Agenda: Development Control Committee
Date: Monday 1 August 2005
Time: 6.00pm
Session: One
Part: One of Two
Item: D1 to D8
Outline Of Meeting Protocol & Procedure:

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

Delegated Authority (“D” Items):

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

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

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

Committee Membership: 7 Councillors

Quorum: The quorum for a committee meeting is 4 Councillors.
WOOLLAHRA MUNICIPAL COUNCIL

Notice of Meeting

25 July 2005

To: The Mayor, Councillor Rundle, ex-officio
Councillor Wilhelmina Gardner (Chair)
Anthony Boskovitz
John Comino
Tanya Excell
Isabelle Shapiro
David Shoebridge
Fiona Sinclair King

Dear Councillors

Development Control Committee Meeting – 1 August 2005

In accordance with the provisions of the Local Government Act 1993, I request your attendance at a Meeting of the Council’s Development Control Committee to be held in the Committee Room, ground floor level, 536 New South Head, Double Bay, on Monday 1 August 2005 at 6.00pm.

Gary James
General Manager
Meeting Agenda
Session One – Commencing 6.00pm
Part One of Two Parts

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<td>Leave of Absence and Apologies</td>
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<td>2</td>
<td>Late Correspondence</td>
<td></td>
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<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 18 July 2005 1

Site Inspection Items

Referred to the site inspection on 3 August 2005
21 Olphert Avenue Vaucluse & 82 Holdsworth Street Woollahra

Other Delegated Items

*See Recommendation Page 10

D3 DA616/2004 – 230-238 New South Head Road, Edgecliff – Alterations & additions to existing motel to create residential flat building containing 11 units & basement parking for 17 vehicles – 21/9/2004 & 22/4/2005
*See Recommendation Page 59

*See Recommendation Page 102
## Meeting Agenda

**Session One – Commencing 6.00pm**

**Part Two of Two Parts**

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<thead>
<tr>
<th>Item</th>
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</tr>
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<tbody>
<tr>
<td>D7</td>
<td>Swimming Pool Covers</td>
<td>261-265</td>
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<tr>
<td>D8</td>
<td>Register of Current Land and Environment Court Appeals for Building and Development Applications *See Recommendation Page 266</td>
<td>266-277</td>
</tr>
</tbody>
</table>
Item No:  D1  Delegated to Committee
Subject:  Confirmation of Minutes of Meeting held on 18 July 2005
Author:  Les Windle, Manager - Governance
File No:  See Council Minutes
Reason for Report:  The Minutes of the Meeting of Monday 18 July 2005 were previously circulated. In accordance with the guidelines for Committees’ operations it is now necessary for those Minutes be formally taken as read and confirmed.

Recommendation:

That the Minutes of the Development Control Committee Meeting of 18 July 2005 be taken as read and confirmed.

Les Windle
Manager - Governance
MEMO TO ALL COUNCILLORS

Item No. D2
File No. DA 179/2004/1
Address 18 Wallis Street WOOLLAHRA
Proposal Alterations and additions to dwelling.
Date lodged 24/03/2004
Author MS F STEWART – ASSESSMENT OFFICER

Please note that Item D3 was called at the Application Assessment Panel meeting held on 19 July 2005 by Councillors Gardner & Shoebridge.

Reason for calling item:
- Concerns about the impact on the streetscape in a conservation area.

Referred to you for action.

Les Windle
Manager - Governance
SECTION 82A REVIEW OF DETERMINATION REPORT

ITEM No. D2
FILE No. DA 179/2004
ADDRESS: 18 Wallis Street WOOLLAHRA 2025
PROPOSAL: Alterations and additions to dwelling.
DATE DA DETERMINED: 13 August 2004
SUBJECT OF REVIEW: Refusal
DATE S82A REVIEW APPLICATION LODGED: 28 April 2005
APPLICANT: Peter Harvey Design
OWNER: Ms K B Morris
REVIEW OFFICER: Mr J Lukas

LOCALITY PLAN
1. SUMMARY

Reason for report

In accordance with the requirements of Section 82A, the application is referred to the Application Assessment Panel for determination as the original application was determined under delegated authority.

Issues

- Design - impact on conservation area
- Privacy
- Deep soil landscaped area

Objections

There was one submission received.

Recommendation

Refusal.

2. BACKGROUND

The original application proposed alterations and additions to an existing dwelling house. The notification/advertising of the application resulted in the submission of an objection from No.8 Moncur Street, adjoining to the rear.

In the assessment of the original application, Council's Heritage Officer, Kate Higgins, recommended refusal of the application based primarily on design issues. These reasons, together with amenity issues, formed the basis for the reasons of refusal of the development application on 13 August 2004.

The original assessment report, including the original comments from Council's Heritage Officer, is attached as Annexure 1.

3. DESCRIPTION OF PROPOSAL SUBJECT OF REVIEW

The proposal is for alterations and additions to an existing dwelling house consisting of internal modifications to the ground and first floor and a new second floor addition comprising of a family room, laundry and bathroom.

4. DESCRIPTION OF PROPOSED REVIEW

The proposed review is against the reasons for refusal of the development application, which are:

1. The proposal does not comply with Clause 28(2) of Woollahra LEP 1995 in that the resultant dwelling is considered to detrimentally impact on the heritage significance of the Woollahra Heritage Conservation Area.
2. The proposal does not comply with Section 3.4.4 – Building height, form, bulk, scale and character of Woollahra Heritage Conservation Area Development Control Plan, as the development exceeds two storeys which is not consistent with the general height of significant buildings in the streetscape.

3. The proposal does not comply with Section 3.4.4 – Building height, form, bulk, scale and character of Woollahra Heritage Conservation Area Development Control Plan, as the floor space ratio does not comply with the maximum floor space ratio for dwelling houses of 1.02:1 applicable to the site.

4. The proposal does not comply with the objectives specified in Section 3.4.8 – Roofs and skylights of Woollahra Heritage Conservation Area Development Control Plan, as the proposed roof does not fit in with the character, physical context and historical background of the streetscape, precinct and conservation area.

5. The proposal does not comply with Section 3.4.6 – Open space and landscaping as the amount of deep soil landscape area on site would be reduced below 8%.

6. The proposal does not comply with Section 3.4.12 – Acoustic and visual privacy of Woollahra Heritage Conservation Area Development Control Plan, as it would result in unacceptable visual privacy impacts on adjoining properties.

7. The proposal is not in the public interest.

With the Section 82A Review application, the applicant has submitted amended plans to vary aspects of the design to counter the reasons for refusal. The changes to the original scheme include the offset of the ground and the first floor building alignment to the street, a reduced building setback to the rear and a reduction to fenestration to the second floor.

The review of the reasons for refusal of the development application, together with the amended plans submitted with the review, will be discussed in detail below.

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

5. COUNCIL’S STATUTORY RESPONSIBILITIES UNDER S82A

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

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

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

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

(b) If the determination was made by full Council the review must also be undertaken by full Council.

Upon making a determination of the review application, the following must be undertaken:
• If upon review, Council grants development consent, or varies the conditions of a development consent, it must endorse on the notice of determination the date from which the consent, or the consent as varied by the review, operates.
• If upon review, Council changes a determination in any way, the changed determination replaces the earlier determination as from the date of the review.

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

6. CONSIDERATION OF REVIEW

Compliance Table - Woollahra LEP 1995

<table>
<thead>
<tr>
<th>Site Area (144.10m²)</th>
<th>Existing</th>
<th>Original Proposal</th>
<th>Section 82A Review</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall Height (metres)</td>
<td>7.8m</td>
<td>9.5m</td>
<td>9.5m</td>
<td>9.5m</td>
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</tr>
</tbody>
</table>

Compliance Table - Woollahra HCA Residential Development Control Plan

<table>
<thead>
<tr>
<th>Site Area (144.10m²)</th>
<th>Existing</th>
<th>Original Proposal</th>
<th>Section 82A Review</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Floor Space Ratio (m²)</td>
<td>0.79:1 (115m²)</td>
<td>1.62:1 (234m²)</td>
<td>1.62:1 (234m²)</td>
<td>1.02:1 (147)</td>
<td>NO</td>
</tr>
<tr>
<td>Deep Soil Landscaped Area (m²)</td>
<td>11.2% (17m²)</td>
<td>6% (9m²)</td>
<td>6% (9m²)</td>
<td>8% (12m²)</td>
<td>NO</td>
</tr>
<tr>
<td>Minimum Floor to Ceiling Height – Habitable Rooms (metres)</td>
<td>Not known</td>
<td>2.5m</td>
<td>2.5m</td>
<td>2.7m</td>
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<tr>
<td>Solar Access to Ground Level Open Space of Adjacent Properties</td>
<td>50% Dimension – 2.5m 2 hours</td>
<td>50% Dimension – 2.5m 2 hours</td>
<td>50% Dimension – 2.5m 2 hours</td>
<td>50% Dimension – 2.5m 2 hours</td>
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<tr>
<td>Solar Access to North-Facing Living Areas of Development (Hours in mid winter)</td>
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<td>3</td>
<td>3</td>
<td>3</td>
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<tr>
<td>Solar Access to North-Facing Living Areas of Adjacent Properties (Hours in mid winter)</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>3</td>
<td>N/A</td>
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<tr>
<td>Private Open Space Per Dwelling</td>
<td>Area – 62m² (12m²) Dimension – 3m</td>
<td>Area – 36m² (12m²) Dimension – 3m</td>
<td>Area – 30m² (&gt;12m²) Dimension – &gt;3m</td>
<td>Area – 23m² (12m²) Dimension – 3m</td>
<td>YES</td>
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<tr>
<td>Car Parking Spaces</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>NO</td>
</tr>
<tr>
<td>Location of Car Parking Structures</td>
<td>Beyond front building line</td>
<td>Behind Front Building Line</td>
<td><strong>Beyond front Building Line</strong></td>
<td>Behind Front Building Line</td>
<td>NO*</td>
</tr>
</tbody>
</table>

* Existing non-compliance

In accordance with the requirements of Section 82A, the amended plans were referred to another Heritage Officer within Council, Louise Thom, who provided the following comments:

"Assessment of heritage impact

The existing building does not have any heritage value and therefore I raise no objection to its demolition."
The form of the proposed building does not reference any of the key characteristics of this part of the Woollahra Conservation Area. The building is bulky and located on the front boundary thereby blocking views to 14 and 16 Wallis Street. The pattern of the façade does not use as its reference any of the architectural language of the adjoining contributory buildings.

The roof is high and there is insufficient separation between 16 and 18. Given that there is rear lane access and this is essentially a new building the garage should be located to the rear. The proposed garage is under the main building and hence adds bulk on this side. Without the garage a break up of height could be achieved and the roof and the height of the neighbouring building at 16 could be better addressed.

The building does not make a positive contribution to the precinct and would be an intrusive structure if built.

**Consideration:**

**Variance with Woollahra 1995 DCP controls:**

3.1.2 West Woollahra Precinct: A significant characteristic is garages and carports to the rear. The garages located at the front are generally intrusive.

3.4.3 - C2 Where front building setbacks vary:

If there is no predominant pattern, new development is to align with the existing adjoining development the most compatible in scale with the proposed development, or is to achieve a transitional setback between the properties on either side.

The new building is to be located between two contributory buildings that have varied setbacks. The new building should therefore be located in the transition point halfway between the two and not aligned with the front boundary.

3.4.4 Building height, form, bulk, scale and character

C1 The height, bulk, scale, dominant roof forms, ridge line and building envelope of new development must be consistent with the predominant height, bulk and scale of significant items in the streetscape that are a similar building type. The bulk of new buildings should be distributed to minimise overshadowing of adjoining properties. In circumstances where the infill site adjoins a prominent building or a building of excessive height or intrusive design, conformity is not appropriate.

C3 New development is not to exceed two storeys unless the predominant significant buildings in the streetscape are three storeys or more, in which case, three storeys may be permitted.

C4 Storey heights must conform to those of adjacent significant buildings.

The proposed building has an additional storey to the adjoining buildings at 16 & 20 Wallis Street. The building is substantially higher and bulkier than these adjoining contributory buildings. The proposed building exceeds two storeys. There should be a single storey element on the boundary to No.16 to provide a transition zone.
Parking and garages

Objective O1 - To ensure that residential buildings, rather than vehicle access and parking structures, remain the dominant elements in the streetscape.

C2 All parking is to be provided behind the front building alignment.

C4 No parking is permitted under the principal building form of a dwelling.

The placement of a garage on the front elevation is contrary to this objective and these controls.

Recommendation:

The application should be refused as it would have an adverse impact upon the conservation area and does not comply with the DCP objectives and controls.

I note that the same issues raised in this referral were the reasons the building was recommended for refusal previously.”

The comments provided by Council's Heritage Officer are supported and the relevant design issues raised will be assessed in detail below.

The assessment of the Section 82A Review will be broken down into two categories, being, the design of the proposal based on the expert advise from Council's Heritage Officer in relation to the physical form of the development and its relationship within the context of the heritage conservation area. The other issues will be based on design impacts in relation to the amenity of adjoining property owners, which will be assessed by the reporting officer.

The amended plans submitted with the Section 82A Review are assessed against the reasons for refusal of the original application as follows:

1. The proposal does not comply with Clause 28(2) of Woollahra LEP 1995 in that the resultant dwelling is considered to detrimentally impact on the heritage significance of the Woollahra Heritage Conservation Area.

Council's Heritage Officer has commented on the amended design submitted with the Section 82A Review application and has indicated that the building would not make a positive contribution to the precinct and would be an intrusive structure if built. The proposal would have an adverse impact upon the conservation area and would not comply with the Woollahra Heritage Conservation Area Residential Development Control Plan (DCP) objectives and controls.

Accordingly, the reason for refusal remains valid.

2. The proposal does not comply with Section 3.4.4 – Building height, form, bulk, scale and character of Woollahra Heritage Conservation Area Development Control Plan, as the development exceeds two storeys which is not consistent with the general height of significant buildings in the streetscape.

Council's Heritage Officer has commented on the amended design submitted with the Section 82A Review application and has indicated that the height, roof form, bulk and scale of the building would detrimentally impact on the immediate adjoining contributory buildings and other buildings in the street. The Woollahra HCA DCP prescribes that the building height should be limited to two stories or consistent with other buildings in the immediate vicinity. The proposal would extend above the height of buildings on the northern side of Wallis Street.
The amended plans submitted with the review application have not adequately addressed this issue. Accordingly, the reason for refusal remains valid.

3. The proposal does not comply with Section 3.4.4 – Building height, form, bulk, scale and character of Woollahra Heritage Conservation Area Development Control Plan, as the floor space ratio does not comply with the maximum floor space ratio for dwelling houses of 1.02:1 applicable to the site.

Council's Heritage Officer has commented on the amended design submitted with the Section 82A Review application and has indicated that the building would detrimentally impact on the contributory buildings immediately adjoining to the west.

The proposed building has an additional storey to the adjoining buildings at Nos.16 and 20 Wallis Street. The building is substantially higher and bulkier than these adjoining contributory buildings. The proposed building would exceed two storeys in height, which is typical of development on the northern side of Wallis Street. The building should be limited to a single storey element on the boundary adjacent to No.16 Wallis Street to provide a transition zone. The excess floor space contributes to the height, scale and bulk of the building, and therefore, the proposal would not satisfy the relevant criteria prescribed by the DCP.

The amended plans submitted with the review application have not adequately addressed this issue. Accordingly, the reason for refusal remains valid.

4. The proposal does not comply with the objectives specified in Section 3.4.8 – Roofs and skylights of Woollahra Heritage Conservation Area Development Control Plan, as the proposed roof does not fit in with the character, physical context and historical background of the streetscape, precinct and conservation area.

Council's Heritage Officer has commented on the amended design submitted with the Section 82A Review application and has indicated that the building exceeds two storeys in height. The building should be limited to a single storey element on the boundary adjacent to No.16 Wallis to provide a transition zone to fit in with the existing contributory building.

The amended plans submitted with the review application have not adequately addressed this issue. Accordingly, the reason for refusal remains valid.

5. The proposal does not comply with Section 3.4.6 – Open space and landscaping as the amount of deep soil landscape area on site would be reduced below 8%.

The amended drawings submitted with the Section 82A Review application proposes an indent to the front entry that could be utilised for deep soil landscaping, even though the drawings do not indicate whether the indented area would be utilised for deep soil landscaping.

If this indented area was used in the calculation for deep soil landscaped area, the proposal would still be deficient with the minimum criteria prescribed by the DCP. There is scope within the site to provide the minimum deep soil landscaped area on the site as prescribed by the DCP.

The amended plans submitted with the review application have not adequately addressed this issue. Accordingly, the reason for refusal remains valid.
6. **The proposal does not comply with Section 3.4.12 – Acoustic and visual privacy of Woollahra Heritage Conservation Area Development Control Plan, as it would result in unacceptable visual privacy impacts on adjoining properties.**

The amended drawings submitted with the Section 82A Review application proposes a roof terrace to the second floor level and an enclosed balcony to the first floor level. Both of these areas provide the potential for overlooking directly into the private open space and habitable space, being a bedroom and living room, of the adjoining property to the north at No 8 Moncur Street.

The reduced setback to the rear boundary would further exacerbate the overlooking impact. The amended plans submitted with the review application have not adequately addressed this issue.

7. **The proposal is not in the public interest.**

Having regard to the issues raised above, this reason for refusal remains valid.

6.1 **Substantially the same development**

The amended plans submitted with the Section 82A review of determination propose a modification of the original design. The modified design would retain similar volumes and setbacks as originally proposed. The proposal is considered to be substantially the same to that which was originally submitted and would therefore satisfy the criteria prescribed by Section 82A.

7. **CONCLUSION**

The proposal is unacceptable against the relevant considerations under s82A and s79C of the Environmental Planning and Assessment Act 1979, Woollahra LEP 1995 and Woollahra HCA RDCP and would not be in the public interest.

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

THAT Council, as the consent authority, having considered the application for review of its determination, resolve to maintain its refusal of development consent to Development Application No. 179/2004 for alterations and additions to a dwelling house on land at 18 Wallis Street Woollahra, for the following reasons:

1. The proposal does not comply with Clause 28(2) of Woollahra LEP 1995 in that the resultant dwelling is considered to detrimentally impact on the heritage significance of the Woollahra Heritage Conservation Area.

2. The proposal does not comply with Section 3.4.4 – Building height, form, bulk, scale and character of Woollahra Heritage Conservation Area Development Control Plan, as the development exceeds two storeys which is not consistent with the general height of significant buildings in the streetscape.

3. The proposal does not comply with Section 3.4.4 – Building height, form, bulk, scale and character of Woollahra Heritage Conservation Area Development Control Plan, as the floor space ratio does not comply with the maximum floor space ratio for dwelling houses of 1.02:1 applicable to the site.
4. The proposal does not comply with the objectives specified in Section 3.4.8 – Roofs and skylights of Woollahra Heritage Conservation Area Development Control Plan, as the proposed roof does not fit in with the character, physical context and historical background of the streetscape, precinct and conservation area.

5. The proposal does not comply with Section 3.4.6 – Open space and landscaping as the amount of deep soil landscape area on site would be reduced below 8%.

6. The proposal does not comply with Section 3.4.12 – Acoustic and visual privacy of Woollahra Heritage Conservation Area Development Control Plan, as it would result in unacceptable visual privacy impacts on adjoining properties.

7. The proposal is not in the public interest.

Mr J Lukas  Mrs C McMahon
REVIEW OFFICER  TEAM LEADER

ADVISINGS

1. Appeal

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

ANNEXURES

1. Original assessment Report
2. Plans and elevations
**DEVELOPMENT APPLICATION ASSESSMENT REPORT**

<table>
<thead>
<tr>
<th>ITEM No.</th>
<th>D3</th>
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<tbody>
<tr>
<td>FILE No.</td>
<td>DA 616/2004/1</td>
</tr>
<tr>
<td>ADDRESS:</td>
<td>230-238 New South Head Road EDGECLIFF 2027</td>
</tr>
<tr>
<td>PROPOSAL:</td>
<td>Alterations and additions to existing motel to create residential flat building containing 11 units &amp; basement parking for 17 vehicles.</td>
</tr>
<tr>
<td>ZONING:</td>
<td>Residential 2(b)</td>
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<tr>
<td>TYPE OF CONSENT:</td>
<td>Integrated</td>
</tr>
<tr>
<td>APPLICANT:</td>
<td>Edgecliff Motel Syndicate</td>
</tr>
<tr>
<td>OWNER:</td>
<td>Ms D &amp; Mr G M &amp; Mrs R A Freilich &amp; Petula Nominees Pty Ltd</td>
</tr>
<tr>
<td>DATE LODGED:</td>
<td>21/09/2004 (amended plans received on 22/4/2005)</td>
</tr>
<tr>
<td>AUTHOR:</td>
<td>Mr T Wong</td>
</tr>
</tbody>
</table>

**LOCALITY PLAN**

Subject Site

Objectors

North

Locality Plan
1. SUMMARY

Reason for report

Having regard to Council’s delegations, the matter is referred to the Development Control Committee for determination, as the proposal seeks to convert the existing hotel to a new residential flat building.

Issues

- Existing use
- Building height
- Floor space ratio
- Minimum site area
- On-site parking provision
- Privacy
- Right-of-way
- Vehicular access/garaging

Objections

Six (6) objections have been received.

Cost of works

The stated cost of the proposed work of $3,605,000 has been checked using the standard criteria specified in the Cordell Building Guide and is considered to be accurate. The application was lodged prior to DCC’s resolution on 6 June 2005.

Recommendation

Conditional approval

2. DESCRIPTION OF PROPOSAL

The proposal is for redevelopment of the existing Metro Inns Motel building (an existing but prohibited use under WLEP 1995) to a new residential flat building (a permissible use under WLEP1995) providing 11 residential units in mixture of 1, 2 and 3 bedroom apartments with basement parking accessible via New South Head Road and a rear access lane off Ocean Avenue. The proposal seeks to refurbish and upgrade the existing building with the retention of the existing building envelope. Distribution of the residential apartments and associated parking are briefly shown below:

<table>
<thead>
<tr>
<th>Floor</th>
<th>Car spaces</th>
<th>1-bedroom unit</th>
<th>2-bedroom unit</th>
<th>3-bedroom unit</th>
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<tbody>
<tr>
<td>Basement 1</td>
<td>11</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basement 2</td>
<td>6</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Ground</td>
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</tr>
<tr>
<td>L6</td>
<td></td>
<td></td>
<td>1 (with roof terrace)</td>
<td></td>
</tr>
</tbody>
</table>
In response to various comments provided by Council’s officers (Assessment Officer, Urban Designer and Traffic& Transport Team Leader), amended plans were received on 22 April 2005 including the following major changes:-

- Car parking spaces have been allocated to corresponding units.
- Two visitor parking spaces and a wash bay have been identified.
- The podium wall has been articulated by expressing the columns to continue the proportion rhythm established by the existing and neighbouring buildings.
- The roof layout has been modified to locate the planter to the north and the pool to the south.
- The extent of the pergola has been reduced.
- Translucent glazing has been used to the north-facing balustrade on Levels 2, 3 and 4 to avoid overlooking.
- Opaque glass blades are added to the west-facing balconies on Levels 5 and 6.
- The pergola trellis and covering plants to the west and south elevations have been deleted.
- Cross flow ventilation has been reinforced by the addition of a sash to the lobby on Levels 2, 3 and 4.

3. **DESCRIPTION OF SITE AND LOCALITY**

The subject site is located near the intersection of New South Head Road and Ocean Avenue, Edgecliff. The site is rectangular in shape with a site area of 473.8m² and has a frontage of 25.375m along New South Head Road. Currently on the site stands a multi-storey building known and operated as the Metro Inns Motel. The site is located to the northern side of New South Head Road and surrounded by residential flat buildings. To the west of the site is a four and part five storey retail and residential development located at the corner of Ocean Avenue. The former Edgecliff Post Office and the Telstra Telecommunications Centre Building are located opposite to the site on the other side of New South Head Road.

