roads Act 1993.

SEE means the final version of the Statement of Environmental Effects lodged by the Applicant.

Site means the land being developed subject to this consent.

WLEP 1995 means Woollahra Local Environmental Plan 1995

WLEP 2014 means Woollahra Local Environmental Plan 2014

Work for the purposes of this consent means:
- the use of land in connection with development,
- the subdivision of land,
- the erection of a building,
- the carrying out of any work,
- the use of any site crane, machine, article, material, or thing,
- the storage of waste, materials, site crane, machine, article, material, or thing,
- the demolition of a building,
- the piling, piering, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- the delivery to or removal from the site of any machine, article, material, or thing, or
- the occupation of the site by any person unless authorised by an occupation certificate.
A.3 Approved Plans and supporting documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with the plans and supporting documents listed below as submitted by the Applicant and to which is affixed a Council stamp “Approved DA Plans” unless modified by any following condition. Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
<th>Author/Drawn</th>
<th>Date(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dwg. No.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DA02 Rev. A</td>
<td>Site Plan + Location</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DA03 Rev. A</td>
<td>Level 01 Plan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DA04 Rev. A</td>
<td>Level 02 Plan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DA05 Rev. A</td>
<td>Level 03 Plan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DA07 Rev. A</td>
<td>Roof Plan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DA10 Rev. A</td>
<td>West Elevation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A240294</td>
<td></td>
<td></td>
<td>18 Feb 2016</td>
</tr>
</tbody>
</table>

B. Conditions which must be satisfied prior to the demolition of any building or construction

B.1 Construction Certificate required prior to any demolition

Where demolition is associated with an altered portion of, or an extension to an existing building the demolition of any part of a building is "commencement of erection of building" pursuant to section 81A(2) of the Act. In such circumstance all conditions in Part C and Part D of this consent must be satisfied prior to any demolition work. This includes, but is not limited to, the issue of a Construction Certificate, appointment of a PCA and Notice of Commencement under the Act.

Note: See Over our Dead Body Society Inc v Byron Bay Community Association Inc [2001] NSWLEC 125.

C. Conditions which must be satisfied prior to the issue of any construction certificate
C.1 Payment of Long Service Levy, Security, Contributions 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, subdivision certificate or occupation certificate*, as will apply.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Indexed</th>
<th>Council Fee Code</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>LONG SERVICE LEVY</strong>&lt;br&gt;under Building and Construction Industry Long Service Payments Act 1986</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>SECURITY</strong>&lt;br&gt;under section 80A(6) of the Environmental Planning and Assessment Act 1979</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Property Damage Security Deposit -making good any damage caused to any property of the Council</td>
<td>$4,481.00</td>
<td>No</td>
<td>T115</td>
</tr>
<tr>
<td><strong>INSPECTION FEES</strong>&lt;br&gt;under Section 608 of the Local Government Act 1993</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Security Administration Fee</td>
<td>$180</td>
<td>No</td>
<td>T16</td>
</tr>
<tr>
<td><strong>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</strong></td>
<td>$4,661.00 plus any relevant indexed amounts and long service levy</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Building and Construction Industry Long Service Payment**

The Long Service Levy under Section 34 of the *Building and Construction Industry Long Service Payment Act, 1986*, must be paid and proof of payment provided to the *Certifying Authority* prior to the issue of any *Construction Certificate*. The Levy can be paid directly to the Long Service Payments Corporation or to Council. Further information can be obtained from the Long Service Payments Corporation’s website [http://www.lspc.nsw.gov.au/](http://www.lspc.nsw.gov.au/) or the Long Service Payments Corporation on 13 14 41.

**How must the payments be made?**

Payments must be made by:
- Cash deposit with Council,
- Credit card payment with Council, or
- Bank cheque made payable to Woollahra Municipal Council.

The payment of a security may be made by a bank guarantee where:
- The guarantee is by an Australian bank for the amount of the total outstanding contribution;
- 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 [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable];
- 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;
- The bank guarantee is lodged with the Council prior to the issue of the construction certificate; and
- 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.

**Standard Condition: C5**

C.2 BASIX commitments

The *applicant* must submit to the *Certifying Authority* BASIX Certificate No. **A240294** with any application for a *Construction Certificate*. 
Note: Where there is any proposed change in the BASIX commitments the applicant must submit of a new BASIX Certificate to the Certifying Authority and Council. If any proposed change in the BASIX commitments are inconsistent with development consent (See: Clauses 145 and 146 of the Regulation) the applicant will be required to submit an amended development application to Council pursuant to section 96 of the Act.

All commitments in the BASIX Certificate must be shown on the Construction Certificate plans and specifications prior to the issue of any Construction Certificate.

Note: Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires."

Standard Condition: C7

C.3 Structural Adequacy of Existing Supporting Structures

A certificate from a professional engineer (Structural Engineer), certifying the adequacy of the existing supporting structure to support the additional loads proposed to be imposed by the development, must be submitted with the Construction Certificate application.

Note: This condition is imposed to ensure that the existing structure is able to support the additional loads proposed.

Standard Condition: C35 (Autotext CC35)

C.4 Professional Engineering Details

The Construction Certificate plans and specifications, required by clause 139 of the Regulation, must include detailed professional engineering plans and/or specifications for all structural, electrical, hydraulic, hydro-geological, geotechnical, mechanical and civil work complying with this consent, approved plans, the statement of environmental effects and supporting documentation.

Detailed professional engineering plans and/or specifications must be submitted to the Certifying Authority with the application for any Construction Certificate.

Note: This does not affect the right of the developer to seek staged Construction Certificates.

Standard Condition: C36

C.5 Stormwater discharge to existing Stormwater Drainage System

The Construction Certificate plans and specifications required by clause 139 of the Regulation, must detail:

a) The location of the existing Stormwater Drainage System including all pipes, inspection openings, surface drains, pits and their discharge location,

b) The state of repair of the existing Stormwater Drainage System,

c) Any remedial works required to upgrade the existing Stormwater Drainage System to comply with the BCA,

d) Any remedial works required to upgrade the existing Stormwater Drainage System crossing the footpath and any new kerb outlets,

e) Any new Stormwater Drainage System complying with the BCA,
f) Interceptor drain(s) at the site boundary to prevent stormwater flows from the site crossing the footpath,

g) Any rainwater tank (See Note Below) required by BASIX commitments including their overflow connection to the Stormwater Drainage System, and

h) General compliance with the Council’s Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management

Where any new Stormwater Drainage System crosses the footpath area within any road, separate approval under section 138 of the Roads Act 1993 must be obtained from Council for those works prior to the issue of any Construction Certificate.

All Stormwater Drainage System work within any road or public place must comply with Woollahra Municipal Council’s Specification for Roadworks, Drainage and Miscellaneous Works dated February 2012.

Note: Clause F1.1 of Volume 1 and Part 3.1.2 of Volume 2 of the BCA provide that stormwater drainage complying with AS/NZS 3500.3 Plumbing and drainage - Part 3: Stormwater drainage is deemed-to-satisfy the BCA. Council’s specifications apply in relation to any works with any road or public place.

Note: Stormwater Drainage Systems must not discharge to any Sewer System. It is illegal to connect stormwater pipes and drains to the sewerage system as this can overload the system and cause sewage overflows. See: http://www.sydneywater.com.au/Publications/Factsheets/SewerfixLookingAfterYourSewerPipes


Standard Condition: C49

D. Conditions which must be satisfied prior to the commencement of any development work

D.1 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

For the purposes of section 80A (11) of the Act, the following conditions are prescribed in relation to a development consent for development that involves any building work:

a) that the work must be carried out in accordance with the requirements of the Building Code of Australia,

b) in the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

a) to the extent to which an exemption is in force under the Home Building Regulation 2004,

b) to the erection of a temporary building.

In this condition, a reference to the BCA is a reference to that code as in force on the date the application for the relevant construction certificate is made.
**Note:** This condition must be satisfied prior to commencement of any work in relation to the contract of insurance under the Home Building Act 1989. This condition also has effect during the carrying out of all building work with respect to compliance with the Building Code of Australia.

**Note:** All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.

**Standard Condition: D1 (Autotext DD1)**

### D.2 Security Fencing, Hoarding and Overhead Protection

Security fencing must be provided around the perimeter of the development site, including any additional precautionary measures taken to prevent unauthorised entry to the site at all times during the demolition, excavation and construction period. Security fencing must be the equivalent 1.8m high chain wire as specified in AS 1725.

Where the development site adjoins a public thoroughfare, the common boundary between them must be fenced for its full length with a hoarding, unless the least horizontal distance between the common boundary and the nearest parts of the structure is greater than twice the height of the structure. The hoarding must be constructed of solid materials (chain wire or the like is not acceptable) to a height of not less than 1.8 m adjacent to the thoroughfare.

Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an *overhead protective structure* and the facing facade protected by heavy-duty scaffolding, unless either:

a) The vertical height above footpath level of the structure being demolished is less than 4.0 m; or  
b) The least horizontal distance between footpath and the nearest part of the structure is greater than half the height of the structure.

The overhead structure must consist of a horizontal platform of solid construction and vertical supports, and the platform must:

a) Extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary;  
b) Have a clear height above the footpath of not less than 2.1 m;  
c) Terminate 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than
0.5 m above the platform surface; and
d) Together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa.

The principal contractor or owner builder must pay all fees associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

The principal contractor or owner builder must ensure that Overhead Protective Structures are installed and maintained in accordance with WorkCover NSW Code of Practice - Overhead Protective Structures, gazetted 16 December 1994, as commenced 20 March 1995. This can be downloaded from:

Security fencing, hoarding and overhead protective structure must not obstruct access to utilities services including but not limited to man holes, pits, stop valves, fire hydrants or the like.

Note: The principal contractor or owner must allow not less than two (2) weeks from the date of making a hoarding application for determination. Any approval for a hoarding or overhead protection under the Roads Act 1993 will be subject to its own conditions and fees.

D.3 Site Signs

The Principal Contractor or owner builder must ensure that the sign/s required by clauses 98A and 227A of the Regulation is/are erected and maintained at all times.

Clause 98A of the Regulation provides:

**Erection of signs**

- For the purposes of section 80A (11) of the Act, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - showing the name, address and telephone number of the principal certifying authority for the work, and
  - showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State’s building laws.”
Clause 227A of the Regulation provides:

**Signs on development sites**

If there is a person who is the PCA or the principal contractor for any building work, subdivision work or demolition work authorised to be carried out on a site by a development consent or complying development certificate:

- Each such person MUST ensure that a rigid and durable sign showing the person’s identifying particulars so that they can be read easily by anyone in any public road or other public place adjacent to the site is erected in a prominent position on the site before the commencement of work, and is maintained on the site at all times while this clause applies until the work has been carried out.

**Note:** Clause 227A imposes a penalty exceeding $1,000 if these requirements are not complied with.

**Note:** If Council is appointed as the PCA it will provide the sign to the principal contractor or owner builder who must ensure that the sign is erected and maintained as required by Clause 98A and Clause 227A of the Regulation.

Standard Condition: D12 (Autotext DD12)

**D.4 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)**

The erection of the building in accordance with this development consent must not be commenced until:

a) A construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited Certifier, and

b) The person having the benefit of the development consent has:
   - Appointed a principal certifying authority for the building work, and
   - Notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and

c) The principal certifying authority has, no later than 2 days before the building work commences:
   - Notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
   - Notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and

d) The person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
   - Appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
   - Notified the principal certifying authority of any such appointment, and
   - Unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
   - Given at least 2 days’ notice to the council of the person’s intention to commence the erection of the building.
E. Conditions which must be satisfied during any development work

E.1 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

For the purposes of section 80A (11) of the Act, the following condition is prescribed in relation to a development consent for development that involves any building work:

a) That the work must be carried out in accordance with the requirements of the Building Code of Australia,

b) In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

a) To the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4) of the Regulation, or

b) To the erection of a temporary building.

In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant construction certificate is made.

Note: All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.

Standard Condition: E1 (Autotext EE1)

E.2 Compliance with Australian Standard for Demolition


Standard Condition: E2 (Autotext EE2)
E.3 Requirement to notify about new evidence

Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination, heritage significance, threatened species or other relevant matters must be immediately notified to Council and the Principal Certifying Authority.

Standard Condition: E4 (Autotext EE4)

E.4 Critical Stage Inspections

Critical stage inspections must be called for by the principal contractor or owner builder as required by the PCA, any PCA service agreement, the Act and the Regulation.

Work must not proceed beyond each critical stage until the PCA is satisfied that work is proceeding in accordance with this consent, the Construction Certificate(s) and the Act. Critical stage inspections means the inspections prescribed by the Regulations for the purposes of section 109E(3)(d) of the Act or as required by the PCA and any PCA Service Agreement.

Note: The PCA may require inspections beyond mandatory critical stage inspections in order that the PCA be satisfied that work is proceeding in accordance with this consent.

Note: The PCA may, in addition to inspections, require the submission of Compliance Certificates, survey reports or evidence of suitability in accordance with Part A2.2 of the BCA in relation to any matter relevant to the development.

Standard Condition: E5 (Autotext EE5)

E.5 Hours of Work –Amenity of the neighbourhood

a) No work must take place on any Sunday or public holiday,
b) No work must take place before 7am or after 5pm any weekday,
c) No work must take place before 7am or 1pm any Saturday,
d) The following work must not take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday;
   i) Piling;
   ii) Piering;
   iii) Rock or concrete cutting, boring or drilling;
   iv) Rock breaking;
   v) Rock sawing;
   vi) Jack hammering; or
   vii) Machine excavation,

e) No loading or unloading of material or equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday

f) No operation of any equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday

g) No rock excavation being cutting, boring, drilling, breaking, sawing, jack hammering or bulk excavation of rock, must occur without a 15 minute break every hour.

This condition has been imposed to mitigate the impact of work upon the amenity of the neighbourhood. Impact of work includes, but is not limited to, noise, vibration, dust, odour, traffic and parking impacts.
Note: The use of noise and vibration generating plant and equipment and vehicular traffic, including trucks in particular, significantly degrade the amenity of neighbourhoods and more onerous restrictions apply to these activities. This more invasive work generally occurs during the foundation and bulk excavation stages of development. If you are in doubt as to whether or not a particular activity is considered to be subject to the more onerous requirement (9am to 4pm weekdays and 9am to 1pm Saturdays) please consult with Council.

Note: Each and every breach of this condition by any person may be subject to separate penalty infringement notice or prosecution.

Note: The delivery and removal of plant, equipment and machinery associated with wide loads subject to RTA and Police restrictions on their movement outside the approved hours of work will be considered on a case by case basis.

Note: Compliance with these hours of work does not affect the rights of any person to seek a remedy to offensive noise as defined by the Protection of the Environment Operations Act 1997, the Protection of the Environment Operations (Noise Control) Regulation 2000.


Standard Condition: E6 (Autotext EE6)

E.6 Public Footpaths – Safety, Access and Maintenance

The principal contractor or owner builder and any other person acting with the benefit of this consent must:

a) Not erect or maintain any gate or fence swing out or encroaching upon the road or the footway.
b) Not use the road or footway for the storage of any article, material, matter, waste or thing.
c) Not use the road or footway for any work.
d) Keep the road and footway in good repair free of any trip hazard or obstruction.
e) Not stand any plant and equipment upon the road or footway.
f) Provide a clear safe pedestrian route a minimum of 1.5m wide.
g) Protect street name inlays in the footpath which are not to be removed or damaged during development.

This condition does not apply to the extent that a permit or approval exists under the section 73 of the Road Transport (Safety and Traffic Management) Act 1999, section 138 of the Roads Act 1993 or section 94 of the Local Government Act 1993 except that at all time compliance is required with:

a) Australian Standard AS 1742 (Set) Manual of uniform traffic control devices and all relevant parts of this set of standards.
b) Australian Road Rules to the extent they are adopted under the Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999.

Note: Section 73 of the Road Transport (Safety and Traffic Management) Act 1999 allows the Police to close any road or road related area to traffic during any temporary obstruction or danger to traffic or for any temporary purpose. Any road closure requires Police approval.

Note: Section 138 of the Roads Act 1993 provides that a person must not:
- erect a structure or carry out a work in, on or over a public road, or
- dig up or disturb the surface of a public road, or
- remove or interfere with a structure, work or tree on a public road, or
- pump water into a public road from any land adjoined by the road, or
- connect a road (whether public or private) to a classified road, otherwise than with the consent of the appropriate roads authority.
Note: Section 68 of the *Local Government Act* 1993 provides that a person may carry out certain activities only with the prior approval of the council including:

- **Part C Management of Waste:**
  a. For fee or reward, transport waste over or under a public place
  b. Place waste in a public place
  c. Place a waste storage container in a public place.”

- **Part E Public roads:**
  a. Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway
  b. Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.”
  c. Any work in, on or over the Road or Footway requires *Council* Approval and in the case of classified roads the NSW Roads and Traffic Authority. Road includes that portion of the road uses as a footway.

Standard Condition: E7 (Autotext EE7)

### E.7 Maintenance of Environmental Controls

The *principal contractor* or *owner builder* must ensure that the following monitoring, measures and controls are maintained:

- a) Erosion and sediment controls,
- b) Dust controls,
- c) Dewatering discharges,
- d) Noise controls;
- e) Vibration monitoring and controls;
- f) Ablutions;


Standard Condition: E11

### E.8 Disposal of site water during construction

The principal contractor or owner builder must ensure:

- a) Prior to pumping any water into the road or public stormwater system that approval is obtained from *Council* under section 138(1)(d) of the *Roads Act* 1993;
- b) That *water pollution*, as defined by the *Protection of the Environment Operations Act* 1997, does not occur as the result of the discharge to the road, public stormwater system or other place or any site water;
- c) That stormwater from any roof or other impervious areas is linked, via temporary downpipes and stormwater pipes, to a Council approved stormwater disposal system immediately upon completion of the roof installation or work creating other impervious areas.

Note: This condition has been imposed to ensure that adjoining and neighbouring land is not adversely affected by unreasonable overland flows of stormwater and that site water does not concentrate water such that they cause erosion and water pollution.

Standard Condition: E17 (Autotext EE17)

### E.9 Placement and use of Skip Bins

The *principal contractor* or *owner builder* must ensure that all waste storage containers, including but not limited to skip bins, must be stored within the site unless:
a) Activity Approval has been issued by Council under section 94 of the *Local Government Act* 1993 to place the waste storage container in a public place, and
b) Where located on the road it is located only in a positions where a vehicle may lawfully park in accordance with the Australian Road Rules to the extent they are adopted under the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999.*

**Note:** Waste storage containers must not be located on the footpath without a site specific activity approval. Where such site specific activity approval is granted a 1.5m wide clear path of travel is maintained free of any trip hazards.

### E.10 Prohibition of burning

There must be no burning of any waste or other materials. The burning of CCA (copper chrome arsenate) or PCP (pentachlorophenol) treated timber is prohibited in all parts of NSW.

All burning is prohibited in the Woollahra local government area.

**Note:** Pursuant to the *Protection of the Environment Operations (Control of Burning) Regulation 2000* all burning (including burning of vegetation and domestic waste) is prohibited except with approval. No approval is granted under this consent for any burning.

**Standard Condition:** E22 (Autotext EE22)

### E.11 Dust Mitigation

Dust mitigation must be implemented in accordance with “*Dust Control - Do it right on site*” published by the Southern Sydney Regional Organisation of Councils.

This generally requires:

a) Dust screens to all hoardings and site fences.
b) All stockpiles or loose materials to be covered when not being used.
c) All equipment, where capable, being fitted with dust catchers.
d) All loose materials being placed bags before placing into waste or skip bins.
e) All waste and skip bins being kept covered when not being filled or emptied.
f) The surface of excavation work being kept wet to minimise dust.
g) Landscaping incorporating trees, dense shrubs and grass being implemented as soon as practically possible to minimise dust.

**Note:** “*Dust Control - Do it right on site*” can be down loaded free of charge from Council’s web site [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or obtained from Council’s office.

**Note:** Special precautions must be taken when removing asbestos or lead materials from development sites. Additional information can be obtained from [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au) and [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au). Other specific condition and advice may apply.

**Note:** Demolition and construction activities may affect local air quality and contribute to urban air pollution. The causes are dust, smoke and fumes coming from equipment or activities, and airborne chemicals when spraying for pest management. Precautions must be taken to prevent air pollution.

**Standard Condition:** E23 (Autotext EE23)

### E.12 Site waste minimisation and management – Demolition

In order to maximise resource recovery and minimise residual waste from demolition activities:
a) The provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work.
b) An area is to be allocated for the storage of materials for use, recycling and disposal (giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation and access and handling requirements).
c) Provide separate collection bins and/or areas for the storage of residual waste.
d) Clearly ‘signpost’ the purpose and content of the bins and/or storage areas.
e) Implement measures to prevent damage by the elements, odour, health risks and windborne litter.
f) Minimise site disturbance, limiting unnecessary excavation.

When implementing the SWMMP the applicant must ensure:

a) Footpaths, public reserves and street gutters are not used as places to store demolition waste or materials of any kind without Council approval.
b) Any material moved offsite is transported in accordance with the requirements of the Protection of the Environment Operations Act (1997).
c) Waste is only transported to a place that can lawfully be used as a waste facility.
d) Generation, storage, treatment and disposal of hazardous waste and special waste (including asbestos) is conducted in accordance with relevant waste legislation administered by the EPA and relevant Occupational Health and Safety legislation administered by Workcover NSW.
e) Evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained.

Note: Materials that have an existing reuse or recycling market should not be disposed of in a landfill. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.