The site is within very short walking distance to the Edgecliff Shopping Centre, Eastpoint Shopping Centre, the Double Bay Commercial areas, Edgecliff Railway Station and the bus interchange.

The Committee should note that **Condition No. 52** requires the surrender of the existing use of the site (motel) in accordance with clause 97 of the Environmental Planning and Assessment Regulation 2000.

4. **PROPERTY HISTORY**

A Pre-DA meeting was conducted on 3 August 2004 with the following conclusion:

The following issues will be required to be addressed at DA stage:

- Existing use right
- Non-compliance with clauses 10B, 11 and 12 of the Woollahra Local Environmental Plan 1995 i.e. site area, floor space ratio and building height
- Non-compliance with clauses C4.2.4 and C5.2.3 i.e. setbacks
- Non-compliance with clause C5.9.3 of the RDCP 2003 i.e. car parking
- Addition floor on rooftop
- Possible non-compliance with clause O5.8.1 i.e. privacy
- Possible non-compliance with clause O5.5.2 i.e. views
The proposal, as submitted, would not be supported, as the existing building is excessive in scale, bulk and height and fail to comply with statutory controls and parking requirements. Any addition to the building that exacerbates these non-compliances would not be supported.

The current proposal has deleted (with other minor changes) the additional floor as previously proposed on the roof in the Pre-DA stage.

5. REFERRALS

5.1 Comments from external approval bodies

RTA has no objection to the proposal.

5.2 Building

No objection subject to standard conditions.

5.3 Urban Design

Council’s Urban Designer, Susan Young, provided the following comments on the basis of the 10 Principles prescribed in SEPP 65:-

(SEPP 65 Design Review)

CONTEXT
The refurbished building would contribute to the quality and identity of the streetscape.

SCALE
The existing building does not fit the proposed future character of a medium density residential area. However it does provide a transition from larger scale mixed use buildings in the Edgecliff Centre and the residential areas to the east and north. The proposal includes a modest increase in building bulk which is outweighed by the aesthetic benefits of improved facade articulation and the improved amenity provided by part recessed balconies.

BUILT FORM
The redesigned awning and facade treatment provides an acceptable streetscape character and relationship to Cliff House.

DENSITY
No issues. The proposal is for refurbishment of an existing building.

RESOURCES
The adaptive re-use of existing building stock is considered to be more environmentally sustainable development. Complete demolition and rebuilding process consumes significantly greater resources.

LANDSCAPE
Minimal landscape opportunities. Rooftop use of landscape elements has improved design outcome. The green balustrade on southern and western podium presented issues related to practical establishment and long term maintenance and has been removed.
AMENITY

Unit configuration
Final design drawings should indicate the type and operation of window and door openings from the more western units on levels 2, 3 and 4 to the lobby, and from the lobby to the exterior, sufficient to provide natural cross ventilation. (Condition No. 2 is recommended)

Balconies and Terraces
Lower level balconies on the north facade - screening for solar and wind protection satisfactory.
Juliet balconies on the east elevation – screening for privacy satisfactory.

Rooftop Area
Amenity issues, including overlooking and noise have been addressed in revised design. However the proposed roof top pool and terrace area does not provide any communal open space or facilities.

SAFETY AND SECURITY
No issues, as the proposed addition of balconies would have increased the surveillance value of the building.

SOCIAL DIMENSIONS
The mix of unit sizes is satisfactory.

AESTHETICS
The revised roof plans improve the buildings aesthetic appearance and reduce the visual impact of the roof structures. The proposed facade treatment and materials would make a positive contribution to the streetscape.

Ms. Young has no objection to the proposal.

5.4 Fire Safety

Council’s Fire Officer, Robert Lawrence, provided the following comments:-

Comment
EPA Reg 93 Fire Safety Considerations
Comply with Building Code of Australia report dated 26 August 2004 from Bernie Consulting Services P/L.

Condition No. 53 requires compliance with the report dated 26th August 2004. Condition No. 54 requires the building to be upgraded in accordance with Clause 94 of the Regulation.

5.5 Technical Services

Council’s Team Leader – Traffic & Transport, John Stephens, provided the following comments:-

Parking Provision

In accordance with Woollahra Residential Development Control Plan 2003, 21 parking spaces are required, being 1 space per 1 bedroom, 1.5 spaces per 2 bedroom, 2 spaces per 3 bedroom apartment, and 0.25 visitor spaces per apartment, ie 20.25 spaces rounded up to nearest whole number.
Proposal is for 17 parking spaces, 10 of which are in tandem layout that must be allocated to five specific apartments. Thus 1 space has been allocated for the 1 bedroom and 5 by 2 bedroom apartments, plus two spaces allocated for 2 by 2 bedroom and 3 by 3 bedroom apartments, plus 1 visitor space.

There is a shortfall of 2 visitor and 2 residential parking spaces. The shortfall in residential parking spaces is acceptable given the location of the proposed development to public transport.

Kerb side parking is limited, and the shortfall in visitor parking could result in an increase in demand for on-street parking. The traffic report states that there is sufficient public parking available in the nearby Edgecliff Centre. This parking has been provided by and for the use of the Edgecliff Centre, and cannot be considered for use by any adjacent existing or proposed developments.

The Traffic report also notes that the DCP parking requirement for one-bedroom apartments is significantly greater than normal RTA requirements where there is good public transport. However for this proposed development there is only one by one-bedroom apartment. Use of a lower figure for one-bedroom apartments would reduce the parking requirement from 21 to 20 spaces, which is still greater than the number proposed for the development.

Parking space No. 12, designated for a small car, does not comply with AS 2890.1 or Council’s parking DCP. The columns shown on the plan are within the design envelope around parked vehicles. There is 2 metres (scaled) between the columns, this is likely to result in car doors not being able to open sufficiently to allow access.

The visitor parking space has not been identified. The Visitor parking space is to be clearly signed for visitor use only. Space No. 12 is not suitable for visitor parking. Spaces No. 1 and 13 are suitable for visitor parking. If space No. 13 is used for visitor parking the method by which visitors gain access to the car park via the access control point off New South Head Road is to be detailed.

A car wash bay has not been provided as required by Woollahra Residential DCP.

The STORE shown in car space No. 17, reduces the throat width to the parking space to 2m (scaled), this is not acceptable, but can be fixed by relocating the STORE to the opposite side of the car park.

No information has been provided on how the vehicle turntable is operated on Basement Level 2.

Traffic Generation

Traffic generation by the proposed development is considered acceptable on the surrounding road network.
Conclusion

One visitor parking space is to be provided, resulting in a shortfall of two visitor parking spaces. The visitor parking space must be nominated and it must be clearly signed for visitor parking. If a space on Basement Level 2 is used for visitor parking, the method by which visitors gain access to the car park, via the access control point off New South Head Road, is to be detailed.

The Edgecliff Centre cannot be considered as supplying parking for use by any adjacent existing or proposed developments.

A car wash bay has not been provided.

The storage space in parking bay No. 17 is to be relocated to the opposite side of the bay.

The vertical clearance on the access to basement level 2 is to be provided, and should be 2.2m minimum in accordance with AS 2890.1.

If further assessment were required, the Traffic section may need to seek comments from the RTA and Police via a Council Development Committee meeting.

Amended plans were received in response to the above comments including the following changes:-

- Car parking spaces have been allocated to corresponding units.
- Two visitor parking spaces and a wash bay have been identified.
- The column adjacent to parking space No. 12 has been relocated.
- Visitors parking has been clearly allocated and marked.
- The storage in parking space No. 17 has been relocated to the opposite side

This parking assessment is consistent with the Draft SEPP 66 – Integration of Land use and Transport.

In consultation with Council’s Development Engineer, Nick Tomkins, the above changes are considered satisfactory in addressing the traffic issues.

Council’s Development Engineer, Nick Tomkins, provided the following comments:-

Site Drainage comments

There are no objections to Stormwater disposal concept plan prepared by Cardno Young P/L Dwg No. 246047-H00 - H11 Rev A undated. This concept plan is subject to the submission and approval of Stormwater Management Plan for the site prior to release of the Construction Certificate. This is to ensure that site stormwater is disposed in a controlled and sustainable manner - Conditions applied.

Flooding & Overland Flow comments

Not affected

Impacts on Council Infrastructure comments

Council’s assets are in satisfactory condition
Vehicle Access & Accommodation comments

Access is available from 2 roads. An existing driveway off New South Head Rd and a common shared driveway access off Ocean Ave.

It is unlikely that these accesses would be approved today if it were a new application. However as they already exist and approved these are both to be retained. There is little opportunity to vary or amend the accesses. Conditions applied

Geotechnical, Hydrogeological and/or Structural comments

There are minimal earthworks involved in the application and any works are primarily structural changes to the existing structure. No conditions applicable

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 provision of a new Electricity Substation on site.

The above comments are concurred with and Condition Nos. 13 to 35 are recommended accordingly.

5.6 Health

Council’s Senior Environmental Health Officer, Louis Salvatore, provided the following comments:-

Comments

Comments are made in relation to ventilation requirements for the 17 vehicle basement carpark for premises 230-238 New South Head Road, Edgecliff.

All enclosures in which vehicles powered by internal combustion engines are parked are required to comply with Section 4 ‘Ventilation Of Enclosures Used By Vehicles With Internal Combustion Engines’ of Australian Standard 1668.2-1991. In general air distribution must achieve uniform dilution of contaminants in the carpark and maintain contaminant concentrations below recommended exposure standards.

The basement carpark may be naturally ventilated or provided with a combination of both supply and exhaust mechanical ventilation. The applicant is to determine the method of ventilation of the basement carpark and provide details to the Certifying Authority accordingly.

Recommendation

Except as varied in accordance with Clause 4.4.1 (a), (b) or (c), the 17 vehicle basement carpark shall be mechanically ventilated by a combination of general exhaust with flow rates in accordance with Clause 4.4.2, and supply with flow rates specified in Clause 4.8 of Australian Standard 1668.2-1991.
All proposed mechanical ventilation system(s) to the basement carpark must be installed and commissioned in accordance with Australian Standard 1668 Parts 1 & 2. The applicant shall provide detailed mechanical ventilation system(s) plans and specifications prepared by a professional engineer, as defined by the Building Code of Australia, and must be submitted to Council or an Accredited Certifier with the application for a Construction Certificate certifying compliance with Australian Standard 1668 Parts 1 & 2.

The above comments are concurred with and **Condition No. 40** is recommended accordingly.

**ENVIRONMENTAL ASSESSMENT UNDER S.79C**

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

6. **RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION**

6.1 **SEPPs**

**State Environmental Planning Policy No. 55 – Remediation of Land**

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

**State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development**

SEPP 65 applies to new residential flat buildings, substantial redevelopment/refurbishment of existing residential flat buildings and conversion of an existing building to a residential flat building.

All development applications for residential flat development are required to be referred to a Design Review Panel. This panel has yet to be formed for the Woollahra area.

A Design Verification Statement has been submitted in accordance with the provisions of SEPP 65 applies to verify that the proposal was designed by a registered architect and that is achieves the ten design quality principles.

The SEPP requires the assessment of any development application for residential flat development against ten principles contained in Clause 9-18 and against the considerations contained in the publication “Residential Flat Design Code”.

Principles 1 to 10 under Part 2 of the Policy are relevant for assessment of the proposal. Council’s Urban Designer, Susan Young has provided her comments in Section 5.3 above.

The considerations contained in the Residential Flat Design Code are as follows:

- **Relating to the local context**

  The proposal is best defined as a residential hybrid building type with a “slab (block) apartment”.

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The proposed residential flat building exhibits the properties of a “slab (block) apartment” as it has elongated plan.

The proposed building type is considered to be appropriate in terms of the local context in the following manner:

- The building responds to the context of residential flat buildings in the locality;
- The proposal is considered to be consistent with the character of the street in terms of building form location and front setbacks as it retains the building envelop of the existing building;
- It has no change to the existing topography of the site; and
- The refurbishment of the existing building would upgrade the visual quality of the existing streetscape.

The building envelope, in terms of height, floor area, depth and setbacks, is satisfactory having regard to development in the locality. This is discussed in more detail under Section 9.1.

- **Site analysis**

  An appropriate site analysis was submitted with the development application indicating how the proposal is satisfactory in terms of building edges, access and parking and building performance.

  In terms of site configuration, the proposal will retain the building footprint and building envelop of the existing building.

  The orientation of the development ensures adequate solar access to its habitable areas and private open space and to adjoining residential development and provides an appropriate frontage to New South Head Road.

  The merits of the application with respect to stormwater management, access and privacy are discussed under Section 5.5 above and Section 9.1 below.

- **Building design**

  The proposal is satisfactory in terms of internal configuration and will achieve the objectives of providing function and organised space and a high level of residential amenity. All other relevant matters under “Building Design” have been assessed elsewhere in the report and are considered satisfactory.

  In conclusion, the proposal is considered satisfactory in terms of the Principles set out in SEPP 65, see also Clause 5.3 Urban Design.

### 6.2 REPs

**SREP No. 23 – Sydney and Middle Harbours**

The subject site is located upon land to which SREP No. 23 applies and is adjacent to the W1 General Waterways Zone. Council is required to take into consideration the following matters, prior to determination:
• **The appearance of the development from the waterway and the foreshores:**

As the proposal would refurbish and retain the existing building envelop so that the building bulk would remain the same when viewed from the waterway and the foreshores. Since the existing building is situated within a densely built surrounding among other high-rise development, the changes in its appearance when viewed from the waterway would not be significant and would not be dominating in its surrounding setting and context.

• **Whether the development will cause pollution or siltation of the waterway to an extent that would jeopardise any existing or potential uses of the waterway:**

The proposed modifications would not result in any pollution or siltation of the waterway.

• **Whether the development will have an adverse effect on wetlands or flora or fauna habitats:**

The proposed modifications would not result in an adverse effect on wetlands or flora or fauna habitats.

• **The noise likely to be generated by the development and any adverse effect that any such noise would have on existing uses of the waterway or nearby land:**

The proposed works as conditioned are not considered to give rise to any adverse impacts on the acoustic privacy of adjoining development.

• **Whether the development will have an adverse effect on drainage patterns or cause shoreline erosion:**

The proposal would not result in an adverse effect on drainage patterns or cause shoreline erosion.

• **Whether the development will cause excessive congestion of, or generate conflicts between, people using the waterways or the waterfront:**

The proposal would not cause congestion of, or generate conflicts between, people using the waterways or the waterfront.

• **The demand for storage space for boats on the Harbours or on Parramatta River:**

This is not applicable to this assessment.

• **Whether the development warrants a foreshore location:**

This is not applicable to this assessment.

The proposed works are considered acceptable with regard to the relevant provisions of SREP 23 – Sydney and Middle Harbours.
6.3 Section 94 contribution

According to Clause 3.3(a) of the Section 94 Contribution Plan 2002, any development proposal that will result in a net increase in dwellings or dwelling houses will be subject to a condition that requires payment of a monetary contribution or dedication of land or provision of a material public benefit or a combination of these.

In accordance with the Summary Schedules of the Plan, the following contribution rates are relevant and applicable to the proposed development:

<table>
<thead>
<tr>
<th>Contribution Rates by Type of Development</th>
<th>Recreation</th>
<th>Administration</th>
<th>No. of unit proposed</th>
<th>Contribution required</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-bedroom unit</td>
<td>$948/unit</td>
<td>1.5c/$</td>
<td>1</td>
<td>$948</td>
</tr>
<tr>
<td>2-bedroom unit</td>
<td>$1,312/unit</td>
<td>1.5c/$</td>
<td>7</td>
<td>$9,184</td>
</tr>
<tr>
<td>3-bedroom unit</td>
<td>$1,604/unit</td>
<td>1.5c/$</td>
<td>3</td>
<td>$4,812</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td>$14,944</td>
</tr>
</tbody>
</table>

As the proposed development will result in a net increase of one 1-bedroom unit, seven 2-bedroom units and three 3-bedroom units, the required monetary contribution is calculated in accordance with the above table. Accordingly, **Condition No. 37** is recommended.

6.4 Other relevant legislation

Not applicable.

7. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

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

The Woollahra LEP 1995 states that Council shall not grant consent to the carrying out of development on land to which the plan applies unless the Council is of the opinion that the carrying out of the development is consistent with such objectives of the plan and of the zone within which the development is proposed to be carried out as apply to that development.

The site is zoned Residential 2(b). The approved use of the site is a hotel approved on 9 July 1963. Hotels are not a permissible use within a Residential 2(b) zone under the Woollahra LEP 1995 which was gazetted on 10 March 1995. The site enjoys existing use rights as the use commenced, with Council consent, before the use became prohibited pursuant to S. 108 of the Environmental Planning and Assessment Act. Clause 39 of the Environmental Planning and Assessment Regulation states that an existing use may, in accordance with this division, be;

(a) enlarged, expanded or intensified, or  
(b) altered or extended; or  
(c) rebuilt; or  
(d) changed to another use, including a use that would otherwise be prohibited under the act.

The DA proposes a change of use from a prohibited use to a permissible use in a Residential 2(b) zone. Therefore, the provisions of the LEP and RDCP apply to the DA.
7.2 Statutory compliance table

<table>
<thead>
<tr>
<th>Clause</th>
<th>Control</th>
<th>Proposed</th>
<th>Existing</th>
</tr>
</thead>
<tbody>
<tr>
<td>10B</td>
<td>NO</td>
<td>YES</td>
<td>Site area: 473.8m² Frontage: 25.375m</td>
</tr>
<tr>
<td>12AA &amp; 12</td>
<td>NO</td>
<td>9.5m</td>
<td>Overall Height (m) 27.01 27.01</td>
</tr>
<tr>
<td>11AA &amp; 11</td>
<td>NO</td>
<td>0.875:1 (414.575m²)</td>
<td>Floor Space Ratio 3.36:1 (1,592m²)</td>
</tr>
</tbody>
</table>

*existing non-compliance

7.4 Site area requirements

The proposal breaches the minimum allotment size by 456.2m². The applicant has submitted a SEPP 1 objection in relation to this non-compliance, which states that:

Variation is supported for the following reasons:

- The subject site has a total area of 473.8m² and a frontage of 25.375m. The proposal complies in terms of frontage.
- The proposal involves the use of an existing building which will be converted for residential purposes, and as such, the pattern of scale, density, bulk and landscape character of the building and the allotment size has already been established.
- Being an existing building, features such as space between buildings, daylight and sunlight access, space for deep soil landscaping and view preservation have already been established.

1. Is the planning control in question a development standard?

The minimum site area of 930m² is a development standard under WLEP 1995 for a residential flat building containing 4 or more dwellings.

2. What is the underlying purpose of the standard?

The objectives of the minimum site area development standard in Woollahra LEP 1995 are as follows:

a) To achieve compatibility between the scale, density, bulk and landscape character of buildings and allotment size;
b) To provide sufficient space between buildings, to maximise daylight and sunlight access between buildings, to ensure adequate space for deep soil landscaping and to preserve view corridors;
c) To prevent permanent barriers to sub-surface water flows;
d) To ensure that there is sufficient land for car parking on site;
e) To encourage consolidation of allotments in appropriate locations to enable the development of a diversity of dwelling types.
3. **Is compliance with the development standard consistent with the aims of the Policy, and in particular, does the development standard tend to hinder the attainment of the objects specified in s.5(a)(i) and (ii) of the EPA Act?**

The site area is 473.8m² and does not comply with the required standard of 930m². In determining the nature and extent of the non-compliance and its impact, the following points are made:

- The proposal is confined by the existing building bulk.
- It would not result in additional overshadowing as compared with the existing building on site.
- While the existing building bulk is retained, there is currently no deep soil landscaping area on site and this situation would remain.
- It would not have an impact upon the current sub-surface water flow.
- It would not have an impact upon existing view corridor.
- Although the proposed on-site car parking is inadequate, the non-compliance is minor and consistent with Draft SEPP 66. It is discussed further in Section 9.1 under Car parking and driveways performance criteria.
- A mixture of one to three-bedroom residential units would be provided offering a diversity of dwelling types.

In view of the above, having considered the objectives of the development standard contained in Woollahra LEP, the proposal will achieve the objectives of the minimum site area standard and the impact of the non-compliance is minor. As such, the strict application of the minimum site area development standard is considered unreasonable and unnecessary in the circumstances of the case.

4. **Is compliance with the standard unreasonable or unnecessary in the circumstances of the case?**

In view of the above, the strict application of the minimum site area development standard is considered unreasonable and unnecessary in the circumstances of the case.

5. **Is the objection well founded?**

The objection advanced by the applicant that compliance with the development standard is unreasonable and unnecessary is well founded and it is considered that granting of development consent would be consistent with the aims and objectives of SEPP 1.

7.5 **Height**

The proposal breaches the height limit by 17.51m. The applicant has submitted a SEPP 1 objection in relation to this non-compliance, which states that:

*Variation is supported for the following reasons:*

- The proposal relates to an existing building, and clearly the proposal cannot be accommodated within that limit.
- Examination of the objectives relating to the height standard shows that the proposal does fit within these parameters.
- The additional accommodation on the roof is generally contained within the area of the existing plant rooms. As such, there is no additional bulk created to the overall structure.
• As the development involves the refurbishment and conversion of an existing building, the impact of the proposal on existing views of Sydney harbour, ridgelines, public and private open spaces and views of the Sydney City skyline will be minimal.
• The design of the proposal will be modern, but will still provide compatibility with the adjoining residential neighbourhood.
• As the topography of the subject site dips to the north, the line of vision will not impact the visual privacy of interior and/or exterior living areas of neighbouring dwellings. The existing field of vision will be maintained.
• As the building is a refurbishment, existing sunlight access and overshadowing will be maintained.
• The amenity of the public domain by preserving public views of the harbour and surrounding areas will also be maintained. Accordingly, the objectives of the standard are met.

In summary, it is my opinion that the SEPP 1 objection hereby submitted should be supported and the development standard varied, as the proposed development is consistent with the objectives of the Residential 2(b) zone. Further, the development will result in no detrimental impacts upon the future use of the property.

Paragraph 3 of Circular No. B1 from the former Department of Planning states:

As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small in others it may be numerically large, but nevertheless be consistent with the purpose of the standard.

It is my opinion that the variation to the standard prescribed by the WLEP has been shown to be consistent with the aims of SEPP 1 and consistent with the objectives of the standard. As such, strict adherence to the standard is unreasonable and unnecessary in the circumstances of the case.

The SEPP 1 Objection is assessed under Council’s procedure as set out below:-

1. Is the planning control in question a development standard?

The maximum building height (9.5m) is a development standard under WLEP 1995.

2. What is the underlying purpose of the standard?

The objectives of the maximum building height development standard in Woollahra LEP 1995 are as follows:

a) To minimise the impact of new development on existing views of the Sydney Harbour, ridgelines, public and private open spaces and views of the Sydney City skyline;
b) To provide compatibility with the adjoining residential neighbourhood;
c) To safeguard visual privacy of interior and exterior living areas of neighbouring dwellings;
d) To minimise detrimental impacts on existing sunlight access to interior living rooms and exterior open space areas and minimise overshadowing;
e) To maintain the amenity of the public domain by preserving public views of the harbour and surrounding areas and the special qualities of the streetscapes.
3. Is compliance with the development standard consistent with the aims of the Policy, and in particular, does the development standard tend to hinder the attainment of the objects specified in s.5(a)(i) and (ii) of the EPA Act?

It is noted that the proposal would retain the building envelop of the existing building of which the height currently exceeds the statutory control. In determining the nature and extent of the non-compliance and its impact, the following points are made:

- The proposal is confined by the existing building bulk, which would not protrude the existing building height.
- It would not have an impact upon existing views of the Sydney Harbour, ridgelines, public and private open spaces and views of the Sydney City skyline from surrounding and nearby developments.
- It would not reduce the current level of privacy of neighbouring properties.
- It would not result in additional overshadowing as compared with the existing building on site.
- It would have no impact upon existing public views of the harbour and would not have significant impact to the streetscape.

In view of the above, having considered the objectives of the development standard contained in Woollahra LEP, the proposal will achieve the objectives of the height standard and the impact of the non-compliance, which would not protrude the existing building height, is minor. As such, the strict application of the maximum building height development standard is considered unreasonable and unnecessary in the circumstances of the case.