Standard Condition: E31 (Autotext EE31)

E.13 Site waste minimisation and management – Construction

In order to maximise resource recovery and minimise residual waste from construction activities:

a) The provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work.
b) Arrange for the delivery of materials so that materials are delivered ‘as needed’ to prevent the degradation of materials through weathering and moisture damage.
c) Consider organising to return excess materials to the supplier or manufacturer.
d) Allocate an area for the storage of materials for use, recycling and disposal (considering slope, drainage, location of waterways, stormwater outlets and vegetation).
e) Clearly ‘signpost’ the purpose and content of the storage areas.
f) Arrange contractors for the transport, processing and disposal of waste and recycling. Ensure that all contractors are aware of the legal requirements for disposing of waste.
g) Promote separate collection bins or areas for the storage of residual waste.
h) Implement measures to prevent damage by the elements, odour and health risks, and windborne litter.
i) Minimise site disturbance and limit unnecessary excavation.
j) Ensure that all waste is transported to a place that can lawfully be used as a waste facility.
k) Retain all records demonstrating lawful disposal of waste and keep them readily accessible for inspection by regulatory authorities such as council, Department of Environment and Climate Change (DECC) or WorkCover NSW

Standard Condition: E32 (Autotext EE32)

E.14 Asbestos Removal

Where hazardous material, including bonded or friable asbestos has been identified in and such material must be demolished, disturbed and subsequently removed, all such works must comply with the following criteria:

a) Be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (restricted) Asbestos License,
c) No asbestos products may be reused on the site
d) No asbestos laden skip or bins shall be left in any public place

Note: This condition is imposed to protect the health and safety of persons working on the site and the public

Standard Condition: E39

E.15 Classification of Hazardous Waste

Prior to the exportation of hazardous waste (including hazardous fill or soil) from the site, the waste materials must be classified in accordance with the provision of the Protection of the Environment Operations Act 1997 and the NSW DECC Waste Classification Guidelines, Part1: Classifying Waste (April 2008).

Note: This condition is imposed to ensure that where hazardous waste will be removed from a site an Asbestos Licensed contractor can definitively determine where the waste may be legally taken for disposal.

Standard Condition: E40

E.16 Disposal of Asbestos and Hazardous Waste

Asbestos and hazardous waste, once classified in accordance with condition E 40 above must only be transported to waste facilities licensed to accept asbestos and appropriate classifications of hazardous waste.

Note: This condition is imposed to ensure that asbestos and other Hazardous waste is disposed of lawfully under the Protection of the Environment Operations Act 1997 and relevant EPA requirements.

Standard Condition: E41

E.17 Asbestos Removal Signage

Standard commercially manufactured signs containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm are to be erected in prominent visible positions on the site when asbestos is being removed.

Note: This condition is imposed to ensure awareness of any hazard to the health and safety of persons working on the site and public.

Standard Condition: E42
F. Conditions which must be satisfied prior to any occupation or use of the building (Part 4A of the Act and Part 8 Division 3 of the Regulation)

F.1 Occupation Certificate (section 109M of the Act)

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.

Standard Condition: F1 (Autotext FF1)

F.2 Commissioning and Certification of Systems and Works

The principal contractor or owner builder must submit to the satisfaction of the PCA works-as-executed (“WAE”) plans, Compliance Certificates and evidence of suitability in accordance with the BCA confirming that the works, as executed and as detailed, comply with the requirement of this consent, the Act, the Regulations, any relevant construction certificate, the BCA and relevant Australian Standards.

Works-as-executed (“WAE”) plans, Compliance Certificates and evidence of suitability in accordance with the BCA must include but may not be limited to:

a) Certification from the supervising professional engineer that the requirement of the Geotechnical/Hydrogeological conditions and report recommendations were implemented and satisfied during development work.

b) All flood protection measures.

c) All garage/car park/basement car park, driveways and access ramps comply with Australian Standard AS 2890.1 – “Off-Street car parking.”

d) All stormwater drainage and storage systems.

e) All mechanical ventilation systems.

f) All hydraulic systems.

g) All structural work.

h) All acoustic attenuation work.

i) All waterproofing.

j) Such further matters as the Principal Certifying Authority may require.

Note: This condition has been imposed to ensure that systems and works as completed meet development standards as defined by the Act, comply with the BCA, comply with this consent and so that a public record of works as execute is maintained.

Note: The PCA may require any number of WAE plans, certificates, or other evidence of suitability as necessary to confirm compliance with the Act, Regulation, Development Standards, BCA, and relevant Australia Standards. As a minimum WAE plans and certification is required for stormwater drainage and detention, mechanical ventilation work, hydraulic services (including but not limited to fire services).

Note: The PCA must submit to Council, with any Occupation Certificate, copies of works-as-executed (“WAE”) plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA upon which the PCA has relied in issuing any Occupation Certificate.

Standard Condition: F7 (Autotext FF7)

G. Conditions which must be satisfied prior to the issue of any Subdivision Certificate

Nil.
H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (s109C(1)(c))

H.1 Fulfillment of BASIX commitments – Clause 154B of the Regulation

All BASIX commitments must be effected in accordance with the BASIX Certificate No. A240294.

Note: Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."
Standard Condition: H7 (Autotext HH7)

H.2 Removal of Ancillary Works and Structures

The principal contractor or owner must remove from the land and any adjoining public place:

a) The site sign;
b) Ablutions;
c) Hoarding;
d) Scaffolding; and
e) Waste materials, matter, article or thing.

Note: This condition has been imposed to ensure that all ancillary matter is removed prior to the issue of the Final Occupation Certificate.
Standard Condition: H12 (Autotext HH12)

I. Conditions which must be satisfied during the ongoing use of the development

I.1 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No. A240294.

Note: This condition affects successors in title with the intent that environmental sustainability measures must be maintained for the life of development under this consent.
Standard Condition: I24

J. Miscellaneous Conditions

Nil.

K. Advisings

K.1 Criminal Offences – Breach of Development Consent and Environmental laws

Failure to comply with this development consent and any condition of this consent is a criminal offence. Failure to comply with other environmental laws is also a criminal offence.

Where there is any breach Council may without any further warning:

a) Issue Penalty Infringement Notices (On-the-spot fines);
b) Issue notices and orders;
c) Prosecute any person breaching this consent; and/or
d) Seek injunctions/orders before the courts to restrain and remedy any breach.

Warnings as to potential maximum penalties

Maximum Penalties under NSW Environmental Laws include fines up to $1.1 Million and/or custodial sentences for serious offences.

Warning as to enforcement and legal costs

Should Council have to take any action to enforced compliance with this consent or other environmental laws Council’s policy is to seek from the Court appropriate orders requiring the payments of its costs beyond any penalty or remedy the Court may order. This consent and this specific advice will be tendered to the Court when seeking costs orders from the Court where Council is successful in any necessary enforcement action.

Note: The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of the Crimes (Sentencing Procedure) Act 1999, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious. You can obtain further information from the following websites:

K.2 Builder’s Licences and Owner Builders Permits

Section 81A of the Act requires among other matters that the person having the benefit of the development consent, if not carrying out the work as an owner-builder, must appointed a principal contractor for residential building work who must be the holder of a contractor licence.

Further information can be obtained from the NSW Office of Fair Trading website about how you obtain an owner builders permit or find a principal contractor (builder):

The Owner(s) must appoint the PCA. The PCA must check that Home Building Act insurance is in place before the commencement of building work. The Principal Contractor (Builder) must provide the Owners with a certificate of insurance evidencing the contract of insurance under the Home Building Act 1989 for the residential building work.

K.3 Building Standards - Guide to Standards and Tolerances

The PCA does not undertake detailed quality control inspections and the role of the PCA is primarily to ensure that the development proceeds in accordance with this consent, Construction Certificates and that the development is fit for occupation in accordance with its classification under the Building Code of Australia. Critical Stage Inspections do not provide the level of supervision required to ensure that the minimum standards and tolerances specified by the “Guide to Standards and Tolerances©” ISBN 0 7347 6010 8 are achieved.
The quality of any development is a function of the quality of the principal contractor’s or owner builder’s supervision of individual contractors and trades on a daily basis during the development. The PCA does not undertake this role.

The NSW Office of Fair Trading have published a “Guide to Standards and Tolerances©” ISBN 0 7347 6010 8. The guide can be obtained from the Office of Fair Trading by calling 13 32 20 or by Fax: 9619 8618 or by post to: Marketing Branch, PO Box 972, Parramatta NSW 2124.

The Guide can be downloaded from:

Council, as the PCA or otherwise, does not adjudicate building contract disputes between the principal contractor, contractors and the owner.

Standard Condition: K6 (Autotext KK6)

K.4 Workcover requirements

The Occupational Health and Safety Act 2000 No 40 and subordinate regulations, codes of practice and guidelines control and regulate the development industry.

Note: Further information can be obtained from Workcover NSW’s website: http://www.workcover.nsw.gov.au/Industry/Construction/default.htm or through their head office:
Location: Workcover NSW, 92-100 Donnison Street, GOSFORD 2250 Postal address: WorkCover NSW, Locked Bag 2906, LISAROW 2252, Phone (02) 4321 5000, Fax (02) 4325 4145.

Standard Condition: K7 (Autotext KK7)

K.5 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Mr Wilson Perdigao, Assessment Officer, on (02) 9391 7126.

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, site hearings and the use of Court Appointed Experts, 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 commissioner having the full authority to completely determine the matter at the conference.

Standard Condition: K14 (Autotext KK14)

K.6 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 80A of the Act.

The securities will not be released until a Final Occupation Certificate has lodged with Council, Council has inspected the site and Council is satisfied that the public works have been carried out to Council’s requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council’s requirements.
Council will only release the security upon being satisfied that all damage or all works, the purpose for which the security has been held have been remedied or completed to Council’s satisfaction as the case may be.

Council may retain a portion of the security to remedy any defects in any such public work that arise within 6 months after the work is completed.

Upon completion of each section of road, drainage and landscape work to Council's satisfaction, 90% of the Bond monies held by Council for these works will be released upon application. 10% may be retained by Council for a further 6 month period and may be used by Council to repair or rectify any defects or temporary works during the 6 month period.


K.7 Recycling of Demolition and Building Material

It is estimated that building waste, including disposable materials, resulting from demolition, excavation, construction and renovation, accounts for almost 70% of landfill. Such waste is also a problem in the generation of dust and the pollution of stormwater. Council encourages the recycling of demolition and building materials.

Standard Condition: K17 (Autotext KK17)

K.8 Owner Builders

Under the Home Building Act 1989 any property owner who intends undertaking construction work to a dwelling house or dual occupancy to the value of $12,000 or over must complete an approved education course and obtain an owner-builder permit from the Office of Fair Trading (see [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)).

Standard Condition: K18 (Autotext KK18)

Annexures

1. Annexure 1 - Plans and elevations
2. Annexure 2 - Applicants Clause 4.6 Variation
25 February 2016

Woollahra Council
36 New South Head Road
Double Bay NSW 2028

To whom it may concern,

re: 13 Manning Road Clause 4.6 Variation

In accordance with the provisions of LEP 2014 a variation to this control is sought under clause 4.6. In particular, the proposal is assessed below against the relevant criteria in LEP 2014:

Clause 4.6 (3) (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

The additional GFA proposed (i.e. 24 m²) is generated by a minor addition of a infill to an light well. This addition is located within the envelope of the existing building in a location that has negligible and reasonable environmental impacts. The new amenity that is proposed has no little visual or physical impact.

The additional 24 m² of GFA will have no unreasonable environmental impacts and compliance with the site’s floor space control is considered to be unreasonable and unnecessary in this instance.

Clause 4.6 (3) (b): that there are sufficient environmental planning grounds to justify contravening the development standard.

As discussed above, the additional floor space proposed has negligible and reasonable environmental impacts.

The additional GFA will enhance the amenity of the residential units. Such a purpose is consistent with the zone objectives for the site’s R3 Medium Density Residential zoning under the LEP 2014.