4. Is compliance with the standard unreasonable or unnecessary in the circumstances of the case?

In view of the above, the strict application of the maximum building height development standard is considered unreasonable and unnecessary in the circumstances of the case.

5. Is the objection well founded?

The objection advanced by the applicant that compliance with the development standard is unreasonable and unnecessary is well founded and it is considered that granting of development consent would be consistent with the aims and objectives of SEPP 1.

7.6 Floor space ratio

The proposal breaches the FSR control to 3.1:1. The applicant has submitted a SEPP 1 objection in relation to this non-compliance, which states that:

Variation is supported for the following reasons:

- The proposal in fact reduces the overall floor space of the existing building from 1,592 m² to 1,431.3 m². This has been created by the introduction of balconies that have been recessed into the existing floor space. The proposed floor space ratio is 3.1:1
- The objectives set the maximum density for new development. The proposal complies with these objectives, with all requirements achieving the desired future character objectives of the locality.
• The floor space ratio will not impact the environmental effect on the use or enjoyment of adjoining properties given the retention of the existing building.

• The development relates to the existing character of the surrounding built and natural environment as viewed from the streetscape, the harbour or any other panoramic viewing point.

The SEPP 1 Objection is assessed as follows:-

1. Is the planning control in question a development standard?

The maximum floor space ratio of 0.875:1 is a development standard under WLEP 1995.

2. What is the underlying purpose of the standard?

The objectives of the maximum floor space ratio development standard in Woollahra LEP 1995 are as follows:

(a) to set the maximum density for new development,
(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,
(c) to minimise adverse environmental effect on the use of enjoyment, or both, of adjoining properties, and
(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.

3. 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 objects specified in s.5(a)(i) and (ii) of the EPA Act?

It is noted that the proposal would retain the building envelop of the existing building. In determining the nature and extent of the non-compliance and its impact, the following points are made:

• The proposal is confined by the existing building envelop so that the building density, bulk and scale would remain the same as existing on site achieving the desired future character objectives the locality.
• It would not have an impact upon existing views of the Sydney Harbour, ridgelines, public and private open spaces and views of the Sydney City skyline from surrounding and nearby developments.
• It would not reduce the current level of privacy of neighbouring properties.
• It would not result in additional overshadowing as compared with the existing building on site.
• It would have minimal and negligible impact when viewed of the harbour and would not have significant impact to the existing streetscape.

In view of the above, having considered the objectives of the development standard contained in Woollahra LEP, the proposal will achieve the objectives of the FSR standard and the impact of the non-compliance, which would not exceed the existing FSR, is minor. As such, the strict application of the maximum FSR development standard is considered unreasonable and unnecessary in the circumstances of the case.
4. **Is compliance with the standard unreasonable or unnecessary in the circumstances of the case?**

In view of the above, the strict application of the FSR development standard is considered unreasonable and unnecessary in the circumstances of the case.

5. **Is the objection well founded?**

The objection advanced by the applicant that compliance with the development standard is unreasonable and unnecessary is well founded and it is considered that granting of development consent would be consistent with the aims and objectives of SEPP 1.

7.7 **FSBL**

Not applicable.

7.8 **Other special clauses/development standards**

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

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

8. **DRAFT AMENDMENTS TO STATUTORY CONTROLS**

*Draft State Environmental Planning Policy (Application of Development Standards) 2004*

Section 79C(1)(a)(ii) of the Act requires that in determining a development application, a consent authority is to take into consideration any draft environmental planning instrument "EPI" that is or has been placed on public exhibition and details of which have been notified to the consent authority.

Draft State Environmental Planning Policy (Application of Development Standards) 2004 ("the proposed SEPP") was publicly exhibited from 10 May to 18 June 2004. In considering how much weight should be placed upon an exhibited draft environmental planning instrument under section 79C of the Act one must assess how likely it is that the draft EPI will commence, in what form it is likely to commence and consider what effect the instrument would have if applied.

The proposed SEPP received significant criticism from the development industry in submissions. Officers of DIPNR have advised that it will not be made in the form it was exhibited and that it will now be included as part of the new Integrated LEP Template. This template will be placed on public exhibition in late April/May 2005. Therefore, it is not known in what form the draft SEPP will be made.

Clause 14 of the draft SEPP provides Saving and Transitional provisions. These provisions provide that any application submitted prior to the commencement of the proposed SEPP and within 28 days after the commencement of the proposed SEPP is to be determined in accordance with the former SEPP No.1 as if the former SEPP No.1 had not been repealed by the proposed SEPP. It is likely that the draft SEPP, if made, will contain transitional provisions.
The draft SEPP would, if it commenced in its exhibited form, require a higher threshold test in order for an objection against a development standard to be sustained. However, the draft policy should not be given determining weight in the assessment of development applications for the following reasons:

1. The draft SEPP will not be made in the form it was exhibited
2. It is not known whether the threshold tests contained in the exhibited SEPP will be retained
3. It is likely that, if made, the draft SEPP will contain savings and transitional provisions.

This means that objections submitted under State Environmental Planning Policy No.1 must be assessed under the current policy.

**Draft State Environmental Planning Policy No. 66 – Integration of Land Use and Transport**

The policy aims to ensure that urban structure, building forms, and use locations, development designs, subdivision and street layouts help achieve the following planning objectives:-

(a) improving accessibility to housing, employment and services by walking, cycling and public transport,
(b) improving the choice of transport and reducing dependence solely on cars for travel purposes,
(c) moderating growth in the demand for travel and the distances travelled, especially by car,
(d) supporting the efficient and viable operation of public transport services,
(e) providing for the efficient movement of freight.

The subject site, being strategically located in close proximity to various modes of public transport as well as retail and commercial centres of Edgecliff and Double Bay, is considered satisfactory with regard to the objectives prescribed in draft SEPP 66.

### 9. DEVELOPMENT CONTROL PLANS

#### 9.1 Numeric Compliance table - Woollahra Residential Development Control Plan 2003

<table>
<thead>
<tr>
<th>Site Area (473.8m²)</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>C5.2.2/3/5 Building Boundary Setbacks</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Front (S)</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>YES</td>
</tr>
<tr>
<td>Rear (N)</td>
<td>3.5</td>
<td>3.5</td>
<td>25% av site length (4.38m)</td>
<td>NO*</td>
</tr>
<tr>
<td>Side (E)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Basement 1 to ground floors</td>
<td>Nil</td>
<td>Nil</td>
<td>3m</td>
<td>NO*</td>
</tr>
<tr>
<td>- Level 2 and above</td>
<td>3.1m</td>
<td>3.1m</td>
<td>3.5m – 11.63m</td>
<td>NO*</td>
</tr>
<tr>
<td>Side (W)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Basement 1 to ground floors</td>
<td>Nil</td>
<td>Nil</td>
<td>3m</td>
<td>NO*</td>
</tr>
<tr>
<td>- Level 2 and above</td>
<td>3m</td>
<td>3m</td>
<td>3.5m – 11.63m</td>
<td>NO*</td>
</tr>
<tr>
<td><strong>C5.2.7 Building Footprint (% &amp; m²)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>73%</td>
<td>73%</td>
<td>40%</td>
<td>NO*</td>
</tr>
<tr>
<td></td>
<td>(345)</td>
<td>(345)</td>
<td>(189.52)</td>
<td></td>
</tr>
<tr>
<td><strong>C5.2.13 Solar Access to Ground Level Open Space of Adjacent Properties</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>&gt; 50% (area)</td>
<td>&gt; 50% (area)</td>
<td>50% or 35m² &amp; min dimension of 2.5m</td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>&gt; 2.5m (dimension)</td>
<td>&gt; 2.5m (dimension)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>C5.3.1 Deep Soil Landscaped Area (% &amp; m²) (RFBs only)</strong></td>
<td>N/A</td>
<td>Nil</td>
<td>40%</td>
<td>NO*</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(189.52)</td>
<td></td>
</tr>
<tr>
<td><strong>C5.3.5 Private Open Space (balconies etc) – upper floor units in RFBs (per dwelling)</strong></td>
<td>N/A</td>
<td>&gt; 8m² (area)</td>
<td>Min area - 8m² Min dimension - 2m</td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&gt; 2m (dimension)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>C5.6.1 Energy Efficiency Rating (Stars)</strong></td>
<td>N/A</td>
<td>3.5 – 5</td>
<td>3.5</td>
<td>YES</td>
</tr>
</tbody>
</table>
### Site Area (473.8m²)

<table>
<thead>
<tr>
<th>Item of non-compliances</th>
<th>Impact</th>
<th>Complies with applicable Objectives (Y/N)</th>
<th>Accept (Y/N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building Boundary Setbacks</td>
<td>- Moderate (existing non-compliance)</td>
<td>- Y</td>
<td>- Y</td>
</tr>
<tr>
<td>- Rear (N)</td>
<td>Moderate (existing non-compliance)</td>
<td>- Y</td>
<td>- Y</td>
</tr>
<tr>
<td>- Side (E)</td>
<td>Moderate (existing non-compliance)</td>
<td>- Y</td>
<td>- Y</td>
</tr>
<tr>
<td>- Side (W)</td>
<td>Moderate (existing non-compliance)</td>
<td>- Y</td>
<td>- Y</td>
</tr>
<tr>
<td>Building footprint</td>
<td>Moderate (existing non-compliance)</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Deep Soil Landscaped Area</td>
<td>Severe</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Car Parking Spaces</td>
<td>Minor</td>
<td>Y</td>
<td>Y</td>
</tr>
</tbody>
</table>

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

The subject site falls within the Double Bay Precinct under the RDCP 2003. Although the proposal does not comply with the maximum building footprint and the minimum side setback control as prescribed in Clauses C 4.2.3 and C 4.2.4 in Section 4 of the RDCP 2003, as discussed under Building size and location performance criteria below, the proposal is considered satisfactory in this regard.

**Streetscape performance criteria (Section 5.1)**

While the existing building mass and bulk would be retained, the proposal would add more building articulation to the front (south) elevation by introducing front court areas on the ground floor fronting New South Head Road and sliding screen panels to the floors above. The addition of awning also addresses positively to New South Head Road not only providing weather protection to the users but also adding identity to the building itself. It is noted that the locality in this area is dominated by medium to high rise building structures. Therefore, the retention of the subject multi-storey building with an upgraded presentation to New South Head Road would contribute to a cohesive streetscape and improve the visual quality upon the street. As such, the proposal is considered satisfactory with regard to the objectives prescribed in Part 5.1 of the RDCP 2003.

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

**Setback**

The proposal does not comply with the RDCP’s side and rear setback requirements. Council’s procedure when assessing non-compliance requires the following steps.

---

*existing non-compliance*
Step 1 – Identify the applicable development controls

The setback requirements prescribed in the RDCP 2003 are set out below:

- Side setback: 3m (ground floor) to 11.63m (top floor)
- Rear setback: 4.38m (25% of the site)

Step 2 – Determine compliance

The proposed side and rear setbacks do not comply with the RDCP’s requirements.

Step 3 – Determine the impact of non-compliance

The numerical non-compliances to the rear and side setback requirements are considered moderate. However, they are existing non-compliances related to the existing Metro Inn building. The proposal intends to retain the external building envelop so that these non-compliances would also be maintained altogether. Since the non-compliances would not exceed that of the existing, they would not result in any further impacts.

Step 4 – Identify applicable objectives

Relevant applicable objectives are:

- Protect the visual aural privacy of residents in adjoining buildings.
- Provide side access to the rear of properties where rear lanes do not occur.
- Avoid building or parts of buildings encroaching on adjoining properties.
- Avoid unreasonable sense of enclosure.
- Safeguard privacy and minimise noise impacts for dwellings.

Step 5 – Determine compliance with the applicable objectives

- The current level of privacy of residents in adjoining buildings would not be altered.
- Access to the rear of property is currently not provided and this situation is not altered.
- The existing right-of-way would not be encroached upon.
- The building will not encroach on adjoining properties.
- The proposal will not intensify sense of enclosure

The non-compliance with the side and rear setback controls would still meet the applicable objectives of the controls.

Step 6 – Determine if the non-compliance is acceptable.

In view of the above, whilst the numerical non-compliances are moderate, the impact of the non-compliance as a result of the change of use are negligible and meet the objectives of the control.

Building footprint

The proposal does not comply with the RDCP’s maximum building footprint requirements. Council’s procedure when assessing non-compliance requires the following steps.
Step 1 – Identify the applicable development controls

The maximum building footprint prescribed in the RDCP 2003 is 40% of the site (189.52m²)

Step 2 – Determine compliance

The proposed building footprint of 73% (345 m²) does not comply with the RDCP’s requirements.

Step 3 – Determine the impact of non-compliance

It is noted that the numerical non-compliances to the building footprint requirement is moderate. However, The proposal intends to retain the external building envelop so that this non-compliance would also be maintained. Since the non-compliance would not exceed further from the existing building footprint, this non-compliance would not result in any further impacts.

Step 4 – Identify applicable objectives

Relevant applicable objectives are:-
- Limit site coverage and excavation of new building.
- Maximum on-site infiltration of stormwater.
- Maximum deep soil landscape areas.
- Maintain natural landform.
- Maintain subterranean water flows

Step 5 – Determine compliance with the applicable objectives

- The site coverage is not increased and no new excavation is required.
- While the proposal has no alterations to the existing building footprint, the existing on-site infiltration of stormwater and subterranean water flows will not change. Council’s Development Engineer also has no objections to the proposed stormwater disposal concept plan.
- The proposal will not alter the natural landform or subterranean water flows

The non-compliance with the building footprint controls would still meet the applicable objectives of the controls.

Step 6 – Determine if the non-compliance is acceptable.

In view of the above, whilst the numerical non-compliance is moderate, the impact of the non-compliance as a result of the change of use is negligible and would meet the applicable objectives of the control. The non-compliance is therefore considered acceptable.

In view of the above, the proposal is considered satisfactory with regard to the objectives prescribed in Part 5.2 of the RDCP 2003.
Open space and landscaping performance criteria (Section 5.3)

All residential units are provided with more than 8m² of private open space in the form of balconies or roof terraces complying with C 5.3.5 under Part 5.3 of the RDCP 2003.

The proposal does not comply with the RDCP’s deep soil landscape area requirements. Council’s procedure when assessing non-compliance requires the following steps.

Step 1 – Identify the applicable development controls

For residential flat buildings, deep soil landscape area should comprise at least 40% of the site area.

Step 2 – Determine compliance

The proposal does not provide deep soil landscape area and does not comply with the RDCP’s requirements.

Step 3 – Determine the impact of non-compliance

It is noted that there is no deep soil landscape area currently on site. The numerical non-compliances with the deep soil landscape area requirement is severe. The proposal is to refurbish the existing Metro Inn building and convert it to a residential flat building. Due to the existing building footprint, which has already covered 73% of the site, it would not be possible to meet the numerical control prescribed in the RDCP 2003. However, such non-compliance would not have any further impact upon the site or surrounding lots as it has no change to the existing situation being nil provision of deep soil landscape area.

Step 4 – Identify applicable objectives

Relevant applicable objectives are:-

- To retain important existing mature trees, vegetation and other landscape features.
- To enhance stormwater management.

Step 5 – Determine compliance with the applicable objectives

- There is no existing vegetation on site.
- While the proposal has not provided deep soil landscape area, the existing on-site infiltration of stormwater and subterranean water flows will not change. Council’s Development Engineer also has no objections to the proposed stormwater disposal concept plan.

Whilst there is a non-compliance with deep soil landscape area controls, the proposal would still meet the applicable objectives of the controls.

Step 6 – Determine if the non-compliance is acceptable.

In view of the above, whilst the numerical non-compliance is severe, the impact of the non-compliance as a result of the change of use is negligible. The non-compliance is therefore considered acceptable.
In view of the above, the proposal is considered satisfactory with regard to the objectives prescribed in Part 5.3 of the RDCP 2003.

**Views performance criteria (Section 5.5)**

Since the proposal is limited to the existing building envelop, it would not result in any adverse impact upon existing views from surrounding dwellings. The refurbishment of the existing building including the removal of the existing chimney would in fact improve the visual quality from the surrounding.

**Energy efficiency performance criteria (Section 5.6)**

An ABSA Assessor Certificate has been provided indicating that all residential units would achieve 3.5 to 5 star rating complying with the RDCP’s requirement. In addition, the proposal has maximised capturing solar access by locating habitable area to the northern aspect. Since the existing building envelop is retained, there is no additional overshadowing to the adjoining properties. As such, the proposal is considered satisfactory with regard to the objectives prescribed in Part 5.6 of the RDCP 2003.

**Condition No. 55** requires all residential units to be designed and constructed to achieve a minimum of 3.5 star rating complying with the RDCP’s requirement.

**Condition No. 56** requires that the proposed pool be covered with a pool cover when not in use in order to reduce energy and water needs.

**Stormwater management performance criteria (Section 5.7)**

As advised by Council’s Development Engineer, proposed stormwater disposal concept plan is considered satisfactory in this regard.

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

C 5.8.6 under Clause 5.8 of the RDCP 2003 is applicable control in relation to privacy.

The Land and Environment Court in *Meriton Properties Management Pty Ltd and Karimbla Properties Pty Ltd v Sydney City Council* used the following planning principles in assessing privacy:

- *The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private.*

The subject site and adjoining sites consist of medium density development. The principal private open space, being to the rear ground floor, of the immediate adjoining properties would remain relatively private. While habitable areas including balconies and roof terrace of the proposed residential units are located to the north which is facing other residential flat buildings, sliding louvre screens are provided to the northern façade of the building alleviating the possible overlooking impact. Frosted glass balustrades are also proposed to the north-facing balconies of the units on the lower floors (Levels 2 to 4) avoiding direct overlooking to the adjoining properties while a person is in a sitting position within the habitable areas of these units. It is considered that the overlooking impact would become less significant from the upper floor units as they would obtain a harbour view from these floors while they would only look at the roof of the dwelling...
house (containing 3 residential units) to the north when looking down. It is noted that the guest rooms of the current Metro Inn building are also facing north without any screening provided. With the application of the features as discussed above, the current level of private of adjoining properties would not be reduced.

- **Privacy can be achieved by separation.** The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the objective should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of curse, not always achievable.)

Since the proposal would retain the existing building, the physical separation from other surrounding built structures would not be reduced. Whereas the lowest two floor would still be retained for parking purposes, windows from habitable areas open towards other residential developments (No. 4 Ocean Avenue to the north) would only start above these two levels of parking. Due to the considerable height difference between the two sites and dense foliage of existing mature trees, together with the proposed external louvres and frosted glass balustrades to the north-facing balconies, the current level of privacy of No. 4 Ocean Avenue would not be diminished.

With respect to the possible overlooking to the east-facing balconies of the residential units at No. 222 New South Head Road, amended plans have been received on 22 April 2005 showing that the west-facing balconies on Levels 5 and 6 are fitted with opaque glass to the outer balcony edges to preserve privacy of adjoining properties. In addition, the west-facing window to the living area of Unit 10 on Level 5 is also fitted with fixed opaque glass for the same purpose.

- **The use of a space determines the importance of its privacy.** Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.

As discussed earlier, the proposed application of external louvres, translucent glass balustrades and screens would effectively avoid direct overlooking of the private open space of adjoining properties.

- **Overlooking of neighbours that arises out of poor design is not acceptable.** A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.

The proposal has been designed to maximise northern sun. Possible overlooking to the private open space of adjoining property to the south would be overcome by the introduction of frosted glass balustrades to the north-facing balconies as well as the opaque glass screen on the western facade. The overall design of the roof terrace is considered acceptable with respect to preserving privacy of neighbouring properties by locating the a continuous planter box along the northern edge.

- **Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.**

The private open space would not be detrimentally affected by the proposal.
Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable.

The proposed external louvres, frosted glass balustrades, opaque screens and planter box would ensure privacy of adjoining properties.

Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight.

There is no landscaping proposed for the purpose of protection against overlooking.

In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered.

The area around is well developed. The development of adjoining sites would not be constrained by the proposal, but rather, by the controls prescribed by the DCP.

The proposal would therefore satisfy the relevant planning principles applied by the Court and the criteria prescribed by the RDCP.

The applicant has submitted an acoustic assessment report prepared by Vipac Engineers and Scientists Ltd (Report No. 242669-TRP-003309-02) dated 1st October 2004. The report assesses the interaction of the proposed redevelopment of the existing Metro Inn in terms of impacts of road traffic noise on the proposed development and noise emission from the proposed development to adjoining premises.

The assessment was carried out in accordance with the recommendations and guidelines set out in Woollahra Municipal Council’s guidelines as well as the DCP, AS2107 and the EPA Noise Policies.

The report states that provided the recommendations in this report are carried out, the proposed residential development is predicted to comply with the noise intrusion requirements of the Council’s policy as well as the relevant standard and guidelines.

The recommendations from the report include glazing requirements, mechanical services equipment noise emission, sound emission between premises, and BCA requirements, acoustic detail design, guidelines for construction noise and acoustic compliance testing.

A condition has been included, **Condition No. 55**, to ensure compliance with the recommendations of the acoustic assessment.

In order to minimise any noise generated by the air conditioning plant, **Condition No. 3** is recommended requiring deletion of the proposed A/C plant area on Basement Level 1. The A/C plant area may be integrated to the Plant/Store area to the west and south of the stairwell. In addition, **Condition No. 38** is also recommended to monitor the noise level of the air conditioning system.
Car parking and driveways performance criteria (Section 5.9)

The proposal does not comply with the RDCP’s parking requirements. Council’s procedure when assessing non-compliance requires the following steps.

Step 1 – Identify the applicable development controls

The parking requirements prescribed in the RDCP 2003 and the proposed parking provisions are set out in the following two tables:-

<table>
<thead>
<tr>
<th>Dwelling size</th>
<th>Min No. of spaces per dwelling (C 5.9.3 of RDCP)</th>
<th>No. of units proposed</th>
<th>On-site parking required</th>
<th>No. of parking proposed</th>
<th>Surplus/deficit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 bedroom</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>Nil</td>
</tr>
<tr>
<td>2 bedroom</td>
<td>1.5</td>
<td>7</td>
<td>10.5</td>
<td>8</td>
<td>-2.5</td>
</tr>
<tr>
<td>3 bedroom</td>
<td>2</td>
<td>3</td>
<td>6</td>
<td>6</td>
<td>Nil</td>
</tr>
<tr>
<td>Visitors</td>
<td>0.25</td>
<td>11</td>
<td>2.75</td>
<td>2</td>
<td>-0.75</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>11</td>
<td>20.25</td>
<td>17</td>
<td>-3.25</td>
</tr>
</tbody>
</table>

Step 2 – Determine compliance

As shown on the tables above, the proposed on-site car parking does not comply with the RDCP’s requirements with an overall deficit of 3.25 spaces.

Step 3 – Determine the impact of non-compliance

The proposed number of on-site parking does not comply with the RDCP’s requirements and the non-compliance is minor. It should be noted that according to Council’s DCP for Off-street Car Parking and Servicing Facilities, the existing Metro Inn would require 41.5 on-site parking while there is only 14 parking provided on site at present. Therefore, there is a current shortfall of 27.5 on-site parking spaces.

The proposed residential flat building, in virtue, reduces the required on-site parking spaces and would reduce the demand of on-street parking on surround streets. In addition, it should also be noted that the subject site is advantaged by its location being close to public transport including the Edgecliff Railway Station Interchange as well as a number of bus routes along New South Head Road.
On this basis, the impact as a result of the non-compliance with the RDCP’s requirements is considered acceptable.

**Step 4 – Identify applicable objectives**

Relevant applicable objectives are:-

O 5.9.2 to provide convenient and safe car parking and access while encouraging alternative modes of transport, particularly walking and cycling.

O 5.9.3 to ensure that on-site car parking and driveway do not dominate or detract from the appearance of the development and the local streetscape.

**Step 5 – Determine compliance with the applicable objectives**

- The site is located on a public transport (bus) route. Edgecliff Railway Station is less than 100 metres walk while the retail and commercial centres of Edgecliff and Double Bay are within short walking distance. Other modes of travel are also available to access the site. The proposed residential flat building with 11 residential units would in fact generate less on-site parking demand than the existing Metro Inns. The minor shortage in on-site car parking, on the other hand, would encourage more use of public transport.

- The proposed vehicular ingress/egress would utilise that of the existing which is not considered dominating the local streetscape.

The non-compliance with the car parking controls would still meet the applicable objectives of the controls.

**Step 6 – Determine if the non-compliance is acceptable.**

In view of the above, the non-compliance is minor and complies with the applicable objectives. The non-compliance is therefore considered acceptable.

**Site facilities performance criteria (Section 5.10)**

The proposal would provide adequate site facilities including garbage collection areas, external storage area and is considered satisfactory in this regard.

**Access and mobility performance criteria (Section 5.13)**

The proposal would comply with the requirements set out in the Woollahra Access DCP (see Section 9.3 below) and is therefore considered satisfactory in this regard.

**9.2 DCP for off-street car parking provision and servicing facilities**

The current Metro Inn consists of 32 guest rooms and a restaurant of approximately 170 m² of floor area on the ground floor. According to Table 2.6 of the DCP a total number of 41.5 on-site parking spaces (16 for the guest rooms and 25.5 for the restaurant) is required. The site currently provides 14 car parking spaces (some are stacked or substandard) resulting a shortfall of 27.5 spaces (i.e. 41.5 – 14 = 27.5).

According to Table 2.7 of the DCP, the proposed residential flat building would be required to provide on-site parking as follows:-
<table>
<thead>
<tr>
<th>Unit type</th>
<th>Parking space/unit (Table 2.7 of DCP)</th>
<th>No. of units proposed</th>
<th>On-site parking required</th>
<th>No. of parking proposed</th>
<th>Surplus/deficit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 bedroom</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>Nil</td>
</tr>
<tr>
<td>2 bedroom</td>
<td>2</td>
<td>7</td>
<td>14</td>
<td>8</td>
<td>-6</td>
</tr>
<tr>
<td>3 bedroom</td>
<td>2</td>
<td>3</td>
<td>6</td>
<td>6</td>
<td>Nil</td>
</tr>
<tr>
<td>Visitors</td>
<td>2 spaces for the first 3 units, and 1 space for each additional 3 units or part thereof</td>
<td>11</td>
<td>5</td>
<td>2</td>
<td>-3</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>11</td>
<td>26</td>
<td>17</td>
<td>-9</td>
</tr>
</tbody>
</table>

Although the proposal would not provide adequate on-site parking spaces (resulting in a shortfall of 9 spaces), due to the existing shortfall in car parking of 27.5 spaces, the actual on-site parking demand would be reduced as a result of the proposed residential flat building.

Consideration is also given to the close proximity with the readily available public transport including the Edgecliff Railway Station interchange as well as a number of bus routes servicing to the City and the eastern suburbs. This is consistent with Draft SEPP 66.

Clause 1.6.6 of the RDCP 2003 also provides that in the event of any inconsistency between the RDCP and other development control plans, policies and codes, the RDCP prevails.

In view of the above, the non-compliance with the number of on-site parking is considered acceptable.

9.3 Woollahra Access DCP

This proposal is for a residential flat building containing twelve units. The proposed residential flat building is a Class 2 building and, according to the DCP, is required to provide one accessible unit. Ten out of the twelve residential units are accessible in that disable access is provided via ramp and lift from the street to these units. Except unit 11, the internal layouts of all units are level access. As such, the proposal is satisfactory with regard to the objectives and requirements of the DCP.

9.4 Other DCPs, codes and policies

DCP for SREP 23

The proposal complies with the objectives of DCP for SREP 23 – Sydney Harbour and Parramatta River DCP in the following manner:

- The development will not affect public access to the waterway;
- The development will not increase congestion and cause conflict of the waterway and foreshore;
- The development will not interfere with navigation, swimming or other recreational activities;
- The development will not affect the natural flow of tides and currents;
- The development will not dominate the existing landscape setting.

It is considered that the proposed dwelling meets the criteria for built form set out in Section 4.5 of this DCP as the proposed development is considered to be compatible with the locality and will enhance the existing setting.
10. APPLICABLE REGULATIONS

Clause 93 of EP&A Regulations 2000

Clause 93 of the Environmental Planning & Regulations 2000 is applicable to development applications for a change of building use for an existing building that does not comprise the rebuilding, alteration, enlargement or extension of a building.

In determining the application, Council is required to consider whether the fire protection and structural capacity of the building will be appropriate to the building’s proposed new use. Consent must not be granted unless the consent authority is satisfied that the building complies (or will, when completed, comply) with such of the Category 1 fire safety provisions as are applicable to the building’s proposed new use.

Council’s Fire Officer considers the proposal to be acceptable in this regard subject to mandatory requirement for a Construction Certificate.

11. THE LIKELY IMPACTS OF THE PROPOSAL

All likely impacts of the proposal have been assessed elsewhere in this report.

12. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

13. SUBMISSIONS

The proposal was advertised and notified in accordance with Council’s Advertising and Notifications DCP. Submissions were received from:

- Tim Barton of Unit 14, No. 222 New South Head Road
- Dimity Scales of Unit 4, No. 222 New South Head Road and on behalf of the Body Corporate of Strata Plan 15187
- John Green of Unit 20, No. 458 Edgecliff Road
- E. S. Bowman of Units 6 and 11, Templeton, No. 250 New South Head Road
- Erica Turek of No. 4, Ocean Avenue
- Peta Solomon of Unit 1, No. 6 Ocean Avenue

The objectors raised the following issues:

Usage of the current right-of-way to Templeton (No. 250 New South Head Road)

An objector from Templeton raised stressed that the current right-of-way must be kept clear at all time so that the vehicular access to Templeton would be maintained.

In determining a development application, Council must take into account of the planning merit of the application under relevant legislation, Act, statutory planning instrument and any relevant Council’s DCPs, codes or policies. The right of way is an agreement among particular groups/parties, and is not a relevant consideration for the assessment of the application. Notwithstanding that, the proposal would retain the existing driveway and garage arrangement which would not have an impact upon the use of the driveway as at present.
Another objector from No. 4 Ocean Avenue who currently has a carport by the northern side of the right-of-way raised her concerns in relation to the proposed garage doors on Basement Level 1. She doubted whether the new garage doors would obstruct the car manoeuvring in the right-of-way restricting vehicular access in and out of her carport. It is noted that the proposed new garage doors do not encroach upon the right-of-way. In addition, these garage doors are set further back from the southern boundary of the right-of-way by 1m so that the vehicular access of the right-of-way would not be diminished. The turning circle diagrams shown in the traffic report provided by the applicant is considered acceptable to Council’s Engineer.

**Garbage collection impacts on the right-of-way**

The garbage storage room is located on Basement Level 2 which has ramp access to and from New South Head Road. The existing right-of-way at the Basement Level 1 would not be affected by the garbage collection.

**Noise generated from the residential flat building**

The proposed residential flat building is a permissible use under Residential 2(b) zone. Therefore, the proposed use is compatible with the surrounding developments which are dominated by residential dwellings in the form of either dwelling houses or residential flat buildings. Consideration is also given to the nature of the existing and proposed uses of the site. A motel aims to providing temporary accommodation to transient population whereas the proposed residential flat building would be for residents on a rather permanent term who would normally generate less noise in their own residences. In terms of noise generated by vehicles, as discussed in Section 9.2 above, the proposal would in fact generate less vehicles than the current Metro Inn. Therefore, noise from vehicles would be reduced as compared with the existing development on site.

**Noise generated from A/C plant room**

This issue is acknowledged and would be covered by Condition Nos. 3 and 38.

**Noise generated by the opening and closing the panel lift garage doors**

This is acknowledged. In order to minimise the noise produced by the operation of the panel garage doors, Condition No. 39 is recommended requiring that all the panel left garage doors are mechanically operated so that the noise level, as measured at the boundaries of the subject property, will not exceed the ambient noise level. A report from a qualified practicing acoustic engineer is required prior to the issue of any construction certificate and after completion of the works.

**Additions of garage doors**

The owner of No. 4 Ocean Avenue objects to the additions of new garage doors, pointing out that the additions of garage doors would prohibit her vehicles to move in and out of her carport which is located adjacent to the right-of-way. The proposed new garage doors would not encroach upon the right-of-way. These garage doors would be set back 1m from the southern boundary of the right-of-way. In addition, the turning circle diagrams shown in the traffic report provided by the applicant is considered acceptable to Council’s Engineer. Therefore, the vehicular access along the right-of-way would not be obstructed.
**Basement level 1 garages would impact upon the right-of-way and the carport of No. 4 Ocean Avenue**

Council’s Traffic Engineer has no objection to the parking arrangement. The proposed garages on the Basement Level 1 would retain the same parking arrangement (tandem parking) in term of vehicular manoeuvring except panel garage doors are added. Vehicles would be moving in and out of the subject site in the same way as it is now and, therefore, it would not result in any obstruction to the use of the right-of-way or the accessibility to the carport of No. 4 Ocean Avenue.

**Louvres to the north of Basement Level 2**

Objections have been raised from the owners of 1/6 and 4 Ocean Avenue with respect to the exterior louvres to the north of Basement Level 2. The objectors are in the opinion that the louvres should be replaced by a solid wall facing the right-of-way so that the noise from vehicles would not be transmitted out. As discussed in Section 9.2 above, the proposal would reduce the required number of on-site car parking as compared with the current Metro Inn. Therefore, noise generated by vehicles on the site would not be increased. It is noted that this level of parking is currently open to the north without any screening. The proposed louvres would provide appropriate screening ensuring the privacy of adjoining properties while the number of on-site parking would not be increased. As such, a solid wall is not considered necessary to replace the proposed louvres.

**Impact on the air quality due to the two parking level**

This is acknowledged. This issue has been discussed in Section 5.6 above. The two car parking levels are required to be mechanically ventilated by **Condition No. 40**.

**Vehicular moving in and out of the site**

Objections were raised that the current and proposed car park would not allow a vehicle to move out the subject site at Basement Level 1 in a forward manner and would lead to a safety issue. The traffic report provided by the applicant demonstrates that vehicles can move in and out of the site in a forward manner though it would require a number of turns within the site. It is noted that Basement Level 1 is currently used for car parking and the current vehicular access (right-of-way) would not be altered. As such, Council’s Traffic Officer has no objection to the traffic report submitted.

**Increased number of vehicles using the right-of-way**

As discussed in Section 9.1 under *Car parking and driveway performance criteria* and Section 9.2, the proposal would in fact reduce the number of required on-site parking space as compared with the current motel. The objectors raised that as the occupancy rate of the existing motel is low, the actual number of vehicles going in and out of the motel is limited.

It is considered that the occupancy rate of the motel varies depending on the marketing strategy of the operator and different time of the year as well as many other factors. Therefore, the parking requirements prescribed in Council’s DCP for Off-street Car Parking Provision and Servicing Facilities forms the basis of assessment is this regard. As discussed in Section 9.1 under *Car parking and driveway performance criteria* and Section 9.2, the proposed number of on-site parking is considered acceptable.
Construction management

A construction management plan is required by **Condition No. 23**. All works and traffic movements must be carried out in accordance with the approved construction management plan as required by **Condition No. 24**.

**Loss of privacy to No. 4 Ocean Avenue and 4/222 New South Head Road**

This issue has been discussed in Section 9.1 under *Acoustic and visual privacy performance criteria*.

**Location of refuse room**

The location of the refuse room being at Basement Level 1 is considered acceptable and logical as this level is directly accessible from New South Head Road where garbage collection could be carried out.

**Tree preservation**

Objection was raised to the possible impact to the existing trees on the adjoining property on land at No. 4 Ocean Avenue. **Condition No. 41** is recommended.

Amended plans were received on 22 April 2005. They were not renotified under clause 5.1 of the DCP because, having considered clause 9 of the DCP, it is substantially the same development as the original proposal and considered to have no greater environmental impact upon neighbours.

**14. CONCLUSION - THE PUBLIC INTEREST**

**Adaptive re-use**

The Land and Environment Court in *Michael Hesse v Parramatta City Council* used the following planning principles in assessing adaptive re-use and public interest.

> *To be in the public interest, an adaptive re-use project must have an element of public benefit apart from resource conservation. One or more of the following circumstances must be present:*

> - The building is of historical or heritage value;
> - The building is attractive and fits into its urban design context;
> - The building is much loved by the community;
> - The new use serves the public interest better than the existing use.

In the present case, none of the above circumstances applies. Similar to the *Michael Hesse v Parramatta City Council* case, it is common ground that the building is not attractive and does not fit into its surroundings. The new use does not serve the public interest better than the existing. (motels are often considered to be in the public interest because they encourage tourism and job creation.)

However, the Court also clearly stated that:
None of the above suggests that the proposal is against the public interest just because it is adaptive re-use. The conclusion is only that there is no justification for assessing this proposal any differently from a proposal that does not involve adaptive re-use.

From the assessment as detailed throughout the report, the proposal is considered satisfactory particularly with regard to upgrading the presentation to New South Head Road. As a result, the proposal would contribute to a cohesive streetscape and improve the visual quality upon the street which would be of benefit to general public.

**Existing use rights**

The Land and Environment Court in *Fodor Investments v Hornsby Shire Council* used the following planning principles in assessment of proposals on land with existing use rights.

*Four questions usually arise in the assessment of proposals on land with existing use rights.*

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

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

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

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

3. **What are the impacts on adjoining land?**

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

4. **What is the internal amenity?**

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

Three of the above four principles (i.e. except Principle 1) apply to the issues in the present case; namely the relevance of the building area; the impact on the adjoining land; and internal amenity.
These issues have been discussed throughout the report under relevant headings. The proposal is considered satisfactory with regard to the Court’s principles.

Public interest

In view of the above, the proposal is acceptable against the relevant considerations under s79C and would be in the public interest.

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

THAT the Council, as the consent authority, is of the opinion that the objection under State Environmental Planning Policy No. 1 – Development Standards to the site area, building height and floor space ratio development standards under the Woollahra Local Environmental Plan 1995 are well founded. The Council is also of the opinion that strict compliance with the development standards is unreasonable and unnecessary in the circumstances of this case as the development will not impact on views, not increase the bulk and scale of the building, not impact on privacy of neighbouring properties, not create additional overshadowing and will achieve the objectives of these standards.

AND

THAT the Council, as the consent authority, being satisfied that the objection under SEPP No. 1 is well founded and also being of the opinion that the granting of consent to Development Application No. 616/2004 is consistent with the aims of the Policy, grant development consent to DA No. 616/2004 for alterations and additions to existing motel to create residential flat building containing 11 units and basement parking for 17 vehicles on land at 230-238 New South Head Road, Edgecliff, subject to the following conditions:

1. Approved Plans

   The development must be carried out in accordance with plans numbered DA2000 to DA2008 inclusive, DA3000 and DA3001, dated 20 April 2005, drawn by Prescott Architects, including an A4 sized drawing of portion of Basement Level 1 showing the required grade of the driveway, all of which carry a Council stamp “Approved DA Plans” and the signature of a Council officer, except where amended by the following conditions.

2. Cross ventilation

   The type and operation of window and door openings from the more western units on levels 2, 3 and 4 to the lobby, and from the lobby to the exterior shall be provided with the application for Construction Certificate to demonstrate that sufficient natural cross ventilation is provided.

3. Air conditioning plant area

   In order to minimise the possible noise generated by the air conditioning system, the proposed A/C Plant area on Basement Level 1 shall be deleted. The A/C Plant area is to be integrated with the Plant/Store area to the west and south of the stairwell on Basement Level 1. Details are to be provided with the application for Construction Certificate.
4. **Requirement for a Construction Certificate**

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

(a) detailed plans and specifications of the building have been endorsed with a Construction Certificate by:

   (i) Council; or
   (ii) an accredited certifier; and

(b) a principal certifying authority (PCA) has been appointed and the Council has been notified in writing of the appointment, and

(c) at least two days notice, in writing, has been given to Council of the intention to commence work.

5. **Drawings to show levels and heights**

The reduced levels of the ground floor, first floor and the overall height of the roof in relation to Australian Height Datum must be shown on the drawings submitted with the Construction Certificate Application to ensure that building construction complies with the development consent.

6. **Structural adequacy**

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

This condition is imposed to ensure the structural integrity of the proposed building work.

7. **Structural details**

Structural engineering details and design calculations, prepared and certified by a qualified practising Structural Engineer, must be submitted with Construction Certificate application, for all reinforced concrete work, structural steel work, retaining walls, brick fences, shoring and underpinning, isolated piers, chimneys, parapets and other structural members.

This condition is imposed to ensure the structural integrity of the proposed building work.

8. **Services and electrical sub-station**

All electrical and telephone services to the subject property must be placed underground. If an electrical sub-station is required, it must be situated within the boundaries of the subject property and suitably screened.
9. **Layout of buildings**

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

10. **Demolition, excavation and construction hours**

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

11. **Levels**

For the purpose of indicating relative levels in terms of Australian Height Datum and boundary clearances, and to ensure that building construction complies with the development consent, survey certificates must be provided to the PCA in respect of the building/s layout and ground floor level/s prior to pouring of concrete or laying of timber floor boards.

12. **Building Inspections**

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

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

13. **Occupation of premises**

The premises must not be occupied prior to the issue of an Occupation Certificate.
14. **Stormwater Management Plan including On-Site Detention**

Prior to the issue of the Construction Certificate, a Stormwater Management Plan for the development site must be submitted and approved by the Accredited Certifier. This Condition is imposed to ensure site stormwater is disposed in a controlled and sustainable manner.

The Stormwater Management Plan must be in accordance with Council’s Draft Stormwater Development Control Plan and Local Approval Policy (DCP-LAP), and generally in accordance with the drainage plans and documentation prepared by Cardno Young P/L Dwg No. 246047-H00 - H11 Rev A undated.

Stormwater run-off from the proposed development must drain to New South Head Rd. New drainage systems must be designed having regard to the need to prevent stormwater from entering buildings in accordance with the Building Code of Australia (BCA).

**An on-site stormwater detention (OSD) system must be provided.** The minimum (On) Site Storage Requirements (SSR) and the Peak Site Discharge (PSD) from the site must be designed according to the following storage/discharge relationships taken from Council’s *Draft* Stormwater Development Control Plan.

<table>
<thead>
<tr>
<th>2 year ARI</th>
<th>P.S.D</th>
<th>L/s</th>
</tr>
</thead>
<tbody>
<tr>
<td>Min. Volume</td>
<td>1.9 m³</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>100 Year ARI</th>
<th>P.S.D</th>
<th>L/s</th>
</tr>
</thead>
<tbody>
<tr>
<td>Min. Volume</td>
<td>12.8 m³</td>
<td></td>
</tr>
</tbody>
</table>

Site Area (m²) 473.8

The Stormwater Management Plan must include the following specific requirements:

a) **Layout plan**

A detailed drainage plan at a scale of 1:100 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:

- All pipe layouts, dimensions, grades, lengths and material specification
- Location of On-Site Detention unit
- All invert levels reduced to Australian Height Datum (AHD)
- Location and dimensions of all drainage pits
- Point and method of connection to Councils drainage infrastructure
- Overland flow paths over impervious areas.

b) **On-site Detention (OSD) details:**

- Internal dimensions and volume of the proposed detention storage.
- Diameter of the outlet to the proposed detention storage basin.
- Plans, elevations and sections showing the detention storage basin invert level, centre-line level of outlet, top water level, finished surface level and adjacent structures.
- Details of access and maintenance facilities.
• Construction and structural details of all tanks and pits and/or manufacturer’s specifications for proprietary products.
• Details of the emergency overland flow-path (to an approved Council drainage point) in the event of a blockage to the on-site detention system.
• Non-removable fixing details for orifice plates where used.

c) Copies of certificates of title, showing the creation of private easements to drain water by gravity, if required.

d) Subsoil Drainage

• Subsoil drainage details, clean out points, discharge point.

15. On-Site Detention requirements

The on-site detention system must be designed having regard to the following requirements:

a) On-Site Detention (OSD) storages must, generally, be as close as possible to the lowest point of the site and be designed to collect all piped and surface stormwater run-off from the site. The location and design of the OSD storage must not have a detrimental impact on upstream or adjacent properties.

b) Storage’s must not be located in drainage easements and/or overland flow paths, which convey catchment flows through the site.

c) Where the development requires changes to the land titling to accommodate more than one residential dwelling or commercial premise the following apply:

• For Sub-division, Dual Occupancy, Villa or Torrens Title, separate on-site detention storage must be provided for each dwelling
• For Strata development, storage shall generally be located in common areas. Council may consider the use of private spaces for storage (subject to satisfactory overland flow paths and freeboards) where difficult site conditions occur. In these instances, the below ground storage component for aboveground storages will be increased to 50%.

d) Discharge restriction from OSD systems must be by the use of appropriately sized short length of reduced diameter pipe or non-removable orifice plate (Dyna-bolted with 2-part epoxy). Discharge control pits must be fitted with screens. Screens must be able to be easily removed for routine maintenance. The screen must:

• Protect the outlet from blockage,
• Dissipate the kinetic energy of inflows creating static conditions around the discharge restriction, which help to achieve predictable discharge coefficients, and
• Retain litter and debris, which would degrade downstream waterways

e) Below-ground Storage

• Building floor levels must be set above the top water level (TWL) of OSD storages with 150mm freeboard where the OSD storage is located near buildings. This requirement applies to both new and existing buildings.
• Backwater protection device(s) must be provided where there is the potential for backwater from OSD system into areas that are below the OSD system overflow level.

f) Storage in Landscaped Areas

• Storage’s in landscaping areas will require an extra 25% volume to compensate for vegetation growth and construction variation (design of the hydraulic controls must be based on the normal volume).
• Landscape design in the area of the surface storage must avoid the use of materials susceptible to creating blockages. This would include floatable landscaping materials (such as bark) and trees or planting’s that drop leaves. Adequate subsoil drainage must be provided in the aboveground storage to retain the amenity of the area after a storage event.

g) Construction, Access and Maintenance

• Bondek must not be used in a composite slab design.
• Internal supporting walls must be minimised to ease maintenance. Typically, internal supports must only be considered for spans greater than 3m.
• Tank needs to be checked for normal earth, surcharge, traffic and hydrostatic loads. Where free draining soils do not exist around the tank, buoyancy must be considered.
• Excavation for the tank must be checked for impact on the zone of influence of adjacent footings and structures.
• A depression within the OSD system is not to be used to provide a silt/sediment trap. Where required a proprietary silt/oil arrestor must be provided (treatment of runoff from vehicle parking areas)
• Access for cleaning (typically flushing) must be provided at the upstream and downstream ends of the tank. Access must also be provided in the immediate vicinity of the discharge point. Generally, grated access points must be provided to enable venting. Where access points need to be sealed, alternative means of ventilation (incl mechanical if required) must be provided.
• The on-site detention must have a minimum access opening size of 600mm x 600mm for tank depths less than 1.5m and 900mm x 900mm opening size for deeper tanks. The access point must be fitted with a hinged, lockable galvanised grate and be placed over the outlet. Step irons must be placed at the access point to enable entry for maintenance and inspection. The designer must consider the provisions of AS 2865-1986 ‘Safe working in a confined Space’ and other work cover requirements.

16. Positive Covenant - Drainage system

A Positive Covenant, pursuant to Section 88E of the Conveyancing Act, must be created on the title of the subject property. The Covenant must provide for the indemnification of Council from any claims or actions and the on-going maintenance of the on-site detention and/or pump and sump system in the development. This includes all ancillary gutters, pipes, drains, walls, kerbs, pits, pumps, grates, tanks, chambers, basins and surfaces designed to temporarily detain stormwater.
The wording of the Instrument must be in accordance with Council’s standard format (available from Councils web-site http://www.woollahra.nsw.gov.au) and the Instrument must be registered at the Land Titles Office prior to the Final Building Inspection and issuance of the Certificate of Occupation.