There are sufficient environmental planning grounds to justify contravening the development standard in this instance.

Clause 4.6 (4): Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.
The subclause 4.6(3) matters are dealt with above and the remaining issue is the ‘public interest’.

The objectives of the floor space control are:

“(a) to ensure the bulk and scale of new development is compatible with the desired future character of the area, and

(b) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain, and

(c) to ensure development allows adequate provision on the land for deep soil planting and areas of private open space”

(extract - WLEP 2014 cl. 4.4 floor space ratio control objectives)

**Objective (a)** The additional floor space sought will not result in any visual change to the streetscape and retains the desired character of the locality.

**Objective (b)** is considered to be satisfied as all the additions are within the existing building setback and height. The additional floor space sought has negligible and reasonable environmental impacts on the adjoining properties and the public domain.

**Objective (c)** this objective is not relevant

Furthermore, the additions are considered to be consistent with the site’s zone objectives: “To provide for the housing needs of the community within a medium density residential environment.” The additions proposed enhance the amenity and provides for the needs of the residents.

The additions are acceptable in terms of the zone and floor space ratio control objectives and provide for enhanced amenity for the existing commercial property. The proposed development will be in the public interest.

The requested clause 4.6 variation to the site’s floor space control is considered to be well founded and worthy of support on both environmental planning and public interest grounds

Please do not hesitate to contact me if you have any questions or require any further information.

Regards,

Rory Brooks
Item No: D10  Delegated to Committee

Subject: REGISTER OF CURRENT LAND AND ENVIRONMENT COURT MATTERS AND REGISTER FOR COURT PROCEEDINGS FOR BUILDING CONTROL, ENVIRONMENTAL CONTROL AND HEALTH CONTROL

Author: Grace Hawley, PA to Manager, Development Control

Approvers: Nick Economou, Manager - Development Control
            Tim Tuxford, Manager - Compliance

File No: 16/72614

Reason for Report: Update DCC on Legal Matters

Recommendation:

A. Recommendation text. Use alphabetic list if more than one recommendation.
   i. Use numeric list for recommendation subheadings.
   ii. Use numeric list for recommendation subheadings.

B. Second recommendation.

Council at its meeting of 17 August 1994 resolved in the following terms:

THAT the register of current Land and Environment Court Matters for Development Applications presented in the Development Applications Summary be transferred to the Development Control Committee to be considered at each meeting.

Further, the Development Control Committee at its meeting of 29 March 2010 resolved in the following terms:

THAT a register of Court Proceedings for Building Control, Environmental Control and Health Control be presented to the Development Control Committee at least once a month to highlight the prosecution activities being undertaken by Council’s Compliance section.

Please find attached copies of the current registers.

Annexures

1. Legal Register
### Development Control

#### Class 1 - Appealed Deemed Refusal

##### Waiting Hearing

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Respondent</th>
<th>File Ref.</th>
<th>Legal Rep.</th>
<th>Address</th>
<th>Officer</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elbad Tades &amp; Mohaird Mursi v Woollahra Municipal Council</td>
<td></td>
<td>DA666/2015/1</td>
<td>Wildfire Webb, Staunton Beattie</td>
<td>135 Mogulown Ave, VAUGHAN</td>
<td>Eleanor Smith</td>
<td>This is an appeal against the deemed refusal of an application for substantial alterations to convert the existing dwelling house into a dual occupancy. First directions hearing is to be held on 7 April 2016. Hearing set down for 5 and 6 July 2016.</td>
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<tr>
<td>JIN Developments Pty Ltd (ABN 67 166 338 950) v Woollahra Municipal Council</td>
<td></td>
<td>DA574/2015/1</td>
<td>Lindsay Taylor, Lawyers</td>
<td>8 Sutherland Cres, DARLING POINT</td>
<td>George Fekis</td>
<td>This is an appeal against the deemed refusal of an application for the demolition of existing dwelling house and construction of new dwelling house (3) and part four (4) storey dwelling house with swimming pool, garage and associated landscaping. First directions hearing to be held on 6 May 2016. Set down for a s244 Conference on 2 and 3 August 2016.</td>
</tr>
<tr>
<td>Parker Logan Property Pty Ltd (ACN 121 055 178) v Woollahra Municipal Council</td>
<td></td>
<td>DA594/2015/1</td>
<td>HWI Elsworthy, Lawyers</td>
<td>254-256 Old South Head Rd, BELLEVUE HILL</td>
<td>David Booth</td>
<td>This is an appeal against the deemed refusal of an application for the demolition of existing dwellings and construction of a new residential flat building including excavation for basement level carparking and strap subdivision. First directions hearing to be held on 22 March 2016. Matter has been listed for a s244 Conference on 25 May 2016. Amended plans to be submitted.</td>
</tr>
<tr>
<td>Parker Logan Property Pty Ltd (ACN 121 055 178) v Woollahra Municipal Council</td>
<td></td>
<td>DA667/2015/1</td>
<td>Wildfire Webb, Staunton Beattie</td>
<td>8A Cooper Park Rd, BELLEVUE HILL</td>
<td>Simon Taylor</td>
<td>This is an appeal against the deemed refusal of an application for the construction of two three storey residential flat building containing a total of 27 units and basement level carparking for 50 vehicles and storage, strap subdivision, landscaping and streetworks. First directions hearing to be held on 2 February 2016. Report going to DCC on 7 March 2016. Set down for a s244 Conference.</td>
</tr>
<tr>
<td>Applicant v Respondent</td>
<td>File Ref.</td>
<td>Legal Rep</td>
<td>Address</td>
<td>Officer</td>
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<tr>
<td>Shiloh Sheild v Woollahra Municipal Council</td>
<td>DA299/2015/1</td>
<td>Weibley Webb &amp; Stuflank Bostock</td>
<td>1 Magrey St, WOOLLARRA</td>
<td>Simon Taylor</td>
<td>This is an appeal against the deemed refusal of an application for alterations and additions to the existing dwelling to facilitate a change of use to a health services facility. The proposed works include internal works, a new rear wing, parking at the rear partially below ground level for 3 cars, a hardstand car space off Magrey Street, new fences, landscaping and siteworks. First directions hearing to be held on 23 March 2016. Section 34 conferencing set down for 26 and 27 May 2016. The parties have agreed to proceed on a voluntary basis.</td>
<td></td>
</tr>
<tr>
<td>Judgement Finalised</td>
<td>Elle Darvand v Woollahra Municipal Council</td>
<td>DA12/2015/1</td>
<td>Peter Rigby</td>
<td>45 Kambala Rd, BELLEVUE HILL</td>
<td>Dylan Sargent</td>
<td>This is an appeal against the deemed refusal of an application for the demolition of an existing dwelling and pool (retention of existing tennis court) and construction of a new 3 storey dwelling, four bedroom, swimming pool, cabana, fences, landscaping and siteworks. First directions hearing to be held on 23 March 2016. Section 34 conferencing set down for 26 and 27 May 2016. The parties have agreed to proceed on a voluntary basis.</td>
</tr>
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</table>

**Class 1 - Appealed Determination**

**Awaiting Callover/mention**

<table>
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<tr>
<th>Applicant v Respondent</th>
<th>File Ref.</th>
<th>Legal Rep</th>
<th>Address</th>
<th>Officer</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alperto Frangos Edwards v Woollahra Municipal Council</td>
<td>DA28/2015/1</td>
<td>Lindsay Taylor Lawyers</td>
<td>15 Alt St, WOOLLARRA</td>
<td>Dimitri Lukas</td>
<td>This is an appeal against the refusal of a S3A review application for alterations and additions to the existing dwelling including modifications to the roof structure (unauthorised works). First directions hearing to be held on 26 April 2016. The matter has been adjourned.</td>
</tr>
<tr>
<td>Ian &amp; Anne Bums v Woollahra Municipal Council</td>
<td>DA315/2015/1</td>
<td>Weibley Webb &amp; Stuflank Bostock</td>
<td>156 Harwood St, PADDINGTON</td>
<td>Thomas Wong</td>
<td>This is an appeal against the conditions of consent for an application for alterations and additions to an existing dwelling, including internal reconfiguration; two storey rear addition and double garage accessed from Harwood Lane. First directions hearing to be held on 14 June 2016.</td>
</tr>
<tr>
<td>John Austin v Woollahra Municipal Council</td>
<td>DA507/2015/1</td>
<td>Peter Rigby</td>
<td>30 Costley St, PADDINGTON</td>
<td>Thomas Wong</td>
<td>This is an appeal against the refusal of an application to install a roller shutter to rear lane boundary; double garage to existing attic storage and change ground floor window at side passage to a French door. First directions hearing to be held on 1 April 2016. Section 34 Conferencing set down for 6 June 2016.</td>
</tr>
<tr>
<td>Applicant v Respondent</td>
<td>File Ref.</td>
<td>Legal Rep</td>
<td>Address</td>
<td>Officer</td>
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<tr>
<td>Awaiting 634 Conference</td>
<td>DA171/2015/1</td>
<td>Wilshe Wels</td>
<td>9-10 Cecil St</td>
<td>PADDINGTON</td>
<td>This is an appeal against the refusal of an application for the alterations and additions to the existing two (2) storey warehouse building and its adaptive re-use as a four (4) storey boarding house comprising twenty-seven (27) self-contained rooms, including a caretakers' room, ground floor parking comprising of six (6) car parking spaces and one (1) motorbike space accessed from Cecil</td>
</tr>
<tr>
<td>Applicant v Respondent</td>
<td>File Ref.</td>
<td>Legal Rep.</td>
<td>Address</td>
<td>Officer</td>
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<tr>
<td>Mark Eggleton v Woollahra Municipal Council</td>
<td>DA405/2013/2</td>
<td>Weirra Webb</td>
<td>7 Stephen St</td>
<td>Padignton</td>
<td>Mario O’Alessio This is an appeal against the refusal of a s.96 application for alterations and additions including new roof material to the principal building; internal modifications; excavation to the front courtyard; new glass screens to the lightwell; new attic level with rear dormer and a side boundary realignment. First directions hearing to be held on 22 March 2016. The matter has been adjourned. The matter has been adjourned.</td>
</tr>
<tr>
<td>Vincent Wong v Woollahra Municipal Council</td>
<td>DA394/2013/2</td>
<td>Weirra Webb</td>
<td>36 Hopewell St</td>
<td>Padignton</td>
<td>Mario O’Alessio This is an appeal against the conditions of consent for a s.96 application for the modification of the existing facade (street elevation); internal modifications and changes to the approved rear addition. First directions hearing to be held on 27 May 2016. A s.94A Conference to be held on 8 August 2016.</td>
</tr>
<tr>
<td>Judgement Reserved</td>
<td>Ani Tedesco v Woollahra Municipal Council</td>
<td>DA502/2015/1</td>
<td>Lindsay Taylor Lawyers</td>
<td>13 Cove St WATSONS BAY</td>
<td>Lauren Samuels This is an appeal against the refusal of an application for alterations and additions, and landscaping works. First directions hearing to be held on 1 April 2016. The matter is set down for a hearing on 25 May 2016. Judgement reserved.</td>
</tr>
<tr>
<td>Strood Over Callover-Mention</td>
<td>Jewell Rose Bay Developments Pty Ltd v Woollahra Municipal Council</td>
<td>DA77/2015/1</td>
<td>Norton Rose</td>
<td>835 New South Head Rd ROSE BAY</td>
<td>Eleanor Smith This is an appeal against the refusal of an application for the demolition of existing dwelling and erection of residential flat building comprising 5 apartments and basement car parking. First directions hearing to be held on 15 July 2015. The matter is listed for a s.94 conciliation conference on 17 September 2015, commencing on site at 9.30AM and thereafter.</td>
</tr>
</tbody>
</table>

Class 4 - Orders & Civil Enforcement
Judgement Finalised
Woollahra Municipal Council Legal Matter
Parker Logan Property Pty Ltd (ACN 121 055 178) v Woollahra Municipal Council
9A Cooper Park Rd, BELLEVUE HILL

Jurisdiction: Land & Environment Court
Court Matter No.: 10022 of 2016
Penalty Infringement Number:
Type of Matter: Class 1 - Appealed Deemed Refusal
Council File Reference: DA607/2015/1
Status: Awaiting s34 Conference
F1 Account Number: 1413620A104

Precis

This is an appeal against the deemed refusal of an application for the construction of two x three storey residential flat building containing a total of 27 units and basement level car parking for 50 vehicles and storage, strata subdivision, landscaping and site works. First directions hearing to be held on 9 February 2016, Report going to DCC on 7 March 2016. Set down for a s34 Conference on 22 March 2016. Awaiting revised plans.