17. Compliance with the Stormwater Management Plan

The stormwater drainage system must be constructed in accordance with the Stormwater Management Plan as prepared by Cardno Young P/L Dwg No. 246047-H00 - H11 Rev A undated.

18. Stormwater Certification and Work-As-Executed (WAE) Plans

Prior to the release of the Final Building Certificate, Certification and Work-As-Executed (WAE) plans must be submitted and approved by the Accredited Certifier demonstrating that the site drainage system has been provided according to the submitted calculations and/or approved plans.

Certifications must be provided by a suitably qualified engineer. WAE plans must be prepared and certified by a Registered Surveyor.

The following must be provided:

a) Certification that:

- The drainage system has been installed in accordance with the drainage Conditions of Development Consent and relevant Australian Standards.
- That all drainage components, including the on site detention, are structurally adequate and have been installed in accordance with the relevant Codes and Standards and/or specifications.
- That the on-site detention system will provide the detention storage volume and attenuation in accordance with the submitted calculations.
- Buffer storage volume and pump discharge rates are in accordance with the submitted calculations and plans.

b) Work-As-Executed (WAE) plans showing:

- Pipe and drainage system layout, including all pits, pipe diameters, grades, materials, invert levels and surface levels.
- Details (exact point and method) of connection to Council system
- OSD tank dimensions, location and orifice plate/outlet details.
- Contours indicating the direction in which water will flow should the OSD storage overflow.

19. Erosion and sediment control

An erosion and sediment control plan, designed in accordance with the SSROC Soil and Water Management Brochures titled “Do it Right on Site” and the current version of the NSW Landcom publication “Managing Urban Stormwater: Soils and Construction” (The Blue Book), must be prepared to show erosion and sediment control measures which are to be installed. The Plan must be submitted to Council or the accredited certifier for approval before commencement of excavation or construction work.
20. **Compliance with erosion and sediment control plan**

The erosion and sediment control plan must be implemented during site works and construction activities. All controls in the Plan must be maintained at all times. A copy of the Plan must be kept on-site at all times and made available to the accredited certifier and Council officers on request.

21. **Stockpiles**

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

22. **Location of building operations**

Building operations such as brick cutting, washing tools or brushes and mixing mortar must not take place on public roadways or footways or in any other location which could lead to the discharge of materials into the stormwater drainage system.

Footpaths, gutters and roadways must be swept regularly to keep them free from sediment.

23. **Construction management**

A construction management plan must be submitted for the approval of Council’s Development Engineer before the commencement of demolition, excavation or construction works. The Plan must:

a. **describe the anticipated impact of the construction works on:**
   - local traffic routes
   - pedestrian circulation adjacent to the building site
   - and on-street parking in the local area, and;

b. **describe the means proposed to:**
   - manage construction works to minimise such impacts,
   - provide for the standing of vehicles during construction,
   - provide for the movement of trucks to and from the site, and deliveries to the site, and;

c. **show the location of:**
   - any site sheds and any anticipated use of cranes and concrete pumps,
   - any areas of Council property on which it is proposed to install a construction zone, or to erect structures such as hoardings, scaffolding or shoring, or to excavate.

The Plan must make provision for all materials, plant, etc. to be stored within the development site at all times during construction. Structures or works on Council property such as hoardings, scaffolding, shoring or excavation need separate consent from Council. Standing of cranes and concrete pumps on Council property will need consent on each occasion.

Note: A minimum of eight weeks will be required for assessment. Work must not commence until the Construction Management Plan is approved. Failure to comply with this condition may result in fines and proceedings to stop work.
24. **Compliance with the construction management plan**

All excavation, demolition and construction work and traffic movements must be carried out in accordance with the approved construction management plan. All controls in the Plan must be maintained at all times. A copy of the Plan must be kept on-site at all times and made available to the PCA or Council on request.

25. **Hoarding**

Either a Class A (Fence) Hoarding or a Class B (Overhead) Hoarding or Scaffolding is required for this development as determined by Council. An application for the required Hoarding must be submitted to Woollahra Council prior to any Construction Certificate being issued. Prior to commencement of any demolition, land clearing, piling, piering, excavation, construction or like work or the issue of a Notice of Commencement, approval for the required Hoarding must be obtained and the required Hoarding erected.

Note: A minimum of two weeks is required for assessment of a Hoarding application. Failure to comply with this condition may result in fines and proceedings to stop work.

26. **Works Zone**

A Work Zone (Construction Zone) may be required for this development in Ocean Ave only. Prior to issue of the Construction Certificate an application for the required Works Zone must be submitted to Woollahra Council, for consideration by the Woollahra Local Traffic Committee.

Prior to commencement of any demolition, land clearing, piling, piering, excavation, construction or like work or the issue of a Notice of Commencement of building works, any Works Zone approval by the Woollahra Local Traffic Committee shall be implemented strictly in accordance with the Committee’s terms and conditions.

Note:
- The Woollahra Local Traffic Committee meets monthly.
- A minimum of eight weeks is required for assessment and determination of a Works Zone application.
- Failure to comply with this condition may result in fines and proceedings pursuant to Part 6 of the *Environmental Planning & Assessment Act 1979*.

27. **Damage security deposit**

A security deposit of **$74,103.46** for the cost of making good any damage to Council property caused as a consequence of the construction work, plus an administration fee of **$154.00**, must be paid to Council prior to the issue of the Construction Certificate. The security deposit, which may be in the form of a bank guarantee, has been calculated in accordance with the following schedule.

<table>
<thead>
<tr>
<th>Estimated cost of work</th>
<th>Deposit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Works up to $50,000</td>
<td>$2,000</td>
</tr>
<tr>
<td>Works in excess of $50,000 &amp; up to $100,000</td>
<td>$4,000</td>
</tr>
<tr>
<td>Works in excess of $100,000</td>
<td>$4,000 + $200/$10,000 estimated cost &gt; $100,000</td>
</tr>
</tbody>
</table>
Council may use all or part of the Damage Security Deposit to complete damage restoration works if they do not meet Council’s requirements.

28. **Footpath levels**

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

29. **Protection of services**

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

30. **Road Opening Permit**

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

31. **Storage of materials and plant on Council’s footpath**

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

32. **Public footpaths**

A safe pedestrian circulation route a minimum of 1.5m wide and with a pavement free of trip hazards must be maintained at all times on or adjacent to the public footpaths fronting the construction site. Where the footpath is damaged, repair works must be carried when directed by Council officers and in accordance with the relevant clauses of the current edition of AUS-SPEC.

Where circulation is diverted on to the roadway clear directional signage and protective barricades must be installed in accordance with Aust AS1742-3 1996 “Traffic Control Devices for Work on Roads”.

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

33. **Repair of Damaged Infrastructure**

If Council’s infrastructure is damaged during the course of works, Council’s Development Engineer must be notified and necessary repairs must be undertaken within the time stipulated by Council, to Council’s specifications, and at no cost to Council. Works generally must be in accordance with the relevant clauses of the current edition of AUS-SPEC.
If work is not undertaken to the satisfaction of the Development Engineer with regard to time or quality, Council may carry out remedial works and deduct the cost from the Damage Security Deposit.

34. Vehicular access and garaging

The proposed carpark layouts are to be amended as follows:

- The vertical clearance on the access to basement level 2 is to be provided, and should be 2.2m minimum including clearance over vehicle turntable in accordance with AS 2890.1.
- Driveways and access ramps must be designed not to scrape the underside of cars.

In all other respects, proposed garage/car park/basement car park, driveways and access ramps must be designed to comply with Australian Standard AS 2890.1 – “Off-Street car parking.”

The amended details are to be submitted and approved by the Accredited Certifier prior to the release of the Construction Certificate.

35. Dilapidation reports

A dilapidation report on the current structural condition of the existing common driveway access off Ocean Ave. must be prepared by a practicing civil engineer. The Report must be completed and submitted to Council prior to the commencement of any demolition, excavation or construction works.

A second dilapidation report recording structural condition must be carried out on the common driveway access off Ocean Ave. at the completion of the works and be submitted to Council.

36. Provision of an Electricity Sub-Station

An electricity sub station may be required on the site. The owner shall dedicate to the appropriate energy authority, free of cost, an area of land adjoining the street alignment to enable an electricity substation to be established, if required. The size and location of the electricity substation is to be in accordance with the requirements of the appropriate energy authority and Council. The opening of any access doors are not to intrude onto the public road reserve.

Documentary evidence of compliance, including correspondence from the energy authority is to be provided to the Principal Certifying Authority prior to issue of the Construction Certificate. The Principal Certifying Authority must be satisfied that the requirements of energy authority have been met prior to issue of the Construction Certificate.

37. Section 94 contributions

Pursuant to Section 94 of the Environmental Planning and Assessment Act 1979, a monetary contribution of –
$14,944 towards the provision of recreational facilities; and
$224.16 towards the costs for administration of Woollahra Section 94 Contributions Plan 2002;

Total contribution = $15,168.16

must be paid to Council:

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

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

**Indexation of Section 94 contributions**

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

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

**Deferred periodic payment of Section 94 contributions**

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

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

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

(a) the guarantee is by an Australian bank for the amount of the total outstanding contribution;

(b) the bank unconditionally agrees to pay the guaranteed sum to Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first;

(c) the bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to this development consent or the carrying out of the development in accordance with this development consent; and
(d) the obligations of the bank are discharged when payment to Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

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

38. Noise from mechanical ventilation or air conditioning system

This condition has been applied to maintain a reasonable level of amenity to the area.

Prior to the issue of any construction certificate, the developer must submit to the Council or accredited certifier a report from a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants).

The report must certify that the method of treating the mechanical ventilation or air conditioning system will ensure that the noise level, as measured at the boundaries of the subject property, will not exceed the ambient noise level.

After completion of the works and prior to the issue of an occupation certificate or occupation, the developer must submit to the principal certifying authority, a report from a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants) certifying that the works have been undertaken to meet the above design criteria.

39. Noise from garage door

In order to minimise the noise generated due to the operation of the garage doors, all garage doors on Basement Level 1 shall be mechanically operated.

Prior to the issue of any construction certificate, the developer must submit to the Council or accredited certifier a report from a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants).

The report must certify that the operation of all garage doors will ensure that the noise level, as measured at the boundaries of the subject property, will not exceed the ambient noise level.

After completion of the works and prior to the issue of an occupation certificate or occupation, the developer must submit to the principal certifying authority, a report from a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants) certifying that the works have been undertaken to meet the above design criteria.
40. **Mechanical ventilation system to carpark levels**

Except as varied in accordance with Clause 4.4.1 (a), (b) or (c) of Australian Standard 1668.2-1991, the 17 vehicle basement carpark shall be mechanically ventilated by a combination of general exhaust with flow rates in accordance with Clause 4.4.2, and supply with flow rates specified in Clause 4.8 of Australian Standard 1668.2-1991. The location of discharge shall be in accordance with Section 3.7 of Australian Standard 1668.2-1991.

All proposed mechanical ventilation system(s) to the basement carpark must be installed and commissioned in accordance with Australian Standard 1668 Parts 1 & 2. The applicant shall provide detailed mechanical ventilation system(s) plans and specifications prepared by a professional engineer, as defined by the Building Code of Australia, and must be submitted to Council or an Accredited Certifier with the application for a Construction Certificate certifying compliance with Australian Standard 1668 Parts 1 & 2.

41. **Tree condition report**

The developer must submit for approval by Council or the accredited certifier, with or before the application for a Construction Certificate, a report prepared by an experienced Tree Surgeon/Arborist with a minimum qualification of a Certificate in Arboriculture or other equivalent qualification. The Report must give an appraisal of the present condition of those trees to be affected by the proposal, and the likely impact of the development on the trees. The Report must also detail:

a) The present condition of those trees on adjoining properties likely to be affected by the proposed development and the likely impact of the development on the long term condition of those trees.

b) Methods to be undertaken to ensure the preservation and longevity of the trees to be retained or transplanted.

c) Methods of proposed root pruning.

d) Estimated percentage loss of canopy.

e) Estimated percentage loss of roots.

42. **Facilities for waste storage and collection**

Details of facilities for waste storage and collection must be submitted to the accredited certifier prior to issue of a Construction Certificate. Details must meet the following requirements.

a) **Multiple occupancies (including the residential component of mixed use developments):**

For developments containing four dwellings or less a communal bin bay external to the building is permitted subject to it being located within the property boundary with minimal impact on adjoining properties. For developments containing more than four units a Waste Storage Room is required.

The waste storage room/bin bay must be sufficiently sized so as to accommodate:

i) 100 litres of putrescible waste per residential dwelling stored in 240 and/or 120 litre mobile garbage bins. Developments containing more than 4 dwellings must not use more than one 120 litre mobile garbage bin.
50 litres of recyclables per residential dwelling stored in colour coded, shared use, mobile garbage bins and/or 50 litre crates

One 240 litre mobile garbage bin for garden organics, per 500 square metres of landscaped area.

For residential developments with four storeys and greater, a waste storage cupboard must be provided on each floor. In each cupboard, storage must be provided for putrescible waste in mobile garbage bins and recyclables in colour coded crates.

For residential developments with three storeys or less, residents may use the central waste storage area.

Residents must not be required to wheel bins a distance greater than 75m from the waste storage area to the collection point (usually the kerb) for collection. For development applications assessed using SEPP 5 (State Environmental Planning Policy 5: Housing for Older People or People with a Disability) the maximum distance is 50m.

b) Inside the Waste Storage Area

The interior of the Waste Storage Area must meet the following requirements

Bins to be stored with lids down to prevent vermin from entering the waste containers.

The area must be constructed with a smooth impervious floor graded to a floor waste and provided with a tap and hose to facilitate regular cleaning of the bins. A waste storage area that is located internal to the building must be fitted with both a hot and cold water supply and hose cocks. Waste water must be discharged to the sewer in accordance with the requirements of Sydney Water.

Walls and ceilings of the waste storage area must be constructed of an impervious material with a smooth finish. The junction between the walls and the floor must be coved with a minimum radius of 25mm to prevent the accumulation of waste matter.

The garbage storage area must be well lit to enable use at night. A timer switch must be fitted to the light fitting to ensure the light is turned off after use.

Odour problems to be minimised by good ventilation. The air flow must not be close to units.

Air-conditioned waste storage areas to be provided with a separate air-conditioning system to units.

For developments of four storeys and above, waste storage areas, garbage and recycling rooms must be fitted with fire sprinklers and be rated to fire safety standards in accordance with the Building Code of Australia.

Both putrescible and recycling bins/crates must be stored together. Recycling bins must never stand alone. They must always be located beside putrescible waste bins. Putrescible bins must be located closest to the entrance to the waste storage room.

Signage on the correct use of the waste management system and what materials may be recycled must be posted in the communal waste storage cupboard/ room or bin bay.

43. Wet areas

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

A Long Service Levy under Section 34 of the Building & Construction Industry Long Service Payment Act, 1986, must be paid and proof of payment provided prior to the issue of a Construction Certificate.

The Levy can be paid directly to the Long Services Payments Corporation or to Council.

45. Compliance with Building Code of Australia

(a) All building work must be carried out in accordance with the provisions of the Building Code of Australia.

(b) This condition does not apply to the extent to which an exemption is in force under Clause 187 or 188, of the Environmental Planning and Assessment Regulation 2000, subject to the terms of any condition or requirement referred to in Clause 187 (6) or 188 (4) of the Regulation.

46. Change of building use

(a) A building in respect of which there is a change of building use must comply with the Category 1 fire safety provisions applicable to the proposed new use.

Note. The obligation under this condition to comply with the Category 1 fire safety provisions may require building work to be carried out even though none is proposed or required in the relevant development consent.

(b) This condition does not apply to the extent to which an exemption is in force under Clause 187 or 188 of the Environmental Planning and Assessment Regulation 2000, subject to the terms of any condition or requirement referred to in Clause 187 (6) or 188 (4).

47. Residential building work

(a) Building work that involves residential building work (within the meaning of the Home Building Act 1989) must not be carried out unless the principal certifying authority (PCA) for the development to which the work relates:

• in the case of work to be done by a licensee under that Act:
  
  (i) has been informed in writing of the licensee's name and contractor license number; and
  
  (ii) is satisfied that the licensee has complied with the requirements of Part 6 of that Act; or
in the case of work to be done by any other person:

(iii) has been informed in writing of the person’s name and owner-builder permit number; or
(iv) has been given a declaration, signed by the owner of the land, that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of owner-builder work in Section 29 of that Act,

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

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

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

48. Support for neighbouring buildings

(a) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

(i) must preserve and protect the building from damage; and
(ii) if necessary, must underpin and support the building in an approved manner; and
(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(b) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

(c) In this condition, allotment of land includes a public road and any other public place.

49. Protection of public places

(a) If the work involved in the erection or demolition of a building:

(i) is likely to cause pedestrian or vehicular traffic on a public place to be obstructed or rendered inconvenient, or
(ii) building involves the enclosure of a public place;

a hoarding or fence must be erected between the work site and the public place.
(b) If necessary, an awning must be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.

(c) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

(d) Any such hoarding, fence or awning must be removed when the work has been completed.

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

50. **Toilet facilities**

(a) Toilet facilities must be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

(b) Each toilet provided:

   (a) must be a standard flushing toilet; and

   (b) must be connected:

      (i) to a public sewer; or
      (ii) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council; or
      (iii) if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.

(c) The provision of toilet facilities in accordance with this clause must be completed before any other work is commenced.

(d) In this condition:

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

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

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

**sewage management facility** has the same meaning as it has in the Local Government (Approvals) Regulation 1993.
51. **Residential building work over $12,000 in value**

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

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

52. **Surrender of existing use**

The owner of the Metro Inn must surrender the existing use at 230-238 New South Head Road, Edgecliff, being a motel in accordance with clause 97 of the Environmental Planning and Assessment Regulation 2000.

No construction certificate must be issued until Council has acknowledged in writing that this condition has been satisfied.

53. **Compliance with Report on the Requirements of the Deemed to Satisfy Provisions of the BCA prepared by Bernie Consulting Services Pty Ltd dated 26\(^{th}\) August 2004.**


Details are to be indicated on the Construction Certificate drawings, with all associated building works completed prior to issue of the Occupation Certificate.

54. **Building required to be upgrade (cl. 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 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* in force at the date of issue of the *Construction Certificate*:

(a) Category 1 fire safety provisions  
(b) This will typically involve as a minimum ensuring that all habitable dwellings and sole occupancy units have a hard wired smoke detection and alarm system and a Hydrant system throughout the building complying with 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 deemed to satisfied 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: The Certifying Authorities must also 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 should form the basis of any fire upgrade report. (To include a Fire safety Schedule)

Note: The PCA should be mindful of the current fire safety order issued dated 5 April 1994 and further relevant report from MAUB Management Consulting date the 30 December 2004 as to the compliance with the order.


The recommendations, including acoustic design detail, and guidelines for construction noise, acoustic compliance testing, contained in acoustic assessment report prepared by Vipac Engineers and Scientists Ltd (Report No. 242669-TRP-003309-02) dated 1st October 2004 are to be implemented during all stages of the development.

Relevant details are to be indicated on the Construction Certificate drawings, with all associated building works completed prior to issue of the Occupation Certificate.

56. Pool cover

The proposed pool on Level 7 is to be covered with a pool cover when not in use in order to reduce energy and water needs.

Mr T Wong  Cathy McMahon
ASSESSMENT OFFICER  TEAM LEADER

ADVISINGS

1. Other approvals

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

2. Application for a Construction Certificate

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

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

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

4. **Model**

   If you submitted a model with the application it must be collected from the Council offices within fourteen (14) days of the date of this determination. Models not collected will be disposed of by Council.

5. **Modifications to the consent**

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

6. **Storage bins on footpath and roadway**

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

7. **Home Building Act insurance**

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

8. **Long Service Levy**

   The current rate of the levy required by this consent is 0.2% of the cost all building and construction work costing $25,000 or more.

9. **Appeal**

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

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**ANNEXURES**

1. Plans and elevation
DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No. D4
FILE No. DA 438/2004/1
ADDRESS: 102-106 Oxford Street PADDINGTON 2021
PROPOSAL: Redevelopment of hotel including conversion of basement into bar and restaurant ground floor to retail tenancies and first floor to commercial tenancies
TYPE OF CONSENT: Local Development
APPLICANT: Myers Business Partners
OWNER: Buddy Holdings Pty Ltd & Exodus Enterprises Pty Ltd
DATE LODGED: 13/07/2004 Original submission
22/11/2004 Revised submission
12/07/2005 Further justification
AUTHOR: Mr G Fotis

LOCALITY PLAN

Subject Site

Objectors

North

Locality Plan

Clover Moore MP; Paddington Society; 25, 26, 30A & 48 Hopewell Street
1. SUMMARY

Preamble

This matter was called to Full Council by Councillor Huxley but discussed at the Development Control Committee (DCC) on 20 June 2005 (refer to Annexure 2 for report considered by the committee). The DCC recommended that the matter be deferred to enable staff and the applicant to liase in relation to nine identified issues. The applicant, Mr David Katon on behalf of Burley Katon Halliday, provided a response to the nine issues in a letter dated 23 June 2005.

At the meeting of Full Council of the 27 June 2005, it was resolved that the matter be again deferred in order to allow staff and the applicant to further liase in relation to the original nine issues and an additional eight issues which are as follows:

1. Possible relocation of the proposed entry door to the restaurant from Hopewell Street closer to Oxford Street or from Oxford Street.
2. The description of the proposal in the preamble of the recommendation being modified to replace the reference to 'Bar and Restaurant' with only 'Restaurant'.
3. Condition No 14 being modified to include Hopewell Street and Hopewell Lane.
4. The addition of the first and third conditions suggested in the late correspondence from UrbisJHD relating to patron use of the rear courtyard and the doors and windows to the rear courtyard being fitted with acoustic seals.
5. A further report being submitted from an Acoustic Engineer relating to the internal furnishings of the restaurant required to assist in reducing the reflected noise that may be generated.
6. A new condition specifying the maximum number of tables and chairs (number of patrons) permitted in the rear courtyard with consideration being given to the maximum number being 6 tables of 4 patrons having a total of 24 patrons in the courtyard at any one time.
7. A new condition or the modification of Condition No. 2 specifying that no piped or amplified music being permitted within the courtyard.
8. A new condition requiring the doors leading into the courtyard to be locked at all times outside the permitted operating hours of the rear courtyard.
9. Further assessment of reduced closing times (hrs) for the use of the rear courtyard.
10. All rear and side windows and door glazing to be double glazed.
11. No patrons to be in the Courtyard within one hour before the permitted opening times.
12. Whether security guards are required or whether one security guard would be sufficient to be employed at the external entry during operating hours to ensure existing patrons are quiet and signs put up on walls at the entrance and exists to the premises so that people are made aware that they are moving into a quiet area.
13. No queuing to be permitted in to Oxford Street, Hopewell Street and Hopewell Lane.
14. Whether the premises is to be regarded as a place of public entertainment.
15. Reference being made to the Paddington Mixed Concrete paver or the Paddington DCP in Condition 35.
16. Stone kerbing to be reused during the reconstruction of the Hopewell Street or Hopewell lane footpath.
17. Consideration of the parking deficit.

2. CONSIDERATION

Mr David Katon on behalf of Burley Katon Halliday, provided a response to all the above mentioned issues in a letter dated 12 July 2005, which are discussed below. The applicant stated:
We once again wish to stress the substantial advantages that this proposal offers residents.

We remain unconvinced that the councillors or the residents have fully understood the rear impact of this proposal and its benefits to the local community.

**Advantages:**

- 400 patrons reduced to 120 patrons.
- 3am POPE licence reduced to 1.00am/12.00pm restaurant licence (9.30pm/10.30pm to courtyard)
- 400 potential drunken louts at 3.00am to 150 diners @ $100 per head at 12.30pm.
- Change of use reducing projected car numbers from 78 to 54.
- A fully refurbished building.
- Permanent removal of corner pub and POPE licence.

**Disadvantages**

- A restaurant garden courtyard seating 24 patrons with closing time of 9.30pm Monday to Thursday, and 10.30pm Friday to Sunday.

We feel the advantages are clear cut and that it would be unrealistic for councillors or residents to expect a large commercial building on Oxford Street to have nil impact on the adjoining residential area.

We have previously responded to councillors item 1-9 and have agreed to all except 1 and 9.

1. **Possible relocation of the proposed entry door to the restaurant from Hopewell Street closer to Oxford Street or from Oxford Street.**

Additional to our response dated 23 June 2005 we would like to stress the difference between restaurant and pub patrons:

- Restaurant crowd is less likely to be noisy.
- No queuing with restaurant due to holding bar.
- Reduced parking demand.
- Reduced hours of operation.
- Car parking will predominantly still be in side streets so door to Oxford Street will have minimal advantage.

Opening restaurant to Oxford Street remains financially unfeasible due to size of entry and stairs that would be required to be successful and resultant loss of high rent Oxford Street rental space.

**Comment:**

The main entrance/exit to the restaurant/bar is half way down Hopewell Street, adjacent to the stair to the first floor office. There is a half-floor level difference from the restaurant/bar and the street so there is no potential for ‘spilling out’ or ‘loitering around’ the doorway. It is therefore considered not viable to move this entry for the following reasons:

- Entry off Oxford Street would reduce the most valuable retail area and create full floor to floor stair in lieu of existing entry with only 7 steps from street.
Entry on corner of Oxford and Hopewell Street would have same impact also be incompatible with the iconic curved corner of the building.
Moving entry only marginally closer to Oxford Street would have no real benefit.

2. **The description of the proposal in the preamble of the recommendation being modified to replace the reference to 'Bar and Restaurant' with only 'Restaurant'.**

We are happy to delete the ‘bar’ reference. The proposal is for a licensed restaurant, which would have a holding area with a lounge and bar facility.

**Comment:**

The preamble being modified to delete reference to a bar:

THAT the Council, as the consent authority, grant development consent to DA 438/2004/1 for redevelopment of hotel including conversion of basement into a restaurant, ground floor to retail tenancies, and first floor to commercial tenancies on land at 102-106 Oxford Street Paddington, subject to the following conditions:

3. **Condition No 14 being modified to include Hopewell Street and Hopewell Lane.**

We accept that Hopewell Street and Hopewell Lane should be included in any reference to acoustics and noise control.

We agree to have no speakers in the courtyard or directed towards the courtyard area.

*Increased courtyard wall height, double garage structure to Hopewell Street and vegetation to courtyard are all designed to reduce acoustic impact on Hopewell Street and Hopewell Lane.*

**Comment:**

14. **Noise to street**

No music or other noise is to be directed out over the footpaths of Oxford Street, Hopewell Street and Hopewell Lane, Paddington.

4. **The addition of the first and third conditions suggested in the late correspondence from Urbis/JHD relating to patron use of the rear courtyard and the doors and windows to the rear courtyard being fitted with acoustic seals.**

**Condition 1:** Only restaurant patrons to use courtyard.

*This is agreed. There is no other direct access from other parts of the building.*

**Condition 2:** Acoustic seals on all doors and windows to courtyard.

*The doors and windows will have glazing type and/or double glazing and acoustic seals as per acoustic consultant/s specifications and to meet Council’s recommendation.*
Condition 3: Doors and windows to be on closure system so cannot be left open.

This condition we do not agree with as it is not feasible from an operational point of view.

Comment:

New additional conditions for use of courtyard, acoustic treatment to doors to be closed outside courtyard operating hours, and details of interior finishes and fittings are recommended. Refer to Conditions No 58, 59 & 60 of the recommendation.

5. A further report being submitted from an Acoustic Engineer relating to the internal furnishings of the restaurant required to assist in reducing the reflected noise that may be generated.

We are happy to provide an acoustic report with recommendations for interior finishes and fittings to reduce noise levels to courtyard and beyond.

We would however point out that a DA will be required for the fitout by the operator (as yet not known) and finishes and fittings selections and design will be addressed as part of that separate DA.

Comment:

The following additional condition has been imposed.

60. Interior fitout of restaurant

A report prepared by a suitably qualified Acoustic Consultant shall be submitted prior to the issue of a Construction Certificate. The report must detail the interior finishes and fittings required to be installed to reduce the noise levels generated from within the tenancy in order to maintain the amenity of the surrounding area.

6. A new condition specifying the maximum number of tables and chairs (number of patrons) permitted in the rear courtyard with consideration being given to the maximum number being 6 tables of 4 patrons having a total of 24 patrons in the courtyard at any one time.

We would be happy with a condition limiting courtyard seating to 24 people as currently indicated on Drawing No. 1.0b.

Comment:

The following additional condition has been imposed.

58. Use of courtyard

The courtyard shall only be used by restaurant patrons for the purpose of dining. The number of patrons seated in the courtyard shall not exceed a maximum of 24 at any time.
7. A new condition or the modification of Condition No. 2 specifying that no piped or amplified music being permitted within the courtyard.

We agree that no piped or amplified music will be permissible in the courtyard area.

Comment:

Condition No 2 of the original recommendation has been modified to read:

2. Deletion of piped music (speaker) within the rear courtyard

No piped or amplified music shall be provided within the rear courtyard. Any reference to speakers within the rear courtyard shall be deleted from the plans accompanying the Construction Certificate. This condition is imposed to ensure that the residential amenity of the locality in terms of noise is protected and preserved.

8. A new condition requiring the doors leading into the courtyard to be locked at all times outside the permitted operating hours of the rear courtyard.

We are happy to accept a condition that doors and windows to courtyard are kept closed after courtyard hours of use.

Comment:

The following additional condition has been imposed.

59. Courtyard doors

The doors leading to the rear courtyard shall be closed at all times outside the approved operating hours for the courtyard. The doors and windows to the courtyard shall also be treated with double glazing and acoustic seals. This condition is imposed to ensure the amenity of the neighbouring residential properties is maintained.

9. Further assessment of reduced closing times (hrs) for the use of the rear courtyard.

The hours were reduced from midnight close in our original DA application. We believe the proposed hours are a good compromise and any further reduction would not be commercially viable in attracting a good tenant.

With 24 people only dining in the courtyard and the proposed 9.30pm closing time we believe the impact on residents is overstated.

Comment:

Any noise generated in the courtyard would be limited to that associated with dining. To ensure no significant noise impacts the courtyard will not operate beyond 9.30pm Monday to Thursday, 10.30pm Friday to Saturday and 9.30pm Sunday. Refer to Condition No 2 of the recommendation.

The restaurant is reconfigured so that the courtyard becomes supplementary space for fine weather, rather than a permanent dining area. It will not be used in wet/cold weather (no proposed cover over the courtyard). The majority of dining tables and core business will be inside, year around.
10. **All rear and side windows and door glazing to be double glazed.**

**Comment:**

The justification provided by the applicant is considered to be well founded and therefore supported.

11. **No patrons to be in the Courtyard within one hour before the permitted opening times.**

We are not sure we understand the intent of this item. No patrons would be in any part of the restaurant including courtyard prior to opening.

*Staff would set up tables prior to opening.*

**Comment:**

The justification provided by the applicant is considered to be well founded and therefore supported.

12. Whether security guards are required or whether one security guard would be sufficient to be employed at the external entry during operating hours to ensure existing patrons are quiet and signs put up on walls at the entrance and exists to the premises so that people are made aware that they are moving into a quiet area.

*We envisage no need for security guards for a restaurant operation (no longer a pub).*

*Signs can be placed adjacent to entry requesting patrons to leave quietly and respect residential area.*

**Comment:**

Refer to **Condition No 4** of the recommendation

13. **No queuing to be permitted in to Oxford Street, Hopewell Street and Hopewell Lane.**

*There would be no queuing. Again this is a restaurant operation with a holding lounge/bar area for patrons while waiting for a table.*

**Comment:**

The justification provided by the applicant is considered to be well founded and therefore supported.

14. **Whether the premises is to be regarded as a place of public entertainment.**

*We are proposing to voluntarily forego the POPE (Place of Public Entertainment) Licence, which is relevant to the ground floor hotel area only. With the licence gone and the ground floor areas change of use to retail there will be no area of the building licensed for public entertainment.*
Comment:

The justification provided by the applicant is considered to be well founded and therefore supported. Notwithstanding, refer to **Condition No 61** of the recommendation.

15. **Reference being made to the Paddington Mixed Concrete paver or the Paddington DCP in Condition 35.**

Agree to Council’s recommendation.

Comment:

Refer to **Condition No 35** of the recommendation.

16. **Stone kerbing to be reused during the reconstruction of the Hopewell Street or Hopewell lane footpath.**

Agree to Council’s recommendation.

Comment:

Refer to **Condition No 35** of the recommendation.

17. **Consideration of the parking deficit**

The table in Council’s report clearly shows that the proposed change of use significantly reduces parking demand.

Current 78 cars, proposed 54 cars.

When the shops and office are closed at night the parking generated by basement and courtyard as compared to ground floor and basement bar is reduced from:

Current 73 cars, proposed 41 cars.

The car numbers generated by proposed change of use are significant bonus to the local residents. While it is not possible to provide alternative parking we have added a second car space on site with the garage extension.

Comment:

The justification provided by the applicant is considered to be well founded and therefore supported.

3. **CONCLUSION**

If the Council is of the mind to approve the development application in line with the comments submitted by Mr Katon, it should adopt the recommendation as printed in the Development Application Assessment Report, dated 20 June 2005, subject to the following modifications:
4. 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. 438/2004 for redevelopment of hotel including conversion of basement into a restaurant, ground floor to retail tenancies, and first floor to commercial tenancies on land at 102-106 Oxford Street Paddington, subject to the following conditions:

1. Approved Plans

This consent relates to the work, shown in colour, on plans numbered DA 1.0b, DA 1.0.1, DA 1.1, DA 1.2, DA 3.0, DA 3.1 and DA 3.2, dated May 2004 & DA 5.3b, dated June 2005, drawn by Burley Katon Halliday, all of which carry a Council stamp “Approved DA Plans” and the signature of a Council officer, except where amended by the following conditions.

2. Deletion of piped music (speaker) within the rear courtyard

No piped or amplified music shall be provided within the rear courtyard. Any reference to speakers within the rear courtyard shall be deleted from the plans accompanying the Construction Certificate. This condition is imposed to ensure that the residential amenity of the locality in terms of noise is protected and preserved.

3. Tile Size

New tiles on the façade shall be the same size as the existing tiles. This condition is imposed to protect the integrity of the heritage conservation area.

4. Retention of historic signage

The historic signage and unicorn emblem located on the facades of the building and on the awning is to be retained. This condition is imposed to protect the integrity of the heritage conservation area. Details are required to be shown on plans submitted with the Construction Certificate.

5. Photographic archival recording of the parts of the building to be demolished:

A photographic archival record of all the building and landscape elements to be demolished is to be submitted, to the satisfaction of Council’s heritage officer, prior to the commencement of demolition work and prior to the issue of a Construction certificate.

The photographic archival recording is to be bound in an A4 format and is to include the following:

- Site plan at a scale of 1:200 (or 1:500) if appropriate of all structures and major landscape elements including their relationship to the street and adjoining properties.
- Postcard sized photographs of:
  - Each elevation,
  - Each structure and landscape feature;
  - Internal or external details if nominated in Council’s heritage officer’s assessment report; and
  - Views to the subject property from each street and laneway or public space.
Each photograph to be mounted, labelled and cross-referenced in accordance with recognised archival recording practice.

One original coloured photographic set and a coloured photocopy are to be submitted to the satisfaction of Council’s heritage officer prior to the commencement of demolition work and prior to the issue of a construction certificate. The original will be retained by Council and the coloured photocopy will be provided to the Woollahra Local History Library.

6. **Hours of Operation**

To ensure that the residential amenity of the locality in terms of noise and traffic generation is protected, the following trading hours are to be maintained:

**Restaurant/bar**
- Monday to Saturday: 7am – 1am
- Sunday: 10am – Midnight

**Courtyard**
- Monday to Thursday: 7am – 9.30pm
- Friday to Saturday: 7am – 10.30pm
- Sunday: 10am – 9.30pm

No patrons shall be seated in the courtyard within 1 hour of the closing time.

The proposed retail (ground level) and commercial (first floor) uses are not to operate outside the hours of 9am to 6pm Monday to Saturday, 9am to 9pm Thursday & 10am to 5pm Sunday.

7. **Security Management Plan**

The applicant shall provide a security management plan providing details of any existing security measures and any proposed additional measures. The plan must provide the following:

- Number of security guards / doorman that are to be employed during operating hours and one hour after closing;
- Security measures for the Hopewell Street frontage
- Any electronic security measures i.e. security camera surveillance.

The Security Management Plan shall be provided and approved by Council prior to the issue of a Occupancy Certificate for the basement level.

8. **Requirements for Food Premises - Prior or the issue of any Construction Certificate**

The Applicant shall submit to Council’s Environmental Health Officer details of the construction and fit out of the food premises. Such details must demonstrate compliance with the *Food Act 2003, Food Regulation 2004; the Food Standards Code as published by Food Standards Australia and New Zealand* and the *Australian Standard AS 4674-2004: Construction and fit out of food premises.*
No work must commence on construction and fit out of the food premises until Council’s Environmental Health Officers have advised the applicant in writing that the details submitted to Council comply with the above standards and work can commence.

**Note:** The assessment of food premises fitout plans and specifications is subject to an adopted fee.

**Requirements for Food Premises - Standards of Construction**

The applicant, owner and builder must ensure that all construction and fitout of the food premises complies with the *Food Act 2003, Food Regulation 2004; the Food Standards Code as published by Food Standards Australia and New Zealand* and the *Australian Standard AS 4674-2004: Construction and fit out of food premises.*

**Requirements for Food Premises - Prior or the issue of any Occupation Certificate**

Prior to the issue of any Occupation Certificate or Interim Occupation Certificate or occupation or use of any food premises:

- the Principal Certifying Authority must arrange an inspection of the fit out of the Food Premises by Council’s Environmental Health Officers;
- a satisfactory final inspection must have been undertaken by Council’s Environmental Health Officer and
- the Owner or Occupier of the premises must register the Food Premises with Council’s Environmental Health Officers and pay to Council the adopted Food Premises Inspection Fee.

**Note:** Inspections are subject to payment of the adopted inspection fee.

**Requirements for Food Premises - Maintenance of Food Premises**

The food premises must be maintained in accordance with the *Food Act 2003, Food Regulation 2004; the Food Standards Code as published by Food Standards Australia and New Zealand* and the *Australian Standard AS 4674-2004: Construction and fit out of food premises.*

**Note:** Accredited Certifiers are unable to issue Compliance Certificates in relation to compliance with the *Food Act 2003, Food Regulation 2004; the Food Standards Code* and the *Australian Standard AS 4674-2004: Construction and fit out of food premises;* since these are not matters which an Accredited Certifier can be satisfied in relation to under Clause 161 of the Environmental Planning & Assessment Regulation 2000.

**Note:** All food premises must also be registered with NSW Health.

9. **Facilities for waste storage and collection**

Details of facilities for waste storage and collection must be submitted to the accredited certifier prior to issue of a Construction Certificate. Details must meet the following requirements.
10. **Air emissions or odours**

The use of the premises must not give rise to air pollution, including odours, as defined by the *Protection of the Environment Operations Act 1997*. Waste gases released from the premises must not cause a public nuisance, be hazardous or harmful to human health or to the environment.

11. **Mechanical ventilation/services**

**Prior to the issue of any Construction Certificate**


**Installation and Commissioning**


**Prior to the issue of any Occupation Certificate**

Detailed "works as executed" mechanical ventilation system plans and specification prepared by a professional engineer, as defined by the Building Code of Australia, must be submitted to Council or an Accredited Certifier together with certification from the supervising *professional engineer* that the system as commissioned complies with AS/NZS 1668 *The Use of Mechanical Ventilation and Air Conditioning in Buildings*, Part 1-1998: *Fire and smoke control in multi-compartment buildings* and Part 2-1991: *Mechanical ventilation for acceptable indoor-air quality*.

**Note**: Part 1 of AS/NZS 1668 only applies to multiple compartment buildings.

12. **Noise control**

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

13. **Noise from liquor licensed premises**

Noise emissions from the licensed premises must comply with the following:

a) The LA$_{10}$ noise level emitted from the licensed premises must not exceed 5dB above the background (LA$_{90}$) noise level in any Octave Band Centre Frequency (31.5Hz to 8KHz inclusive) between the hours of 7.00am to 12.00 midnight when assessed at the nearest affected residential boundary. The background noise level must be measured in the absence of noise emitted from the licensed premises.
b) The LA$_{10}$ noise level emitted from the licensed premises must not exceed the background (LA$_{90}$) noise level in any Octave Band Centre Frequency (31.5Hz to 8KHz inclusive) between the hours of 12.00 midnight to 7.00am when assessed at the nearest affected residential boundary. The background noise level must be measured in the absence of noise emitted from the licensed premises.

Notwithstanding compliance with the above, the noise from the licensed premises must not be audible within any habitable room in any residential premises between the hours 12.00 midnight to 7.00am.

Where this condition is inconsistent with the requirements imposed by the Liquor Administration Board or Liquor Licensing Court, the more stringent condition prevails.

14. Noise to street

No music or other noise is to be directed out over the footpaths of Oxford Street, Hopewell Street and Hopewell Lane, Paddington.

15. Lighting

Any lighting on the site must be designed so as not to cause nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area by light overspill. All lighting must comply with the Australian Standard AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting.

16. Existing trees which must be retained

Approval is NOT granted for the removal of the following trees, which Council has determined to be significant landscape elements.

<table>
<thead>
<tr>
<th>Council Reference No:</th>
<th>Species</th>
<th>Location</th>
<th>Dimension (Metres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><em>Jacaranda mimosifolia</em></td>
<td>Jacaranda Rear North West corner</td>
<td>10x7</td>
</tr>
</tbody>
</table>

The Construction Certificate plans must include reference to the retention of the above mentioned trees and identify the trees by Councils reference number (Ref No:1) and colour or shade them in the colour green for trees to be retained and yellow for trees to be transplanted.

17. Hand excavation within tree root zones

To prevent compaction within the root zone, excavation undertaken within the specified radius of the trunks of the following trees must be hand dug. Any root pruning must be undertaken by hand along the perimeter line of such works by an experienced Tree Surgeon-Arborist with a minimum qualification of a Certificate in Arboriculture or other equivalent qualification acceptable to Council’s Landscape Assessment Officer.

Beyond this radius, mechanical excavation is permitted, when root pruning by hand along the perimeter line of such works is completed.
18. Level changes in the vicinity of trees

No level changes are to occur within the dripline of the canopy of the following tree in order to allow for the preservation of their root zones.

<table>
<thead>
<tr>
<th>Council Reference No:</th>
<th>Species</th>
<th>Location</th>
<th>Radius from Trunk (Metres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Jacaranda mimosifolia</td>
<td>Jacaranda</td>
<td>10x7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rear North West corner</td>
<td></td>
</tr>
</tbody>
</table>

19. Protective fencing, mulching and irrigation around trees

To limit the potential for damage to trees to be retained, the area beneath their canopies must be fenced. The fencing must encompass the maximum possible area covered by the dripline of the canopy to allow for development and remain in place until the completion of building works. The fencing should be a minimum of a 1.8 metres high chainlink or welded mesh fencing. The fencing is to be maintained for the duration of the building works.

To ensure adequate moisture levels for the growing medium, protected within the fenced areas, all areas within the perimeter of the safety fencing are to be covered with woodchip mulch to a depth of 100mm. All steep gradients unable to be effectively covered with mulch are to be protected with hessian cloth to be kept at a moisture level sufficient to ensure the preservation of tree root systems.

To ensure the continued preservation of the aforementioned existing trees by providing adequate soil moisture, a irrigation program or temporary irrigation system is to be installed and an irrigation program maintained during the full course of construction works.

20. Footings in the vicinity of trees

To ensure the preservation of retained trees, NO APPROVAL is granted for severing of significant tree roots. Footings for any structures constructed within the area, defined by the canopy driplines of the following trees, shall be constructed using an isolated pier and beam construction method, to bridge any existing roots exceeding 100mm, where excavation identifies roots exceeding this diameter. The piers shall be located such that no roots of a diameter greater than 100mm shall be severed.

Approval is granted for the root pruning of all roots of a diameter less than 100mm, subject to all pruning works being undertaken by an experienced Tree Surgeon-Arborist with a minimum qualification of a Certificate in Arboriculture or other equivalent qualification acceptable to Council.

<table>
<thead>
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<th>Dimension (Metres)</th>
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<td></td>
<td></td>
<td>Rear North West corner</td>
<td></td>
</tr>
</tbody>
</table>
21. **Connection to existing drainage system**

Stormwater run-off from the proposed development is to drain to the existing stormwater drainage system.

The existing stormwater drainage pipes on the property must be checked and certified by a practising hydraulic engineer to ensure that all existing stormwater pipes are in good condition and are operating satisfactorily. Certification and a plan showing pipe locations and diameters must be submitted to Council or the accredited certifier prior to the final building inspection.

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

If the existing stormwater pipes are not in good condition and/or not operating satisfactorily, the existing drainage system must be upgraded. Certification and a plan showing pipe locations and diameters of the upgraded system must be submitted to Council or the accredited certifier prior to the final building inspection.

22. **Erosion and sediment control**

Erosion and sediment controls, designed in accordance with the SSROC Soil and Water Management Brochure and the NSW Environmental Protection Authority’s *Managing Urban Stormwater: Construction Activities*, must be implemented during demolition, excavation and construction of the development. All controls must be maintained at all times.

23. **Stockpiles**

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

24. **Location of building operations**

Building operations such as brick cutting, washing tools or brushes and mixing mortar must not take place on public roadways or footways or in any other location which could lead to the discharge of materials into the stormwater drainage system.

Footpaths, gutters and roadways must be swept regularly to keep them free from sediment.

25. **Construction Management**

A construction management plan must be submitted for the approval of Council’s Development Engineer before the commencement of demolition, excavation or construction works. The plan must:-
a. **describe the anticipated impact of the construction works on:**
   - local traffic routes
   - pedestrian circulation adjacent to the building site
   - and on-street parking in the local area, and;

d. **describe the means proposed to:**
   - manage construction works to minimise such impacts,
   - provide for the standing of vehicles during construction,
   - provide for the movement of trucks to and from the site, and deliveries to the site, and;

e. **show the location of:**
   - any site sheds and any anticipated use of cranes and concrete pumps,
   - any areas of Council property on which it is proposed to install a Works Zone (Construction Zone),
   - structures to be erected such as hoardings, scaffolding or shoring,
   - any excavation.

The Plan must make provision for all materials, plant, etc. to be stored within the development site at all times during construction. Structures or works on Council property such as hoardings, scaffolding, shoring or excavation need separate approval from Council. Standing of cranes and concrete pumps on Council property will need approval on each occasion.

Note: A minimum of eight weeks will be required for assessment. Work must not commence until the Construction Management Plan is approved. Failure to comply with this condition may result in fines and proceedings to stop work.

26. **Compliance with the construction management plan**

All excavation, demolition and construction work and traffic movements must be carried out in accordance with the approved construction management plan. All controls in the Plan must be maintained at all times. A copy of the Plan must be kept on-site at all times and made available to the PCA or Council on request.

27. **Works Zone**

A Work Zone (Construction Zone) is required for this development. Prior to issue of the Construction Certificate an application for the required Works Zone must be submitted to Woollahra Council, for consideration by the Woollahra Local Traffic Committee.

Prior to commencement of any demolition, land clearing, piling, piering, excavation, construction or like work or the issue of a Notice of Commencement of building works, any Works Zone approval by the Woollahra Local Traffic Committee shall be implemented strictly in accordance with the Committee’s terms and conditions.

Note:
- The Woollahra Local Traffic Committee meets monthly.
- A minimum of eight weeks is required for assessment and determination of a Works Zone application.
- Failure to comply with this condition may result in fines and proceedings pursuant to Part 6 of the *Environmental Planning & Assessment Act 1979*. 
28. **Site fencing**

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

29. **Damage security deposit**

A security deposit of **$19,000.00** for the cost of making good any damage to Council property caused as a consequence of the construction work, plus an administration fee of **$154.00**, must be paid to Council prior to the issue of the Construction Certificate. The security deposit, which may be in the form of a bank guarantee, has been calculated in accordance with the following schedule.