Parties to Proceeding
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
Woollahra Municipal Council Legal Matter
Shahram Shahidi v Woollahra Municipal Council
1 Magney St, WOOLLAHRA

Jurisdiction: Land & Environment Court
Court Matter No.: 10159 of 2016
Penalty Infringement
Number: 
Type of Matter: Class 1 - Appealed Deemed Refusal
Council File Reference: DA509/2015/1
Status: Awaiting s34 Conference
P1 Account Number: 1413520401127

Precis:
This is an appeal against the deemed refusal of an application for alterations and additions to the existing dwelling to facilitate a change of use to a health services facility. The proposal includes internal works, a new rear wing, parking to the rear partially below ground level for 3 cars, a hard stand car space off Magney Street, new fences, landscaping and siteworks. First directions hearing to be held on 18 March 2016. The matter has been adjourned. The matter is to be heard on 16 May 2016. Agreement pending awaiting amended plans.

Parties to Proceeding
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
Woollahra Municipal Council Legal Matter
Ellie Dalvend v Woollahra Municipal Council
45 Kambaia Rd, BELLEVUE HILL

Jurisdiction: Land & Environment Court
Court Matter No.: 10181 of 2016
Penalty Infringement Number:
Type of Matter: Class 1 - Appealed Deemed Refusal
Council File Reference: DA12/2016/1
Status: Judgement Finalised
F1 Account Number: 1413520.A123

Precis
This is an appeal against the deemed refusal of an application for the demolition of an existing dwelling and pool (retention of existing tennis court) and construction of a new 3 storey dwelling-house, swimming pool, cabana, fences, landscaping and siteworks. First directions hearing to be held on 23 March 2016. Section 34 conference set down for 26 and 27 May 2016. The parties have reached an agreement. Consent orders to be issued.

Parties to Proceeding
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
Woollahra Municipal Council Legal Matter
Cracknell & Lonergan Architects Pty Ltd v Woollahra Municipal Council
6-10 Cecil St Paddington, PADDINGTON

Jurisdiction: Land & Environment Court
Court Matter No.: 14163 of 2015
Penalty Infringement Number:
Type of Matter: Class 1 - Appealed Determination
Council File Reference: DA171/2015/1
Status: Awaiting s34 Conference
F1 Account Number: 191.3620.A096

Precis
This is an appeal against the refusal of an application for the alterations and additions to the existing two (2) storey warehouse building and its adaptive re-use as a four (4) storey boarding house comprising twenty seven (27) self-contained rooms including a caretakers room, ground floor parking comprising of six (6) car parking spaces and one (1) motorbike space accessed from Cecil Lane and associated landscaping. First directions hearing to be held on 28 January 2016. In addition a Notice of Motion has been lodged with a returnable date of 17 December 2015. The matter has been set down for a s34 conference on 1 March 2016 commencing online at 9:30am. The statement of facts and contentions is due to be filed and served Thursday, 4 February 2016. The applicant is to provide amended plans by 7 March 2016 and further details by 14 March 2016. Respondent to supply response to amended plans by 14 March 2016. The applicant to provide final details by 21 March 2016. The matter is listed for an eCourt communication on 23 March 2016 to advise the Court of the status of the matter and notification requirements. The applicant to submit amended plans and additional information.

Parties to Proceeding
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
Woollahra Municipal Council Legal Matter
Mark Eggleton v Woollahra Municipal Council
7 Stephen St, PADDINGTON

Jurisdiction: Land & Environment Court
Court Matter No.: 10152 of 2016
Penalty Infringement Number:
Type of Matter: Class 1 - Appealed Determination
Council File Reference: DA405/2014/2
Status: Awaiting s34 Conference
F1 Account Number: 14L3620A126

Precis
This is an appeal against the refusal of a s.96 application for alterations and additions including new roof material to the principal building; internal modifications; excavation to the front courtyard; new glass screen to the lightwell; new attic level with rear corner and a side boundary readjustment. First directions hearing to be held on 22 March 2016. The matter has been adjourned. The matter has been set down for a s.34AA conciliation hearing on 30 May 2016.

Parties to Proceeding
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
Woollahra Municipal Council Legal Matter
Jewel Rose Bay Developments Pty Ltd v Woollahra Municipal Council
635 New South Head Rd, ROSE BAY

Jurisdiction: Land & Environment Court
Court Matter No.: 10523 of 2015
Penalty Infringement Number:
Type of Matter: Class 1 - Appealed Determination
Council File Reference: DA77/2015/1
Status: Stood Over Callover-Mention
F1 Account Number: 1413620A070

Precis
This is an appeal against the refusal of an application for the demolition of existing dwelling and erection of residential flat building comprising 5 apartments and basement car parking. First directions hearing to be held on 15 July 2015. This matter is listed for a s34 conciliation conference on 17 September 2015, commencing on-site at 9.30am and then returning to Court. Deferred to allow for the applicant to submit amended plans. Directions hearing to be held on 29 October 2015. The matter has been stoodover to 13 November 2015. The matter has been listed for a telephone directions hearing on 18 March 2016. The matter has been adjourned. The matter has been set down for a further directions hearing on 24 May 2016. Further directions hearing to be held on 28 June 2015.

Parties to Proceeding
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
Woollahra Municipal Council Legal Matter
CSKS Holdings Pty Ltd v Woollahra Municipal Council
2-4 Quarry St, PADDINGTON

Jurisdiction: Land & Environment Court
Court Matter No.: 40419/2014
Penalty Infringement
Number:
Type of Matter: Class 4 - Orders & Civil Enforcement
Council File Reference: DA 2013/0094
Status: Judgement Finalised
F1 Account Number: 141-3620-A003

Precis
This is a Class 4 Summons which orders the Respondent within 14 days to determine a development application. This summons is listed for 25 July 2014. The matter has been adjourned for 1 week. A directions hearing has been scheduled on 1 August 2014. This matter will more than likely be adjourned at this directions hearing until 22 August 2014 as agreed by Tony Settler to Stuart Simington to allow DCC to determine the matter on 18 August 2014. Formal orders as follows:


Parties to Proceeding
Land to which proceeding relates
Critical dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
<table>
<thead>
<tr>
<th>File Ref.</th>
<th>Address</th>
<th>Legal Run</th>
<th>Document Ref.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>19 Alyn St, WOOLLAHRA</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Lindmist, Temple</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Lindsay Tporter, Lawyers</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>C/097/03/15</td>
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<tr>
<td></td>
<td>Lindmist, Temple</td>
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<tr>
<td></td>
<td>C/097/03/15</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

City of Woollahra Municipal Council
Development Control Committee Agenda 6 June 2016

Annexure 1 Legal Register
Page 497
Woollahra Municipal Council Legal Matter
Woollahra Municipal Council v A F Edwards
19 Alton St, WOOLLAHRA

Jurisdiction: Land & Environment Court
Court Matter No.: Order 126/2014
Penalty Infringement Number: 151-3620-5065

Type of Matter: Class 4 - Orders & Civil Enforcement
Council File Reference: Order 126/2014
Status: Awaiting

Precis

Parties to Proceeding

Land to which proceeding relates

Critical Dates

Our Legal Team for this matter

Company Search

Judgement

Staff Responsibility and Remarks
Woollahra Municipal Council Legal Matter
Woollahra Municipal Council v Yousef Ahmad, Joseph El-Alam & Joseph Hallal
48 Cambridge Avenue, VAUCLUSE

Jurisdiction: Land & Environment Court
Court Matter No.: 2016/152672
Penalty Infringement Number:

Type of Matter: Class 4 - Orders & Civil Enforcement
Council File Reference: CDC 097-0315
Status: Awaiting Call-over-Mention
F1 Account Number: L15-3620-A0092 (P/Os 108881 - LTL; 110992 - Jason Lazaro)

Precis
Class 4 proceedings in the Land & Environment Court challenging the validity of comply development certificate CDC 097-0315 for a new dwelling, issued by Joseph Hallal of Phoenix Building Approvals Pty Ltd on 26 March 2015 and modified on 8 December 2015. Matter listed for initial call-over on 19 February 2016. Matter adjourned for a further call-over on 15 March 2016. Matter adjourned by consent to 1 April 2016. Undertaking provided that no work will occur on upper level. At call-over Court advised amended summons required and following Orders issued: a. Council to provide a draft further amended summons to the parties by 11 April 2016; b. Council to file and serve a notice of motion seeking leave to file the further amended summons by 11 April 2016; and c. The notice of motion returnable by 15 April 2016. Matter adjourned to 15 April 2016. Stood over until 22 April 2016. Council is to file its affidavit by 13 May 2016.

Parties to Proceed
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
SECTION 96 APPLICATION ASSESSMENT REPORT

<table>
<thead>
<tr>
<th>ITEM No.</th>
<th>R1</th>
</tr>
</thead>
<tbody>
<tr>
<td>FILE No.</td>
<td>DA663/2002/4</td>
</tr>
<tr>
<td>ADDRESS</td>
<td>600-612 New South Head Road ROSE BAY (Rose Bay Aquatic Hire)</td>
</tr>
<tr>
<td>ZONING</td>
<td>RE1 Public Recreation</td>
</tr>
<tr>
<td>EXISTING CONSENT</td>
<td>The operation of an aquatic school and small watercraft hire facility on the central section of the Tingira Reserve beach frontage</td>
</tr>
<tr>
<td>DATE OF CONSENT</td>
<td>18 August 2003</td>
</tr>
<tr>
<td>TYPE OF CONSENT</td>
<td>Local development</td>
</tr>
<tr>
<td>CONSENT AUTHORITY</td>
<td>Woollahra Council</td>
</tr>
<tr>
<td>PROPOSED MODIFICATION</td>
<td>Increase hire fleet from 16 kayaks to 25 kayaks and 16 paddle boards to 25 paddle boards and the modification of the existing storage area</td>
</tr>
<tr>
<td>DATE S96 LODGED</td>
<td>26/11/2015</td>
</tr>
<tr>
<td>APPLICANT</td>
<td>Rose Bay Aquatic Hire</td>
</tr>
<tr>
<td>OWNER</td>
<td>Woollahra Municipal Council</td>
</tr>
<tr>
<td>AUTHOR</td>
<td>Ms J McMillan</td>
</tr>
<tr>
<td>TEAM LEADER</td>
<td>Ms E Smith</td>
</tr>
<tr>
<td>SUBMISSIONS</td>
<td>Two</td>
</tr>
<tr>
<td>RECOMMENDATION</td>
<td>Approval</td>
</tr>
</tbody>
</table>

SUMMARY

1. LOCALITY PLAN
2. LEVEL OF DELEGATION

The application is referred to full Council via the Development Control Committee as it involves an intensification of use of more than 10% on community land and is not delegated under Section 47E of the Local Government Act.