<table>
<thead>
<tr>
<th>Estimated cost of work</th>
<th>Deposit</th>
</tr>
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<tbody>
<tr>
<td>Works up to $50,000</td>
<td>$2,000</td>
</tr>
<tr>
<td>Works in excess of $50,000 &amp; up to $100,000</td>
<td>$4,000</td>
</tr>
<tr>
<td>Works in excess of $100,000</td>
<td>$4,000+$200/$10,000 estimated cost&gt;$100,000</td>
</tr>
</tbody>
</table>

Council may use all or part of the Damage Security Deposit to complete damage restoration works if they do not meet Council’s requirements.

30. **Footpath levels**

The existing footpath level and grade at the street alignment of the property are to comply with revised street drawings no. DA 4.0c to 4.7a prepared by Burley Katon Halliday dated May 05 and emailed to Council 19/5/2005 and the requirements of a separate approval under Section 138 and 139 of the Roads Act 1993 for the works.

31. **Protection of services**

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

32. **Road Opening Permit**

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

33. **Storage of materials and plant on Council’s footpath**

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

A safe pedestrian circulation route a minimum of 1.5m wide and with a pavement free of trip hazards must be maintained at all times on or adjacent to the public footpaths fronting the construction site. Where the footpath is damaged, repair works must be carried out when directed by Council officers and in accordance with the relevant clauses of the current edition of AUS-SPEC.

Where circulation is diverted on to the roadway clear directional signage and protective barricades must be installed in accordance with Aust AS1742-3 1996 “Traffic Control Devices for Work on Roads”.

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

35. Works on Council Land - Infrastructure Works -

a) Works Required

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

To accommodate this requirement, the following infrastructure works must be carried out on Council property at the Applicant’s expense:

**Oxford St**

- The construction of new full width footpath paving for the full length of the property to and including the extension for the kerb blister to the existing pedestrian crossing. Levels for the full length of the property must match existing. Full details of the paving pattern, paver type and construction methodology must be supplied with the Roads Act Application.
- The new paving and paving layout is to match the existing paving recently constructed pavers on the Oxford Street frontage for the Development between Brodie Street and Young Street.
- Replacement of the kerb for the full length of the development including the extension of the island.

**Hopewell St**

- All works are to generally comply with the amended Street drawings No.DA.4.0c to 4.7a prepared by Burley Katon Halliday dated May 05 and emailed to Council 19/5/2005 and in accordance with the relevant clauses of Council’s current document "Standard Specifications for Roadworks, Drainage and Miscellaneous Works dated Jan 2003AUS-SPEC."
- The construction of new full width footpath paving for the full length of the property from Oxford St to the kerb return into Hopewell Lane. Levels for the full length of the property must be adjusted to match the amended levels as shown Street drawings No.DA.4.0c to 4.7a prepared by Burley Katon Halliday dated May 05 and emailed to Council 19/5/2005. Full details of the paving pattern, paver type and construction methodology must be supplied with the Roads Act Application.
- The new paving and paving layout is to match the existing paving recently constructed on the Oxford Street frontage for the Development between Brodie Street and Young Street.
Construction of a new full width 5m wide concrete driveway crossing and layback in accordance with Council’s Standard Drawing RF2. Levels in the footpath area must match with amended Street drawings No.DA.4.0c to 4.7a prepared by Burley Katon Halliday dated May 05.

- Removal of all driveway crossings and kerb laybacks which will be no longer required.
- Any driveway adjustment to level between the garage platform and driveway crossfall is to be adjusted internally.
- Remove the traffic island blister and reinstate the pavement.
- Steep road pavement shoulder is to be raised to prevent vehicles from scraping.
- Reconstruction of the existing K&G to new levels to profile RF1.
- Reconstruction of road pavement shoulder. Sawcut road pavement 1-2 from the kerb face to reinstate.
- The developer shall be responsible for carrying out any service investigations.
- Reinstatement of footpath, kerb and gutter to match existing.

b) Approval

Development Consent does NOT give approval to these works on Council property. A SEPARATE APPROVAL IS REQUIRED UNDER SECTION 138 AND 139 OF THE ROADS ACT 1993 FOR THE WORKS REQUIRED BY THIS CONDITION. The Construction Certificate must not be issued until Council’s Manager - Public Infrastructure has issued the Applicant with a written consent under the Roads Act.

An “Application to carry out works in a Public Road” form (available from Councils web-site http://www.woollahra.nsw.gov.au) must be completed and lodged, with the Application fee, at Councils Customer Services counter. Detailed engineering plans and specifications of the works required by this Condition must accompany the Application form. The plans must clearly show the following:

- Engineering drawings (plan, sections and elevation views) and specifications of the footpath, kerb & gutter, road shoulder and road pavement to be constructed in Oxford St and Hopewell St.

Four weeks should be allowed for assessment. Works generally must be in accordance with the relevant clauses of the current Council’s document "Standard Specifications for Roadworks, Drainage and Miscellaneous Works dated Jan 2003”

c) Infrastructure works bond

To ensure that works on Council property required by this Condition are carried out to Council’s requirements, the developer must lodge a bond to the value of $94,000. The Bond may be in the form of a bank guarantee and must be lodged prior to the issue of a Construction Certificate. The Bond will be not be released until Council has inspected the site and is satisfied that the works have been carried out to Council’s requirements. Council may use part or all of the bond to complete the works to its satisfaction if the works do not meet Council’s requirements.
36. **Completion of infrastructure work**

All infrastructure works must be completed and be certified by the accredited certifier as meeting all Council requirements and as-built drawings are to be submitted to Council’s Works & Services supervisor, prior to the release of the Infrastructure Works Bond. Works generally must be in accordance with the relevant clauses of Council’s current document “Standard Specifications for Roadworks, Drainage and Miscellaneous Works dated Jan 2003AUS-SPEC.”

37. **Repair of Damaged Infrastructure**

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

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

38. **Vehicular access and garaging**

The following vehicular access and garaging detail must be submitted and approved by the Accredited Certifier prior to the issue of the Construction Certificate.

- Driveway details are to be provided of the new driveway to the new garage. The driveway profile is to comply with AS 2890.1
- Garage is to be a minimum of 5.4m to comply with AS 2890.1
- Driveways and access ramps must be designed not to scrape the underside of cars.

In all other respects the proposed garage, driveways and access ramps must be designed to comply with Australian Standard AS 2890.1 – “Off-Street car parking.”

39. **Internal Garage Floor Transition comments**

The existing footpath level and grade at the street alignment of the property must be maintained. Any driveway slab adjustment required to meet the internal garage crossfall is to be constructed entirely on private property. All grades and crossfalls are to be in accordance with AS2890.1.

40. **Provision of an Electricity Sub-Station**

An electricity sub station may be required on the site. The owner shall dedicate to the appropriate energy authority, free of cost, an area of land adjoining the Hopewell Street or Hopewell Lane alignment to enable an electricity substation to be established, if required. The size and location of the electricity substation is to be in accordance with the requirements of the appropriate energy authority and Council. The opening of any access doors are not to intrude onto the public road reserve.
Documentary evidence of compliance, including correspondence from the energy authority is to be provided to the Principal Certifying Authority prior to issue of the Construction Certificate. The Principal Certifying Authority must be satisfied that the requirements of energy authority have been met prior to issue of the Construction Certificate.

41. **Occupation of premises**

The premises must not be occupied prior to the issue of an Occupation Certificate.

42. **Requirement for a Construction Certificate**

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

(a) detailed plans and specifications of the building have been endorsed with a Construction Certificate by:

   (i) Council; or
   (ii) an accredited certifier; and

(b) a principal certifying authority (PCA) has been appointed and the Council has been notified in writing of the appointment, and

(c) at least two days notice, in writing, has been given to Council of the intention to commence work.

43. **Structural adequacy**

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

This condition is imposed to ensure the structural integrity of the proposed building work.

44. **Structural details**

Structural engineering details and design calculations, prepared and certified by a qualified practising Structural Engineer, must be submitted with Construction Certificate application, for all reinforced concrete work, structural steel work, retaining walls, brick fences, shoring and underpinning, isolated piers, chimneys, parapets and other structural members.

This condition is imposed to ensure the structural integrity of the proposed building work.

45. **Demolition, excavation and construction hours**

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

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

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

47. **External Service Pipes and the like prohibited**

Proposed water pipes, waste pipes, stack work, duct work, mechanical ventilation plant and the like must be located within the building. Details confirming compliance with this condition must be shown on construction certificate plans and detailed with construction certificate specifications. Required external vents or vent pipes on the roof or above the eaves must be shown on construction certificate plans and detailed with construction certificate specifications. External vents or roof vent pipes must not be visible from any place unless detailed upon development consent plans. Where there is any proposal to fit external service pipes or the like this must be detailed in an amended development (S96) application and submitted to Council for determination.

Vent pipes required by Sydney Water must not be placed on the front elevation of the building or front roof elevation. The applicant, owner and builder must protect the appearance of the building from the public place and the appearance of the streetscape by elimination of all external services excluding vent pipes required by Sydney Water and those detailed upon development consent plans.

48. **Fire safety**

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

49. **Long Service Levy Payment**

A Long Service Levy under Section 34 of the *Building & Construction Industry Long Service Payment Act*, 1986, must be paid and proof of payment provided prior to the issue of a Construction Certificate.

The Levy can be paid directly to the Long Services Payments Corporation or to Council.
50. **Standard for demolition**

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

51. **Access DCP**

A compliance certificate prepared by a suitably qualified person certifying that the completed building complies with the approved plans and the requirements of the Access DCP shall be provided prior to the issue of an occupation certificate.

52. **Additional Approvals**

In order to ensure the amenity of the surrounding residential area is preserved separate, additional Development Applications shall be submitted to the Council in relation to the specific intended uses including fitouts prior to the commencement of the use/s.

53. **Compliance with Building Code of Australia**

(a) All building work must be carried out in accordance with the provisions of the *Building Code of Australia*.

(b) This condition does not apply to the extent to which an exemption is in force under Clause 187 or 188, of the *Environmental Planning and Assessment Regulation 2000*, subject to the terms of any condition or requirement referred to in Clause 187 (6) or 188 (4) of the Regulation.

54. **Change of building use**

(a) A building in respect of which there is a change of building use must comply with the Category 1 fire safety provisions applicable to the proposed new use.

   **Note.** The obligation under this condition to comply with the Category 1 fire safety provisions may require building work to be carried out even though none is proposed or required in the relevant development consent.

(b) This condition does not apply to the extent to which an exemption is in force under Clause 187 or 188 of the *Environmental Planning and Assessment Regulation 2000*, subject to the terms of any condition or requirement referred to in Clause 187 (6) or 188 (4).

55. **Protection of public places**

(a) If the work involved in the erection or demolition of a building:

   (i) is likely to cause pedestrian or vehicular traffic on a public place to be obstructed or rendered inconvenient, or
   (ii) building involves the enclosure of a public place;

   a hoarding or fence must be erected between the work site and the public place.
(b) If necessary, an awning must be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.

(c) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

(d) Any such hoarding, fence or awning must be removed when the work has been completed.

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

56. Signs to be erected on building and demolition sites

(a) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:

(i) stating that unauthorised entry to the work site is prohibited; and
(ii) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.

(b) Any such sign must be removed when the work has been completed.

(c) This clause does not apply to:

(i) building work carried out inside an existing building; or
(ii) building work carried out on premises that must be occupied continuously (both during and outside working hours) while the work is being carried out.

57. Toilet facilities

(a) Toilet facilities must be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

(b) Each toilet provided:

(a) must be a standard flushing toilet; and

(b) must be connected:

(i) to a public sewer; or
(ii) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council; or
(iii) if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.

(c) The provision of toilet facilities in accordance with this clause must be completed before any other work is commenced.
(d) In this condition:

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

_approved by the Council_ means the subject of an approval in force under Division 1 of Part 3 of the _Local Government (Approvals) Regulation 1993_.

_public sewer_ has the same meaning as it has in the _Local Government (Approvals) Regulation 1993_.

_sewage management facility_ has the same meaning as it has in the _Local Government (Approvals) Regulation 1993_.

58. **Use of courtyard**

The courtyard shall only be used by restaurant patrons for the purpose of dining. The number of patrons seated in the courtyard shall not exceed a maximum of 24 at any time.

59. **Courtyard doors**

The doors leading to the rear courtyard shall be closed at all times outside the approved operating hours for the courtyard. The doors and windows to the courtyard shall also be treated with double glazing and acoustic seals. This condition is imposed to ensure the amenity of the neighbouring residential properties is maintained.

60. **Interior fitout of restaurant**

A report prepared by a suitably qualified Acoustic Consultant shall be submitted prior to the issue of a Construction Certificate. The report must detail the interior finishes and fittings required to be installed to reduce the noise levels generated from within the tenancy in order to maintain the amenity of the surrounding area.

61. **Surrender to Place of Public Entertainment (POPE)**

The existing Place of Public Entertainment License (POPE) applicable to the ground floor hotel area only shall be surrendered prior to a Construction Certificate being issued. This condition is imposed to facilitate orderly development of the site.

Mr G Fotis

SENIOR ASSESSMENT OFFICER

Mr R Keys

TEAM LEADER
ADVISINGS

1. **Other approvals**

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

   - an Application for Approval under Section 68 of the *Local Government Act 1993* for an activity under that Act, including the erection of a hoarding. All such applications must comply with the Building Code of Australia.
   - an application for an Occupation Certificate under Section 109(C)(2) of the *Environmental Planning and Assessment Act 1979*.
   - An application for an Occupation Certificate may be lodged with Council if the applicant has nominated Council as the Principal Certifying Authority.

2. **Application for a Construction Certificate**

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

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

3. **Occupational Health and Safety**

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

4. **Trade waste agreement**

   A Trade Waste Agreement must be obtained from Sydney Water prior to the discharge of trade wastewater to the sewer system. Trade wastewater is defined as ‘discharge water containing any substance produced through industrial or commercial activities or operation on the premises’.

5. **Waste collection**

   Liquid and solid wastes generated on the site must be collected, transported and disposed of in accordance with the requirements of the *Protection of the Environment Operations Act 1997*. Records must be kept of all waste disposal from the site.

6. **Hazardous Material Management**

   "Builders are advised to obtain a copy of the EPA publication *Solutions to Pollution for Builders* which provides environmental information including hazardous material management. The EPA can be contacted by phone on 131 555 or at [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)"
7. **Hazardous waste removal**

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

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

8. **Signs**

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

9. **Compliance with the Disability Discrimination Act**

This decision does not ensure compliance with the *Disability Discrimination Act*. You should therefore investigate your liability under that Act. *Australian Standard 1428 - Design for Access and Mobility*, Parts 2, 3 and 4 may assist in determining compliance with the Disability Discrimination Act.

10. **Modifications to the consent**

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

11. **Storage bins on footpath and roadway**

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

12. **Building Code of Australia classification**

The classification of the building pursuant to the Building Code of Australia is 5, 6 & 10a.

13. **Long Service Levy (To accompany the above as an advising)**

The current rate of the levy required by this consent is 0.2% of the cost all building and construction work costing $25,000 or more.
14. Appeal

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

ANNEXURES

1. Plans and elevations
2. Original Development Control Committee report dated 20 June 2005
DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No. D5
FILE No. DA 504/2004/1
ADDRESS: 47C Drumalbyn Road, Bellevue Hill
PROPOSAL: Demolition of an existing residential flat building and the construction of a new 3 storey, 3 x 3 bedroom residential flat building, over a car parking level
ZONING: Residential 2(a)
TYPE OF CONSENT: Local Development
APPLICANT: Drumalbyn Apartments P/L
OWNER: Drumalbyn Apartments Pty Ltd
DATE LODGED: 04/08/2004
AUTHOR: Mr A Biller

LOCALITY PLAN

Subject Site
Objectors
North
Locality Plan
1. SUMMARY

Reason for report

In accordance with Council’s delegations, the subject development application is referred to the Development Control Committee for determination as it involves the proposed erection of a new residential flat building.

Issues

- existing use rights
- objectors’ concerns
- tree loss
- excavation
- construction management

Objections

Five (5)

Cost of works

The stated cost of the proposed work of $1,500,000 has been checked using the standard criteria specified in the Cordell Building Guide and is considered to be accurate.

Recommendation

The application is recommended for conditional approval because it:

1. satisfies the provisions of Section 79C of the Environmental Planning and Assessment Act;
2. is an appropriate design for the site; and
3. will not have adverse effects on the amenity of adjoining properties such that refusal is justified.

2. DESCRIPTION OF PROPOSAL

The proposal is to demolish the existing residential flat building and construct a new residential flat building over four levels (including basement) consisting of 3 units with basement parking for 9 cars. The new building is to have a curved elongated configuration and will consist of 3 x 3 bedroom units. Pedestrian access is to be via a lift or stairway from entry level to the basement parking level, then across the carpark to a further lift and stairway to the units above. Each unit occupies a separate level and has 3 bedrooms with north-east facing balconies. Vehicle access to the car park is to be via a right of way to a car lift leading up to the basement level. The building is to be constructed of rendered brick with projecting balconies to have glazed balustrades.
3. DESCRIPTION OF SITE AND LOCALITY

The site is located on the western side of Drumalbyn Road almost opposite its intersection with Beresford Road. The site is an irregularly shaped battle axe allotment covering an area of 1049sqm (including the access handle of 76.5sqm). The access handle is part of a shared right of carriageway that services 47 A, B and C Drumalbyn Road, and slopes down to the road about 13m in height below the top of the Right of Way. The entry to the actual site is set approximately 63m from Drumalbyn Road.

The site is located on a north-facing slope with a north easterly aspect looking over Rose Bay towards Watsons Bay. The existing building platform on the site is occupied by a residential flat building constructed in the 1950’s and is in poor condition. The building platform is located about midway up the site and is presently accessed by stairs. At the back of the existing building, and overhanging the site to some extent is a cliff. Above the cliff the land flattens out a little and there are a number of neighbouring properties that front Victoria Road but slope down towards the subject site. A sandstone retaining wall runs close to the northern edge of the existing building. The site contains several mature trees, with the north-western corner in the area of the stairway being occupied by dense vegetation. The site is largely concealed by Nos 47 A and 47 B.

The surrounding area contains a mix of attached and detached generally large, two and three storey dwellings with a few residential flat buildings all generally set upon relatively large allotments. No 47 B located immediately below and to the north is a part two part three storey rendered residence set back between 1m and 2m from the common boundary with the subject site.

Council recently approved a part 3 - part 4 level dwelling on the neighbouring property at No 47 A Drumalbyn Road. Part of this approval involved the replacement of the retaining wall along the western side of the Right of Way. The new dwelling has been constructed.

4. PROPERTY HISTORY

In May 1998, Council approved a development application (DA 358/97) for the demolition of the existing flat building and construction of a new 3 level residential flat building. The applicant then sought amendments through a Section 96 application that was rejected by Council, but approved by the Land and Environment Court (Appeal No 10052 of 1998). The Building Application that followed was approved by Council subject to conditions requiring submission of an acceptable construction management plan and traffic impact study. The documentation submitted was not satisfactory to Council. The applicant then lodged an appeal in the Court, which was dismissed, with the Building Application being overturned in its entirety by the Court.

An application for a Construction Certificate (CC 1997/358) was also refused, and the Court again upheld Council’s decision with the construction management plan and traffic impact statement again being the major issues. The applicant maintains that neighbour objections and Council concerns about the extent of excavation on a very difficult site as well as the then geotechnical and engineering fragility of the driveway made the preparation of the required documentation very difficult, as there appeared to be no way the proposal could be economically constructed without strengthening the driveway retaining walls. It is understood that since that time the retaining walls have been strengthened or rebuilt.

In August 2003 a development application was lodged for a 3 storey residential flat building containing 3 units (DA 657/03). After extensive assessment, the applicant was advised that the proposal could not be supported. Council staff raised concerns regarding building height, bulk and scale. The development application was subsequently withdrawn. The current plans show the building having been lowered by 3m from RL 77.9 (top of lift tower) to RL 74.9 (top of lift tower).
5. REFERRALS

5.1 Comments from external approval bodies

No comment required.

5.2 Building

Satisfactory, subject to Condition 52.

5.3 Health

No comment required.

5.4 Heritage

No Heritage comment has been provided for the current development application. The following comments were provided for the previous development application (DA 657/03).

Heritage Status:
- Heritage item: No
- Conservation area: No
- Vicinity of heritage item: No
- Potential heritage item: No

Description of Buildings
The existing building is a 2 storey Post War apartment building c1960 which is altered.

Significance of Property
The building has previous consent for demolition.

Based on a review of the available information I consider the property has no heritage significance to the Woollahra area to justify its retention.

Recommendation – no objection to demolition subject to the following conditions:-

2 copies of the Heritage Report to satisfy archival recording requirements (refer condition 60).

5.5 Urban Design

No comment required.

5.6 Stormwater Drainage

Council’s Development Engineer has made the following comment:

The stormwater disposal and OSD concept plan prepared by Demlakian Consulting Engineers No's H1 B to H3 B dated May 2003 is considered satisfactory and conditioned accordingly. Sheet H1 B is now not applicable as the drainage line has been recently constructed.
No details have been provided of the WAE for the recently constructed common driveway and crossing which includes a common drainage line to drain the properties. The applicant was requested to provide in Referral Response dated 21 Feb 2005 further legal advice on his rights to connect to pipeline and an analysis of the line's capacity to accept the runoff from his property.

This information was provided by the applicant in a letter dated 21/3/2005 with legal advice from Simpson Freed Lawyers dated 21 March 2005 and drainage calculations from Demlakian Engineers dated 21 March 2005, both of which satisfy Council's concerns.

5.7 Flooding & Overland Flow comments

There is no defined flood path through the development. There may be general overland flow as property is downhill of existing properties in Victoria Rd. This water is to be collected in drainage system and discharged to Drumalbyn Road.

5.8 Construction Management comments

A Construction Management Plan prepared by Demlakian Consulting Engineers dated 17 July 2003 was provided in support of both applications. The latest volume of excavation as calculated by the architect is 1495m³. This is significantly more than was previously calculated (see Demlakian appendix P18 refers to 900m³) Council requested in Referral Response dated 21 Feb 2005 for the applicant to amend the report and that any impacts are to be taken into consideration. This includes the Construction Management Plan and any other affected reports.

In the letter dated 21/3/2005 provided by the applicant on Excavation (refer to Appendix H1 of the SOE prepared by Smyth Planning dated August 2004) outlines the revised construction methods and management but the additional volumes are not mentioned only in general terms. However as this now is the only issue then it will be conditioned.

5.9 Impacts on Council Infrastructure comments

The existing driveway crossing and drainage line has been recently reconstructed across footpath in Drumalbyn Rd and Council assets are in satisfactory condition. Only Standard Conditions applicable

5.10 Traffic comments

The development consists of a 3 x 3 bedroom apartments. The DCP for Off Street Car Parking code requires for 3 Bedroom units 2 spaces per unit and for visitors 2 spaces for the first 3 units. The application is providing 6 spaces and 3 visitor spaces which complies with Council's DCP. The additional traffic generation from this type of development is considered to be only a minor increase in the overall traffic volumes on the adjoining road network. No conditions required.

5.11 Vehicle Access & Accommodation comments

1. Lift Vehicle Storage - Vehicles entering the car lift will need to stand for a period waiting on the lift to arrive. Sufficient room will be required for standing vehicles to be clear of exiting cars to enable them to pass. The proposed layout was not satisfactory as it would impede access to and from properties of 47B and 47A as vehicles will be required to stand in front of the driveways.
A Revised driveway parking location and report prepared by Transport & Traffic Planning Assoc dated 16 Feb 2003 and identifies a location for vehicles to stand to the right of the ROW back from the access to No 57A. This location is considered satisfactory, but will require linemarking and signage and will be subject to conditions.