3. SUMMARY OF APPROVED DEVELOPMENT

3.1 Approved development DA 2002/633

DA 2002/633, was determined by the Development Control Committee on 18 August 2003, and approved the following works:

The storage of small watercraft in association with the use of the Tingira Reserve beach frontage as an aquatic school and small watercraft hire operation. The consent was for seven watercraft to be stored at the eastern end of the Tingira Reserve beach frontage consisting of five catermerans (<4.5m in overall hull length) and two single hull ‘laser’ sailing dinghies.

The conditions of consent included: hours of operation from sunrise to sunset, a license agreement with Council for the use of the waterfront reserve, no obstruction to public access and amenity and safety of the beach.

The proposal was referred to the Waterways Authority as Integrated Development. The Authority responded by stating that as there is no excavation required, the Authority would not require the proposal to be assessed.

4. SUMMARY OF PREVIOUS SECTION 96 MODIFICATIONS

4.1 DA 2002/633/2

DA 2002/633/2, approved by the Development Control Committee on 7 October 2008, modified the number of water craft for hire, changed the permissible storage area on the beach and permitted the placement of additional ancillary structures on the beach and reserve. In detail, the modifications to the original consent permitted under DA 2012/633/2 are:

- a change in location of the permitted storage area from the eastern end of the beach to the western end of the beach. The approved storage area was 19m long and 4.5m deep;
- a change in the number and type of watercraft to be stored to include: 1 hobbie cat, 25 kayaks and 3 surf skis, an increase from 7 to 29 watercraft;
- the license agreement to be varied in accordance with the modifications to the consent;
- unobstructed access to be maintained to the beach at all times from Vickery Avenue and the Tingira Memorial Park;
- the ancillary equipment to be stored within the permitted storage and removed at the end of each day;
- no equipment to be stored within the Tingira Memorial Reserve at any time.

DA 2012/633/2 also identified a view corridor to be preserved at the eastern end of the beach and a 6m clearance for access (beach cleaning) at the western end of the beach from Vickery Avenue.

The Department of Water and Energy advised Council that the application did not require a Controlled Activity Approval.
4.2 DA 2002/633/3

DA 2002/633/3, was approved by the Development Control Committee on 9 February 2015, and modified the previous approvals as follows:

- a change in the number and type of watercraft to be stored to 16 stand-up paddleboards (SUPs), 16 Kayaks and 7 Open Runabouts. It is noted that the original proposal was for the storage of 80 watercraft comprising 30 SUPs and 50 kayaks. However, the final approved number of watercraft was conditioned to accord with the licencing agreements between Rose Bay Aquatic Hire and the Roads and Maritime Service;
- the license agreement with Council to be varied in accordance with the modifications to the consent.

All other conditions of the original consent remained unchanged including the size and location of the storage area.

5. SUMMARY OF PROPOSED MODIFICATION

This Section 96 application (DA 2002/633/4) involves the following:

- Increase the number of SUPs from 16 to 25 and increase the number of kayaks from 16 to 25. Retain the same number of Open Runabouts (7).
- Increase and reconfigure the storage area from 6m x 19m (114m$^2$) to 4.5m x 26m (117m$^2$) an increase of 3m$^2$.

6. ISSUES

6.1. Summary of Issues

<table>
<thead>
<tr>
<th>Issue</th>
<th>Conclusion</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development not in accord with conditions of consent. More watercraft are being stored and hired on the beach than permitted in Condition 4.</td>
<td>A site inspection was undertaken of the watercraft storage on the beach on 12/05/2016. At this time the number of watercraft stored on the beach did not exceed the approved numbers. Council’s Compliance Department will respond to any report made by the public that the number of watercraft stored on the beach exceeds the maximum allowed by Condition 4, to ensure compliance with the condition of consent.</td>
<td>11</td>
</tr>
</tbody>
</table>
| Opposition to further intensification of use with regard to lack of amenities, loss of amenity due to overcrowding of the beach, potential land use conflicts and possibility of accidents occurring. | Amenity impacts are discussed in Sections 11 and 13 of this report and are found to be satisfactory for the following reasons:  
  - Subject to condition, there will be no increase in the storage area on the beach.  
  - The proposed increase in watercraft stored on the beach has to accord with the licencing agreement between Rose Bay Aquatic Hire and the RMS.  
  - The proposal has been reviewed by Council’s Parks and Open Space Department and no objection is raised to the increase in watercraft provided the storage area is not increased. | 11 & 13 |
6.2. Summary of Submissions

<table>
<thead>
<tr>
<th>Issue</th>
<th>Conclusion</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development not in accord with conditions of consent. More watercraft are being stored and hired on the beach than permitted in Condition 4.</td>
<td>Satisfactory, subject to conditions</td>
<td>11</td>
</tr>
<tr>
<td>Loss of amenity due to commercial use at beach.</td>
<td>Satisfactory</td>
<td>11</td>
</tr>
<tr>
<td>Shortage of parking</td>
<td>Satisfactory</td>
<td>11 &amp; 13</td>
</tr>
<tr>
<td>Overcrowding/conflicting land uses.</td>
<td>Satisfactory</td>
<td>11</td>
</tr>
<tr>
<td>Lack of amenities such as public toilets.</td>
<td>Satisfactory</td>
<td>11</td>
</tr>
</tbody>
</table>

PROPERTY DETAILS AND REFERRALS

7. SITE AND LOCALITY

Physical features
The site contains the Tingira Memorial Park and beachfront. The reserve includes parkland containing grass and conifers and a beach with a frontage to the waters of Rose Bay. The trees are located along the edge of the reserve where it meets the beachfront and along the north-eastern side of the reserve.

Topography
The site is relatively flat and slopes gently towards the harbour on the western side of the site. There is a concrete wall of approximately 1m high on the eastern side of the site where the park meets the beachfront.

Existing buildings and structures
The park contains a concrete memorial and a dinghy storage facility near the eastern boundary of the site. There are two seats in the park. The remainder of the structures are temporary in addition to the kayak storage area.

Environment
The site is adjacent to Lyne Park, Lyne Park Tennis Centre, the Cranbrook boatshed, the Woollahra Sailing Club and Club Rose Bay. The Royal Sydney Golf Club is located on the southern side of New South Head Road, opposite the subject site.
8. RELEVANT PROPERTY HISTORY

<table>
<thead>
<tr>
<th>Current use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tingira Reserve is community land and is used for recreational pursuits. The site is zoned RE1 Public Recreation under LEP 2014.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Previous Relevant Applications</th>
</tr>
</thead>
<tbody>
<tr>
<td>DA 403/2005, determined by Council’s Development Control Committee on 21 November 2005, approved use of part of the western section of the Tingira Beach Reserve beach frontage for the launching and retrieval of kayaks in association with organised tours of the harbor with a different operator, Sydney Harbour Kayaks.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Pre-DA</th>
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<tbody>
<tr>
<td>No.</td>
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<table>
<thead>
<tr>
<th>Requests for Additional Information</th>
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<tbody>
<tr>
<td>No.</td>
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<table>
<thead>
<tr>
<th>Amended Plans/Replacement Application</th>
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<tbody>
<tr>
<td>No.</td>
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</table>

<table>
<thead>
<tr>
<th>Land and Environment Court Appeal</th>
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<tbody>
<tr>
<td>No.</td>
</tr>
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</table>

9. REFERRALS

<table>
<thead>
<tr>
<th>Referral</th>
<th>Summary of Referral Response</th>
<th>Annexure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parks and Open Space</td>
<td>Agree to increase from 16 to 25 stand-up paddleboards and from 16 to 25 kayaks provided the storage area on the beach is not increased from that approved under DA 2002/663/3.</td>
<td>2</td>
</tr>
<tr>
<td>Property</td>
<td>Agree to increase from 16 to 25 stand-up paddleboards and from 16 to 25 kayaks provided the storage area on the beach is not increased from that approved under DA 2002/663/3.</td>
<td>3</td>
</tr>
<tr>
<td>Roads and Maritime Services</td>
<td>Give ‘approval in principle’ to additional storage of watercraft subject to Rose Bay Aquatic Hire successfully increasing their numbers through an application to modify their current Aquatic Licence and Hire and Drive Certificate of Operation.</td>
<td>4</td>
</tr>
<tr>
<td>Foreshores and Waterways Planning and Development Advisory Committee</td>
<td>No comments received.</td>
<td>N/A</td>
</tr>
</tbody>
</table>

ASSESSMENT UNDER SECTION 96

The application is assessed under Section 96 of the Environmental Planning and Assessment Act 1979.

10. SECTION 96(1A): MODIFICATION INVOLVING MINIMAL ENVIRONMENTAL IMPACT

Section 96(1A) allows the modification of a development consent where Council is satisfied that the proposed modification is of minimal environmental impact. The application involves an increase in the number of watercraft stored on the beach adjacent to Tingara Reserve.

The considerations in Section 96(1A) require Council to address the following:

a) It is satisfied that the proposed modification is of minimal environmental impact

b) It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)
c) *It has notified the application in accordance with:*
   i) *The regulations, if the regulations so require*
   ii) *A development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent*

d) *It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

The S96 modification is considered to be of minor environmental impact and substantially the same as the original approved development proposal. The S96 modification was notified for public comment and two submissions were received. The issues raised in the two submissions are considered in Section 11 of this report.

### 10.1 S96 (2) (b) Consultation with Minister, public authority or approval body

As the proposal is a land-water interface development under the provisions of SREP (Sydney Harbour Catchment) 2005, the matter was referred to the Foreshores and Waterways Planning and Development Advisory Committee for comment within 21 days. No comments were received from the Department of Planning and Infrastructure.

The S96 application was also referred to the Development Approvals Co-ordinator of Roads and Maritime Service for comment within 21 days.

The Roads and Maritime Service give ‘approval in principle’ to additional storage of watercraft subject to Rose Bay Aquatic Hire successfully increasing their numbers through an application to modify their current Aquatic Licence and Hire and Drive Certificate of Operation.

### ENVIRONMENTAL ASSESSMENT UNDER SECTION 79C

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979 include the following:

1. The provisions of any environmental planning instrument
2. The provisions of any proposed instrument that is/has been the subject of public consultation
3. The provisions of any development control plan
4. Any planning agreement that has been entered into
5. Any draft planning agreement that a developer has offered to enter into
6. The regulations
7. Any coastal zone management plan
8. The likely impacts of that development:
   i) Environmental impacts on the natural and built environments
   ii) Social and economic impacts
9. The suitability of the site
10. Any submissions
11. The public interest
11. ADVERTISING AND NOTIFICATION

11.1. Submissions

The application was advertised and notified from 9/12/2015 to 23/12/2015 in accordance with Chapters A2.2.1, A2.3.1 and A2.8 of the Woollahra DCP 2015. Submissions were received from:

1. Design Collaborative Pty Ltd on behalf of The Owners Corporation, 614 New South Head Rd Rose Bay.
2. John Stitt of 5/614 New South Head Rd Rose Bay.

The submissions raised the following issues summarised in Section 6 of this report.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Conclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>There are currently kayaks and paddle boards stored in excess of what is permitted and proposed. The storage of watercraft in terms of type and number is not in accord with the existing consent.</td>
<td>The proposed number of watercraft (maximum 25 kayaks and 25 stand-up paddleboards and 7 run-abouts) is to be in accord with the applicant’s Licence agreements issued by RMS. This is reflected in amended <strong>Condition 4</strong>. A site inspection was undertaken of the watercraft storage on the beach on 12/05/2016. At this time the number of watercraft stored on the beach did not exceed the approved numbers. Council’s Compliance Department will respond to any report made by the public that the number of watercraft stored on the beach exceeds the maximum number allowed by <strong>Condition 4</strong>, to ensure compliance with the condition of consent.</td>
</tr>
<tr>
<td>Loss of amenity due to overcrowding, excess noise, waste and dogs on the beach.</td>
<td>The proposal retains the existing storage area on the beach. The storage area will not be increased. The number of watercraft stored on the beach is to be in accordance with the licensing agreement between Rose Bay Aquatic Hire and the Roads and Maritime Service. It is considered that the total number of watercraft permitted to be used and stored on the beach will not cause excessive noise or overcrowding on the beach.</td>
</tr>
<tr>
<td>Increase in intensity of use and cumulative impact that the proposal would have in regard to traffic and parking</td>
<td>The proposal was reviewed by Council’s Development Engineer at the Development Application Review Committee and no objection was raised. Chapter D6 requires the provision of on-site car parking to comply with Chapter E1 – Parking and Access of the Woollahra Development Control Plan 2015. The car parking requirements in Chapter E1 calculate additional demand on gross floor area and does not make provision for any outdoor recreational activity. Accordingly, there is no technical additional off street car parking requirement generated by the proposal. Within Lyne Park there are two public car parks – Car Park 1, next to Rose Bay Ferry Wharf and Car Park 2 at the rear of the Tennis Courts. At the time of assessing the previous s96 application, Car Park 2 was highly utilised during the weekdays by commuters but usage was significantly lower on weekends. Furthermore, it was determined that there was car parking available on the surrounding streets. Specifically, additional spaces along New South Head Road between O’Sullivan and Norwich Road. These spaces are approximately within 200m walking distance of Tingira Reserve. The peak demand for the hire of watercraft is on Saturdays and Sundays which coincides with the lower demand for car parking within the two car parks. During the weekdays the demand for the hire of watercraft is low and does not impact significantly on parking demand in the surrounding the area. This stance is maintained. The public car park adjacent to the Tennis Centre while well used on the weekends, can be used for parking. Further, the site is in close proximity to existing public bus services along New South Head Road and the ferry service at Rose Bay Wharf. Accordingly, it is considered that there is adequate public car parking and public transport to facilitate the anticipated increase in parking demand associated with the proposed modification.</td>
</tr>
</tbody>
</table>
The water in front of Tingira Reserve is traditionally used by the Woollahra Sailing Club and Cranbrook School. The expansion of Rose Bay Aquatic Hire has created overcrowding and it is only a matter of time before an accident occurs.

Council’s Open Space and Recreation Team state that they have no objection to the proposed increase in watercraft storage on the beach, provided there is no increase in the already approved storage area on the beach. The number of watercraft stored on the beach is to be in accordance with the licensing agreement between Rose Bay Aquatic Hire and the Roads and Maritime Service. It is noted that the proposal was referred to Cranbrook School and the Woollahra Sailing Club and no objections were received.

There is a lack of amenities nearby such as public toilets.

There are public toilets in adjacent Lyne Park and Council is not considering the provision of additional public amenities as part of its current works program. The proposal would not result in any unreasonable impacts in terms of lack of amenities.

11.2. Statutory Declaration

The applicant has completed the statutory declaration dated 4/1/2016 declaring that the site notice for DA663/2002/4 was erected and maintained during the notification period in accordance with Chapter A2.3.5 of the Woollahra DCP 2015.

12. SYDNEY REGIONAL ENVIRONMENTAL PLAN (SYDNEY HARBOUR CATCHMENT) 2005

The provisions of Clauses 13, 25 and 26 of this instrument and the accompanying DCP for SREP (Sydney Harbour Catchment) 2005 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 aims of the SREP, as outlined in Clause 2, are as follows:

a) To ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained as an outstanding natural asset, and a public asset of national and heritage significance, for existing and future generations
b) To ensure a healthy, sustainable environment on land and water
c) To achieve a high quality and ecologically sustainable urban environment
d) To ensure a prosperous working harbour and an effective transport corridor
e) To encourage a culturally rich and vibrant place for people
f) To ensure accessibility to and along Sydney Harbour and its foreshores
g) To ensure the protection, maintenance and rehabilitation of watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity
h) To provide a consolidated, simplified and updated legislative framework for future planning

The subject site has an immediate frontage to Sydney Harbour. The storage of the watercraft on the beach is visible from Sydney Harbour.

Clause 21 of this instrument requires Council to ensure the protection of the natural aquatic environment. The proposed changes to the number of watercraft, will not have any adverse impact upon the natural aquatic environment as they will be stored above the mean high water mark.
Clauses 22, 23, 24 of this instrument require Council to ensure that adequate public and private pedestrian and boat access is maintained and that commercial harbour related functions are not obstructed. In this regard, DA403/2005 approved by Council’s DCC on 21 November 2005, involves the use of part of the western section of the Tingira Reserve beach frontage for the launching and retrieval of kayaks in association with organised tours of the harbour.

The current S96 application proposes to increase and reconfigure the current storage area, from a 6m x 19m area to a 4.5m x 26m area. This increases the area by 3m² and the length of the storage area by 7m.

The current pedestrian access within Tingira Reserve should be retained. Furthermore, the view corridor from the Reserve to the Harbour should be preserved and not impeded by the storage of watercraft. Council’s Open Space and Property Departments have concluded that the extension to the existing storage area is not acceptable. The modification to the storage area would impede upon access and views. Accordingly, the proposed modification to the storage area is not supported. **Condition 9** states that no increase to the storage area is permitted and that all additional watercraft is to be stored off site if there is insufficient room within the approved storage area. Maintaining the existing storage area will ensure:

- there is a 6m clear access for beach vehicles at the western end of the site;
- the view corridor between the trees at the eastern end of the site is preserved;
- pedestrian access to the beach from the reserve at the eastern end of the site and the dinghy storage area is maintained;
- the storage area occupies approximately 20% of the Tingira Beach frontage above the mean high water mark; and
- there is no conflict with the terms of the consent DA403/2005 as the latter involves the launch and retrieval of kayaks from a location to the north (water side) of the recommended storage area. There is sufficient space on the beach frontage for the activities associated with both consents.

Clause 25 & 27 (e) of this instrument and the accompanying DCP for SREP (Sydney Harbour Catchment) 2005 requires Council to consider the visual impact that a development proposal will have upon Sydney Harbour and adjoining foreshore areas. It is considered that the proposed modification will not have any significant adverse visual impact upon Sydney Harbour and adjoining foreshore areas.

Clause 26 of this instrument requires Council to consider the impact that a development proposal will have upon available views to and from Sydney Harbour. As discussed above, subject to the recommended conditions, the proposal will not obstruct public or private views of the harbour or views from the harbour.

Clause 27 (c) of this instrument promotes the shared use of private boat storage facilities. The proposed modification to the numbers of watercraft available for hire to members of the public, reduces the need for private ownership and storage of craft.

Clause 29 requires Council to take into consideration any submission received from the Foreshores and Waterways Planning and Development Advisory Committee in relation to the proposal. Council wrote to the Committee on 2 December 2015 requesting comments within 21 days. No comments have been received.
13. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

13.1. Part 1.2: Aims of Plan

The proposal is consistent with the aims in Part 1.2(2) of the Woollahra LEP 2014.

13.2. Part 2.3: Zone Objectives and Land Use Table

The proposal is defined as modification to an approved outdoor recreation facility which is permitted and is consistent with the objectives of the RE1 Public Recreation zone.

Objectives of zone

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.

The proposed S96 modification is considered to be consistent with the objectives of the zone.

13.3. Part 5.10: Heritage Conservation

Parts 5.10(2) and 5.10(4) require Council to consider the effect of works proposed to a heritage item, building, work, relic or tree, within a heritage conservation area or new buildings or subdivision in a conservation area or where a heritage item is located.

The site is in the vicinity of heritage items, being the Norfolk Island Pines on Vickery Avenue. The proposed modification will not have any adverse impact on the heritage significance of the heritage listed trees.

13.4. Chapter D6: Rose Bay Centre

Chapter D6 requires the provision of on-site car parking to comply with Chapter E1 – Parking and Access of the Woollahra Development Control Plan 2015. The car parking requirements in Chapter E1 calculate additional demand on gross floor area and does not make provision for any outdoor recreational activity. Accordingly, there is no technical additional off street car parking requirement generated by the proposal.

Within Lyne Park there are two public car parks – Car Park 1, next to Rose Bay Ferry Wharf and Car Park 2 at the rear of the Tennis Courts. At the time of assessing the previous s96 application, Car Park 2 was highly utilised during the weekdays by commuters but usage was significantly lower on weekends.

Furthermore, there car parking was available on the surrounding streets. Specifically, there were additional spaces along New South Head Road between O'Sullivan and Norwich Road. These spaces were approximately within 200m walking distance of Tingira Reserve. The peak demand for the hire of watercraft is on Saturdays and Sundays which coincides with the lower demand for car parking within the two car parks. During the weekdays the demand for the hire of watercraft is low and does not impact significantly on parking demand in the surrounding the area. This stance is maintained.
The public car park adjacent to the Tennis Centre while well used on the weekends can be used for
carking. Further, the site is in close proximity to existing public bus services along New South Head
Road and the ferry service at Rose Bay Wharf. Accordingly, it is considered that there is adequate
public car parking and public transport to facilitate the anticipated increase in parking demand
associated with the proposed modification.

13.5. Chapter E1: Parking and Access

The aims and objectives, as outlined in Chapter E1 are, are:

O1 To minimise the amount and impact of vehicular traffic generated because of proposed
development.
O2 To ensure that development generating vehicular traffic makes adequate provision off street
for the car parking and servicing needs of its occupants and users, including residents,
employees, visitors, employees and deliveries.
O3 To ensure the safe and efficient movement of vehicles within, entering and leaving properties.
O4 To minimise the environmental effects, particularly visual impact, of parked vehicles on the
amenity of the municipality.
O5 To ensure that access points to car parking areas are situated to minimise disruption of
vehicle movement on the public road system.

As discussed, Chapter E1 does not specify the provision of parking spaces for outdoor recreational
activity. It is considered that the availability of public parking in the vicinity of the subject site
makes the proposed modification acceptable regarding the objectives of the Chapter E1.

14. NATURAL AREA (FORESHORE) PLAN OF MANAGEMENT

Tingira Reserve is identified in this generic plan of management of Woollahra’s harbour foreshore
parks and reserves. The proposed modification, as conditioned, is considered to be consistent with
the following land management goal and management objectives:

1.3 To ensure the preservation of open space as a community resource for public access
and recreation.
4.2 Expand public access to foreshore lands, by promoting and increasing access to
existing areas.

Further, Section 5.17 of the PoM in relation to leases and licenses states the following:

“Leases and licenses on public foreshore land will be granted and renewed based on the
compliance with the principal of general community use and access. Any lease application
seeking to change the general public purpose and character of particular beach or park
will be rejected.”

Condition 5 of the existing development consent retains the existing licence agreement with
Council which is not varied as part of the modified development consent.

15. THE LIKELY IMPACTS OF THE PROPOSAL

All likely impacts have been addressed elsewhere in the report, or are considered to be satisfactory
and not warrant further consideration.
16. **THE PUBLIC INTEREST**

The proposal is considered to be in the public interest.

17. **CONCLUSION**

The proposal to increase the number of watercraft stored on the beach from 16 SUPs and 16 kayaks to 25 SUPs and 25 kayaks, in addition to the 7 open runabouts already approved, is considered to be acceptable provided the storage area on the beach is not increased. This is required by the addition of **Condition 9:**

No approval is given to any modification to the approved watercraft storage area. The watercraft storage area shall be maintained in accordance with DA2002/663/3 at all times (a storage area of 6m x 19m). Storage for the additional watercraft is to be sourced off site if there is insufficient room within the approved watercraft storage area.

18. **DISCLOSURE STATEMENTS**

There have been no disclosure statements regarding political donations or gifts made to any Councillor or to any council employee associated with this application by the applicant or any person who made a submission.

**RECOMMENDATION: PURSUANT TO SECTION 96 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979**

THAT the Council, as the consent authority, modify development consent to Development Application No. 663/2002/1 for the operation of an aquatic school and small watercraft hire facility on the central section of the Tingira Reserve beach frontage on land at 600-612 New South Head Road Rose Bay, subject to the following:

**The modification of the following condition:**

4. **Hiring, identification and storage of water craft.**

Subject to licensing agreements with Roads and Maritime Services, Rose Bay Aquatic Hire shall be limited to the hiring of and storage of a maximum:

- 25 SUPs
- 25 Kayaks
- 7 Open Runabouts

No other watercraft may be hired or launched from the beach other than that specified in this consent, without prior Council approval.

All vessels owned or hired by Rose Bay Aquatic Hire require identification to indicate ownership.
The addition of the following condition:

9. Storage of Additional Watercraft

No approval is given to any modification to the approved watercraft storage area. The watercraft storage area shall be maintained in accordance with DA2002/663/3 at all times (a storage area of 6m x 19m). Storage for the additional watercraft is to be sourced off site if there is insufficient room within the approved watercraft storage area.

Annexures

1. Plans
2. Referral Response - Open Space
3. Referral Response - Property
4. Referral Response - Roads and Maritime
Completion Date: 24 February 2016

REFERRAL RESPONSE – OPEN SPACE

FILE NO: DA 663/2002/4
ADDRESS: 600-612 New South Head Road ROSE BAY 2029
PROPOSAL: Increase hire fleet from 16 kayaks to 25 kayaks and 16 paddle boards
to 25 paddle boards
FROM: Caitlin Moffat – Team Leader Open Space & Recreational Planning
TO: Ms J McMillan

1. ISSUES

- Increase in proposed storage area for equipment is not supported.

2. DOCUMENTATION

I refer to the following documents received for this report:

• Statement of Environment Effects, referenced DA663/2002/4 prepared by Vance King
  and Thomas Woodriff, dated 26 November 2015.

3. RESEARCH

The following research was undertaken in the preparation of this assessment:

• A site inspection was carried out on the following date 18 February 2016

4. PLAN OF MANAGEMENT

N/A

5. ASSESSMENT

Comments have been prepared on the following. Where Approval is recommended,
Conditions of Consent follow at the end of the comments.

a) Impacts on Public Open Space and Reserves

The increase in length of the storage area by 7m has an impact on the circulation and amenity
of the site. Whilst there is no plan provided to show the extent of the increase, the proposal
requests at least half of the foreshore is taken up by a commercial business (the applicant). It
is important that the remainder of the existing foreshore in Tingira Reserve remain
unimpeded to pedestrian traffic.

Extending the storage area east of the existing location will block access between the
park/beach. Access needs to be maintained through the site.
The concrete wall along the foreshore is intended as a seating wall and there should be no infrastructure in front of it. Further to that, views from the Reserve to the water must be maintained and not impeded by the storage of watercrafts.

Council must maintain a balance between the community and a commercial operation when considering development applications. Storage for the additional watercrafts must be sourced off site. The height of the storage area must not exceed the height of the concrete wall, as per the original development application consent.

b) Impacts on Council Infrastructure
n/a

c) Vehicle Access
n/a
6. **RECOMMENDATION**

Council’s Team Leader – Open Space and Recreation Planning has determined that the proposal is satisfactory, subject to the following conditions:

- The watercraft storage area does not increase beyond the approved area in DA2002/663/3 at all times. Storage for the additional watercraft is to be sourced off site.

**Modification to Conditions 4:**

**Hiring, identification and storage of watercraft**

Rose Bay Aquatic Hire shall be limited to the hiring of; and storage of;

- 25 SUP
- 25 Kayaks
- 7 Open Runabouts

No other watercraft may be hired or launched from the beach other than that specified in this consent, without prior Council approval.

All stored vessels must not pass over the existing sandstone wall into the reserve and at no time should the craft obstruct public access to the beach.

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Caitlin Moffat  
**Team Leader – Open Space and Recreation Planning**  
Date: 24 February 2016
24 March 2016

REFERRAL RESPONSE – Tech Services - Property

FILE NO: DA 663/2002/4
ADDRESS: 600-612 New South Head Road ROSE BAY 2029
PROPOSAL: Increase hire fleet from 16 kayaks to 25 kayaks and 16 paddle boards
          to 25 paddle boards
FROM: Anthony Sheedy – Senior Property Officer
TO: Ms J McMillan

I refer to the following documents received for this report:

1. Additional Information from Council Open Space and RMS staff dated 12 &
   24/2/2016

Comments have been prepared on the following. Where Approval is recommended,
Conditions of Consent follow at the end of the comments.

The Applicant has requested that Council consent to DA 663/2002/4 regarding the
increase in the Aquatic Hire fleet from 16 to 25 Kayaks and 16 Paddle Boards to 25
Paddle Boards, on the beach frontage at Tingirra Reserve, Rose Bay.

The proposed increase in length of the storage area by 7m will have an impact on the
circulation and amenity of the site, unacceptably blocking pedestrian traffic to the
park/beach and views from the reserve to the water.

Council must maintain a balance between the community and commercial uses of this
reserve, and it is my view that the storage for the additional watercraft being
considered in this proposal must be sourced off site.

If the area footprint of the activity remains the same, then there will be no rental
impact.

Recommendation:

Council’s Property Officer has determined that the proposal satisfies Technical
Services concerns, subject to the following conditions. Accordingly, the following
conditions are recommended.

Conditions of Consent

16-42174 Referral Response - Property - DA2002 663 4 - 600-612 New South Head Road ROSE BAY
Please note that the standard conditions of consent are generally modified by the Technical Services Division to suit a particular development application. Please ensure all Technical Services conditions of consent are cut and pasted from this document only, and not inserted as standard conditions using the automatically generated (F3) function.

- The number of Kayaks in the Aquatic Hire fleet may increase from 16 to 25 and Paddle boards may increase from 16 to 25, however there is to be no increase in the watercraft storage area beyond the approved area in DA 2002/663/3 at all times.

- Any increase in the Aquatic Hire fleet which cannot be accommodated on site, is to be stored off site.

[Signature]

Anthony Sheedy
Senior Property Officer
Hi Jane,

Thank you for your email. My sincere apologies in the delayed response. I was in receipt of your initial correspondence and had informally discussed the application with a colleague of yours, Caitlin Moffat and made a commitment to her to respond. Hence my sincere apology.

I do not have any objections to this increase in Kayak and Sup numbers and give ‘approval in principal’ subject to Rose Bay Aquatic Hire successfully increasing their numbers through an application to modify their current Aquatic Licence and Hire and Drive Certificate of Operation.

Please don’t hesitate to contact me if you have any further questions.

Kind regards

Dan Duemmer
Manager Operations Sydney Harbour
Boating Operations | Maritime Division
T 02 9563 8504  F 02 9563 8622  M 0400 427 478
www.rms.nsw.gov.au

Every journey matters

Roads and Maritime Services
33 James Craig Road Rozelle Bay NSW 2039

From: Jane McMillan [mailto:Jane.McMillan@woollahra.nsw.gov.au]
Sent: Friday, 12 February 2016 12:59 PM
To: DUEMMER Daniel
Subject: RE: DA 2002/663/3 - 600-612 New South Head Rd Rose Bay

Good afternoon Daniel

Council currently has a DA to assess for Rose Bay Aquatic Hire to increase its watercraft storage at 600-612 New South Head Rd Rose Bay from 16 SUPs, 16 kayaks and 7 runabouts to 25 SUPs and 25 kayaks.

I attach a letter sent to the RMS requesting a formal response to the proposal.

It is my understanding from the applicant that the RMS is willing to modify the licencing agreement with Rose Bay Aquatic Hire to permit 25 SUPs and 25 kayaks if Council agrees to their storage on the beach.
Political Donations – matters to be considered by Councillors at Meetings

Matter before Committee or Council Meeting

Did the applicant, owner (if not the applicant) or someone close to the applicant make a donation in excess of $1,000 that directly benefited your election campaign?
(Code of Conduct Cl 4.21)

No

Did the applicant or someone close to the applicant make a donation less than $1,000 that directly benefited your election campaign?
(Code of Conduct Cl 4.2)

No

Do you believe the political contribution creates a significant non-pecuniary conflict of interest for you?
(Code of Conduct Cl 4.23)

Yes

Action
Declare a significant non-pecuniary conflict of interest, absent yourself from the meeting and take no further part in the debate or vote on the matter
(Code of Conduct Cl 4.16(b))

No

Action
Consider appropriate action required.
This could include limiting involvement by:
1. participating in discussion but not in decision making (vote),
2. participating in decision making (vote) but not in the discussion
3. not participating in the discussion or decision making (vote)
4. removing the source of the conflict

Action
Participate in debate and vote on the matter

Yes

Is the matter before the meeting a Planning Matter?

No

Staff to record decision process (motions/amendments) and Division of votes for the determinative resolution or recommendation in the meeting minutes.

Yes

Staff to record decision process (motions/amendments) and Division of votes for the determinative resolution or recommendation in the meeting minutes.