2. As the proposed design gradient is close to the required gradient and is a vast improvement on the existing driveway it is considered acceptable. Subsequently the driveway has now been reconstructed and there are no further issue.

3. A dilapidation report on the new driveway and adjoining retaining walls will be required prior to construction.

5.12 Geotechnical, Hydrogeological and/or Structural comments

A full geotechnical investigation including boreholes was carried out on the site and a geotechnical report was prepared by Jeffery & Katauskas dated 9 May 2003 Ref: 17153W2rpt.

A revised supplementary Geotechnical Report Ref: 17153W3 dated 23 July 2004 was submitted in support of the application. This report relies on and makes reference to the previous report. The revised report identifies that this proposal "...substantially reduces the depth and extent of excavation that will be required compared to the original proposal."

However in essence the comments and conditions will be similar to the original report with amendments. Comments are made below on both reports as they are applicable to the development.

Access to the area of the cliff by the consultant was not possible during the assessment. Observations of the cliff face were not possible due to dense vegetation, which covered the upper 3-4m of cliff and some lower portions. The report identified stated that possible defects may exist along the cliff.

The cliff appears to be formed by natural processes. The cliff waviness or irregularities in the overall curved shape may create localised less stable areas " Joints in the cliff were observed"

The report identifies that the uppermost sandstone is detached bedrock with a typical soil depth of 1.5 - 2.2m in depth and only minor seepage was encountered during the investigation.

While generally the adjoining properties are in satisfactory condition, structures in properties No 55 Drumalbyn Rd and 93 Victoria Rd are showing signs of distress. Dilapidation reports will be required and are conditioned.

In Section 4 of the 9 May 2003 report, the Comments and Recommendations identified the following:

- Existing Cliff Stability - " No signs of developing slope instability"
- Topping Failures - "no indication that a topping failure is likely"
- Potential Wedge / Sliding Failure - " unlikely that such joints will be encountered"
- Local Stability - "will require stabilisation during construction"
- Effect of Excavation - " no significant stress relief" .." some seams may require protection."

The NW end of carpark level the soil and boulders are to be retained by an engineered retaining wall. Also underpinning of boulders may be required at the excavation face. Further geotechnical inspections are required during excavation / construction
Vibration would be expected due to the removal of sandstone from the site

Prior to any demolition work on the site the following is required

- During site clearing vegetation is to be removed from the cliff face for the full site length and the area to be mapped by a geotechnical engineer
- A further 2 boreholes be drilled in the area of the entry and Car Lift
- Detailed excavation procedure
- Rock Catch Fence - is to be constructed along the full length of the proposed excavation before demolition or excavation to protect building on 47B as outlined in Sect 4.6

Further issues raised in the supplementary report 23 July 2004 are as follows

- Staging of the works to enable progressive inspection and stabilisation
- Staged excavation
- Site drainage
- Further geotechnical inspections during construction

It is imperative that on such a difficult site that the recommendations of the Geotechnical Report by Jeffery & Katauskas dated 9 May 2003 Ref: 17153W2rpt and supplementary Report 17153W3 dated 23 July 2004 be carried out and the site continually monitored by a geotechnical engineer, accordingly conditions have been applied.

Conditions of consent are recommended in relation to the above (refer conditions 4-33).

5.13 Landscaping/trees management

Council’s Tree and Landscape Officer has commented in the following terms:

Comments: The submitted plans indicate the removal a Acmena smithii Lillypilly, Cinnamomum camphora Camphor Laurel and Ficus rubiginosa Port Jackson Fig that are good healthy specimens.

Councils Open Space Department regards the Lillypilly, Camphor Laurel and Port Jackson Fig trees as highly significant items in terms of visual significance (dimensions of the trees), the contribution the trees canopies have on the skyline, the estimated age of the trees and in regards to the Lillypilly its importance as a mature native species. The removal of the Lillypilly, Camphor Laurel and Port Jackson Fig, which are well-established trees, would be unacceptable due to the loss of visual and environmental amenity.

The design of the proposal must be amended where required through professional advice from a qualified Arborist to ensure the preservation and the expected future growth requirements of these trees. The design of structures may be required to be of structural strength and design exceeding typical design standards to acknowledge the existence of these trees.

RECOMMENDATION

Council’s Tree and Landscape Officer has determined that the proposal is not satisfactory in its current form.
Comment

The Camphor Laurel tree (height approximately 18m) is located in the middle of the site and was approved for removal under DA 358/97). The Court approved Section 96 also granted approval to the removal of the Camphor Laurel Tree. The Lillypilly (height approximately 18m) is located close to the front boundary in the area of the proposed car lift and entry lobby. Both trees are located in positions, which will not allow the reasonable redevelopment of the site. Both are also visible from a distance from Drumalbyn Road, and do not contribute directly to the visual amenity of the public domain. The landscape plan indicates the retention of several mature trees close to the Lillypilly at the north-western corner of the site. It is considered that these will assist in reducing the visual impact of the proposal when view from the shared accessway.

The Port Jackson fig (height approximately 20m) is located at the rear of the site and is also only visible from a distance from Drumalbyn Street. A condition is recommended that suitable mature replacement trees (to the satisfaction of Council’s Trees Officer) be planted close to the south-eastern corner of the site. This will help limit the loss of visual and environmental amenity in the locality (Refer condition 2).

ENVIRONMENTAL ASSESSMENT UNDER S.79C

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

6. STATE/REGIONAL INSTRUMENTS AND LEGISLATION

6.1 SEPPs

State Environmental Planning Policy No.10 – Retention of Low Cost Housing

Clause 7 of SEPP 10 relates specifically to the demolition or alteration of low rental residential accommodation. However, by virtue of Clauses 7.1 and 7.2, SEPP 10 does not apply to the demolition of residential flat buildings, but rather to their alteration or strata subdivision.

State Environmental Planning Policy No.55 – Remediation of Land

Under Clause 7 (1) (a) of State Environmental Planning Policy No 55 – Remediation of Land, consideration has been given as to whether the land is contaminated. An assessment of the documentation provided by the applicant indicates that the land does not require further consideration under Clause 7(1) (b) and (c) of SEPP 55.

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

SEPP 65 applies to new residential flat buildings, which are comprised of three or more storeys and four or more self contained dwellings. The proposed development consists of three dwellings and is therefore not subject to the provisions of SEPP 65.

6.2 REPs

Sydney Regional Environmental Plan No.23 – Sydney and Middle Harbours

The subject site is located upon land to which SREP No. 23 applies. Clause 18 and the objectives under Clause 2 of this instrument require Council to assess the visual impact of the proposed development on Sydney Harbour.
From the waterway and foreshores, the appearance of the new building from a distance will be that of a more contemporary structure with a larger bulk and scale than the existing. However the profile of the building will be within the existing cliff face. The new building represents a visual improvement on what is currently on site and will not adversely affect views from the harbour. Accordingly, the proposal satisfied the provisions of Clause 18 of SREPP No 23.

6.3 Section 94 contribution

Council’s Section 94 Contribution Plan provides the mechanism to levy development for monetary contributions towards community services and facilities where it can be determined that there will be a net increase in the number of dwellings.

In this regard, there is no net increase in the number of dwellings. Accordingly, no Section 94 contribution is required.

6.4 Other legislation

Not applicable.

7. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

7.1 Zoning

The subject site is zoned Residential 2(a) under Woollahra LEP 1995.

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

The site is located within the Residential 2(a) Zone. The existing building on the site is a non-conforming residential flat building.

Clause 8(5) of Woollahra LEP 1995 prescribes that Council shall not grant consent to development unless it is satisfied that the proposal is consistent with both the aims and objectives of the LEP as set out in Clause 2 and the specific objectives of the zoning that applies to the subject site. The proposal is considered to be consistent with the aims and objectives of the LEP in that it is appropriate to the needs of the community, will not increase population density or strain the existing road network and will provide adequate on site parking.

The proposal is also consistent with the objectives for the Residential 2 (a) Zone, as set out in WLEP 1995. The amenity and existing characteristics of an area predominantly characterised by dwelling houses will be maintained.

7.3 Existing use rights

Given the non-conforming use and the extensive history of the site, advice was sought from Michell Sillar Attorneys regarding the threshold issue of whether or not the site currently enjoys existing use rights. Michell Sillar reached the following conclusions:

1. The applicant bears the onus of showing that it has existing use rights so as to found a right to rebuild the existing use as a residential flat building.
2. In the circumstances of this case, where the use has not been physically continued for a lengthy period, the applicant also bears the onus of showing the use has not been abandoned.
3. **In our view, the successive applications to obtain approval for a residential flat building, which can only be founded on the continuance of existing use rights, would go a long way towards rebutting the presumption of abandonment.**

4. **For more abundant caution, and having regard to the submissions from neighbours, the Council may wish to obtain further evidence, such as an affidavit from the owners of the land, explaining the history of the purchase of the property and the intention in relation to its redevelopment.**

The applicant has provided the required affidavit and their own legal advice from Allens Arthur Robinson Solicitors which confirms that, in their opinion, no abandonment or lapsing of the existing use rights enjoyed by the premises has occurred.

Regulation 41(1) of the EPA Regulations 2000 states that:

**An existing use may**

- be enlarged or expended or intensified or
- altered or extended
- be rebuilt
- be changed to another use, including a use that would otherwise be prohibited under the Act.

The proposal involves the demolition of the existing residential flat building and the construction of a new residential flat building, which is facilitated under regulation 41(1).

Clause 108(3) states that the provisions of any environmental planning instrument that derogate (detract) from the existing use rights provisions have no force or effect whilst existing use rights remain. Established case law has held that the provisions of environmental planning instruments do not apply to the assessment of applications on sites with existing use rights. Therefore planning objectives and controls that limit the size of the proposal such as height, setbacks, building footprint and floor space ratio cannot be applied to the proposal.

Accordingly, non-compliances with the 9.5 metres Height Standard and the relevant provisions of Residential Development Control Plan 2003 cannot in themselves be grounds to withhold consent for the proposed development.

For this reason, objections pursuant to **State Environmental Planning Policy No.1 – Development Standards**, in relation to non-compliance with any development standard are not required. Assessment of the proposal is confined to pure planning merit against the relevant objectives of the **EPA&Act** together with the relevant considerations of S79C of the EP&A Act.

The following principles, in relation to the assessment of proposals on land with existing use rights, have been established in the Fodor Investments vs Hornsby Shire Council Land and Environment Court case:

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

   While these controls do not apply to sites with existing use rights, they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when the surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessment.
The bulk and scale compares favourably with that of surrounding developments. No 47B Drumalbyn Road below the site contains a recently completed large part two, part three storey single dwelling. The recently constructed dwelling at No 47A reaches a height of 11.26m, compared to 10.8m for the subject application. The development also falls substantially below the level of the cliff face behind. On this basis it is considered that the bulk and scale proposed are appropriate to the context.

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

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

The existing residential flat building is proposed to be demolished. That proposed in its place is significantly larger. In the context of what is proposed on the site, the bulk and scale of the existing building has little significance.

2. **What are the impacts on adjoining land?**

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

The impacts on adjoining land are discussed in detail in the body of this report. The impacts are such that the amenity of adjoining properties will not be affected to the extent that the application warrants refusal. The shadow impact on adjoining rear yards is considered reasonable.

3. **What is the internal amenity?**

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

The internal amenity of the proposed units would be high, with excellent views, reasonable access to outdoor open space areas, solar access and natural ventilation. Internal amenity is not raised as a concern.

7.4 **Statutory compliance table**

Whilst the statutory controls listed below have no have no force or effect they have been provided as a guide.

<table>
<thead>
<tr>
<th>Site Area (973m²)</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall Height (metres)</td>
<td>6.1</td>
<td>10.8</td>
<td>9.5</td>
<td>NO</td>
</tr>
<tr>
<td>Frontage for a new a RFB containing three (3) or fewer dwellings</td>
<td>6.8m</td>
<td>6.8m</td>
<td>15m</td>
<td>NO</td>
</tr>
</tbody>
</table>
7.5 Height

Under the provisions of Clause 12 of the Woollahra Local Environmental Plan 1995, a maximum height control of 9.5 metres applies to the subject site.

In assessing the height of the proposed development, consideration needs to be given to the planning merits of the proposal and its appropriateness in terms of its compatibility with the surrounding development and locality, the streetscape and the amenity of neighbouring dwellings. In this regard, the height of the proposed development is considered to be satisfactory for the following reasons:

- The existing building achieves an RL of 70.2 to the gutter, which translates to approximately 6.1m above the existing ground level (currently approximately RL 64.1). The proposal achieves an RL of 74.8 at its highest point, translating to about 10.8m above the existing ground level. (The basement area is incorporated within excavation). The height compares with the limit of 9.5m and the 11.26m height (above existing ground level) of the recently approved dwelling at No 47A Drunalbyn Street.
- The existing views to Rose Bay and the Harbour beyond will be preserved as the building sits on a platform below the top of the cliff, and the properties above (being 101A, 103, 105 and 107 Victoria Road) will continue to look over the top of the building. Dwellings on either side (east or west) are at the same level or below and their views will remain uninterrupted.
- The orientation and location of adjoining buildings and differences in levels on the hillside as well as the existing and proposed landscaping will assist in ensuring there is a minimal invasion of privacy for adjoining dwellings.
- Shadow diagrams submitted with the application demonstrate the minimal impact which overshadowing will have on the surrounding properties at the winter solstice.

Accordingly, the height of the proposed development is considered to be satisfactory.

7.6 Site Area and Frontage

The site area of 973sqm and frontage of 6.8m are not changing. The site area has been taken as that area excluding the access handle, as set out in the definition for site area in WLEP 1995. The site currently accommodates a residential flat building and there is no reason why it could not accommodate a more contemporary residential flat building.

7.7 Floor Space Ratio

Refer to “Section 9 - Building Size and Location Performance Criteria” for details.

7.8 FSBL

The subject site is not affected by Council’s Foreshore Building Line.

7.9 Other special clauses/development standards

Clause 18 Excavation

Clause 18 of Woollahra LEP 1995 requires Council to consider the impact of excavation associated with a development proposal upon the local environment. The matter of excavation has been discussed in detail in 5.8 and 5.12 above. Council’s Development Engineer is satisfied with regard to the matter of excavation subject to conditions (refer conditions 27-33).
Clause 19 HFSPA

The subject site falls within the Harbour Foreshore Scenic Protection Area and therefore Clause 19 of WLEP 1995 applies. From the waterway and foreshores, the appearance of the new building from a distance will be that of a more contemporary structure with a larger bulk and scale than the existing. However, the profile of the building will be within the existing cliff face. The new building represents a visual improvement on what is currently on site and will not adversely affect views from the harbour.

Clause 25D Acid Sulfate Soils

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

Clause 25 Water, wastewater and stormwater

Subject to Conditions Nos 4-8, the proposed development is acceptable in terms of Clause 25(1) and (2).

8. DRAFT AMENDMENTS TO STATUTORY CONTROLS

Draft State Environmental Planning Policy (Application of Development Standards) 2004 applies.

Section 79C(1)(a)(ii) of the Act requires that in determining a development application, a consent authority is to take into consideration any draft environmental planning instrument "EPI" that is or has been placed on public exhibition and details of which have been notified to the consent authority.

Draft Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2004

This draft planning instrument is aimed at repealing several existing planning instruments including SREP 23 Sydney and Middle Harbours. The draft SREP requires the consideration of similar issues as SREP 23 such as the visual impact of development upon Sydney Harbour and adjacent foreshore areas.

The development will be distantly visible from Sydney Harbour and some foreshore areas. However, the development will blend in with the surrounding built and natural environment and will not have any adverse visual impact upon Sydney Harbour or the foreshore areas. Accordingly, the proposal is considered to be satisfactory with regard to the provisions of this draft instrument.

9. DEVELOPMENT CONTROL PLANS

9.1 Compliance table - Woollahra Residential Development Control Plan 1999

The development controls listed below have no force or effect, but have been provided to serve as a guide.
**COMPLIANCE WITH WRDCP 2003**  
**(NUMERIC CONTROLS)**

<table>
<thead>
<tr>
<th>Site Area (973m$^2$)</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Floor Space Ratio/ Gross Floor Area</td>
<td>0.3:1 (294m²)</td>
<td>1.09:1 (1064m²)</td>
<td>0.55:1 (535m²)</td>
<td>No</td>
</tr>
<tr>
<td>Building Footprint (maximum)</td>
<td>18% 177m²</td>
<td>54% of site (525m²)</td>
<td>40% of site (389m²)</td>
<td>No</td>
</tr>
</tbody>
</table>

**Boundary Setbacks**

**Entry Lobby level**

| Front N | N/A | 1600mm | Context* | Yes |
| Rear S | N/A | 13m | 6m | Yes |
| Side E | N/A | 900mm-1.5m | 2.5m | No |
| Side W | N/A | 4.5m-9.5m | 2.5m | Yes |

**Plant Level**

| Front N | N/A | 1600mm | Context* | Yes |
| Rear S | N/A | 13m | 6m | Yes |
| Side E | N/A | 900mm-1.5m | 2.5m | No |
| Side W | N/A | 4.5m-9.5m | 2.5m | Yes |

**Carpark Level**

| Front N | N/A | 1600mm | Context* | Yes |
| Rear S | N/A | 1.5m-4.5m | 6m | No |
| Side E | N/A | 700mm-5.3m | 2.5m | Partial |
| Side W | N/A | 1.5m-5.3m | 2.5m | Partial |

**First Floor**

| Front N | 16.5m | 9m | Context* | Yes |
| Rear S | 4m-7m | 3.5m-5m | 6m | No |
| Side E | 7.5m | 1.5m-8m | 2.5m | Partial |
| Side W | 2.8m-6m | 1.6m-2.5m | 2.5m | Partial |

**Second Floor**

| Front N | 16.5m | 12m-16.5m | Context* | Yes |
| Rear S | 4m-7m | 3.5m-5m | 6m | No |
| Side E | 7.5m | 1.5m-8m | 2.5m-3.5m | Partial |
| Side W | 2.8m-6m | 2.5m | 2.5m | Yes |

**Third Floor**

| Front N | N/A | 12m-16.5m | Context* | Yes |
| Rear S | N/A | 3.5m-5m | 6m | No |
| Side E | N/A | 1.5m-8m | 3.5m-6m | Partial |
| Side W | N/A | 2.5m | 2.5m-5m | No |

**Excavation Piling & Subsurface Wall Setback**

| N/A | >1.5m | 1.5m | Yes |

**Minimum Floor to Ceiling Height – Habitable Rooms**

| N/A | 2.7m | 2.7m | Yes |

**Non-articulated Building Length to Street**

| N/A | <6m | 6m | Yes |

**Proportion of Site Area at Ground Level to be soft and Porous Landscaping**

| N/A | 46% 447m$^2$ | 40% 389m$^2$ | Yes |

**Private Open Space**

| N/A | First 105m$^2$ | Second 60m$^2$ | Ground 35m$^2$ | Yes |

**Solar Access to Ground Level Open Space of Adjacent Properties (Minimum)**

| >35m$^2$ - 2.5m | >35m$^2$ - 2.5m | 35m$^2$ Dimension – 2.5m | Yes |

**Solar Access to North-Facing Living Areas of Development**

| <3hrs | <3hrs | 3 Hours in Mid-winter | Yes |

**Solar Access to North-Facing Living Areas of Adjacent Properties**

| <3hrs | <3hrs | 3 Hours in Mid-winter | Yes |

**Car Parking Excavation**

| N/A | Within building footprint | Within building footprint | Yes |
**COMPLIANCE WITH WRDCP 2003 (NUMERIC CONTROLS)**

<table>
<thead>
<tr>
<th>Site Area (973m$^2$)</th>
<th>Existing</th>
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<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Car Parking (minimum) (maximum)</strong></td>
<td>1</td>
<td>9</td>
<td>7</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Garages, parking structures and driveways as % of site frontage.</strong></td>
<td>4m</td>
<td>(40% of site frontage) 2.72m</td>
<td></td>
<td>No</td>
</tr>
</tbody>
</table>

**Context**

The location and configuration of the site together with the location of adjoining buildings ensures that there is no predominant front setback which can be measured.

**Bellevue Hill North Precinct**

The site is situated in the Bellevue Hill North precinct. The site has significant constraints, having a steep gradient, being located up against a cliff face and having a limited frontage to a right of way. The redevelopment of the site will also require considerable excavation (1495cum). However, it is considered that the design in its current form responds positively to the considerable constraints. The development responds in form and siting to the subdivision pattern (Objective 4.7.2), having a curved elongated shape to follow the unique configuration of the site, and the existing dense tree canopy at the north west corner is to be maintained (Objective 4.7.3). The proposal will also allow the introduction of a good contemporary building to replace outdated structures (Objective 4.7.6).

**5.1 Streetscape**

Clause 4.7.5C (Bellevue Hill North Precinct) sets out that a garage or parking structure may be permitted on sites where the gradient on the higher side of the street measured to a distance 7m from the street frontage is greater than 1:3 (as measured from the footpath level) and where there is minimal detrimental impact upon the streetscape. In this instance a single storey structure forward of the building line may be permitted, but is limited to a maximum width of 6m and a maximum height of 2.5m from the footpath level.

The gradient in the area of the proposed car lift is approximately 1:2. A 4m wide car lift is proposed adjoining the pedestrian entry lobby area at the northern edge of the site close to the top of the shared access road. The car lift will be located behind 4m high sliding timber doors with louvre cladding above and has been designed as an integral part of the overall entry to the development. The entry is also concealed from Drunalbyn Road, being located approximately 130m away at the end of the shared access road. From the shared access road, the scale of the residential component behind the entry structure will be similar to the scale of other buildings in the locality and will be reduced by the presence of the cliff face behind.

Overall, given the limited site frontage, the concealed nature and the significant topographical constraints of the site, it is considered that the design of the entry to the development, its scale and the materials to be used are consistent with the objectives for streetscape as set out in Part 5.1 of Woollahra RDCP 2003.

**5.2 Building size and location**
Building Footprint:

Clause 5.2.7 limits building footprints for residential flat buildings to 40% or 389sqm in this instance. The existing residential flat building on the site and garage have a building footprint of 18% (177sqm) while the proposed new residential flat building will have a building footprint of 54% (525sqm), an increase of 348m².

The purpose of the building footprint control is to:

- limit site coverage and excavation of new buildings,
- maximise on site infiltration of stormwater,
- maximise deep soil landscape areas,
- maintain natural landform
- maintain subterranean water flows,
- protect significant vegetation,
- minimise the likelihood of land instability due to excavation.

The topography of the site makes it difficult to accommodate a reasonable design that would achieve compliance with the building footprint control. The new building is longer and wider than that which is existing, and located closer to the cliff face at the rear. Much of the additional site coverage located in the internal driveway and entry area on the northern side of the site is necessary in order to facilitate improved access into and within the site. The proposal still leaves 447sqm (46%) of site area at ground level for deep soil landscaping and infiltration, and excavation is located away from the property boundaries to reduce the potential for instability.

Floor Space Ratio:

The existing residential flat building on the site achieves a gross floor area of approximately 294m² (0.3:1) while the proposed residential flat building achieves a gross floor area of 1064m² (1.09:1); an increase of 770m².

In assessing the floor space ratio, consideration needs to be given to the planning merits of the proposal and its appropriateness in terms of its compatibility with the surrounding development and locality, the streetscape and the amenity of neighbouring dwellings. In this regard, the floor space ratio of the proposed is considered to be satisfactory for the following reasons:

- The proposal will not result in a building of excessive bulk and scale having regard to its context. The top of the building will be comparable with the level of the cliff behind and the scale of the building is comparable to that which has recently been constructed at No 47A Drummbyn Road.
- Part of the first floor and most of the car park is located below existing ground level and so will not contribute to the visible bulk of the building when viewed from the side elevations.
- The steeply sloping nature of the site requires a design which incorporates additional lifts and stairs to facilitate an appropriate level of access throughout the development.
- The development incorporates 165sqm of balconies in excess of the 20sqm per dwelling permitted under the definition for GFA as set out in WLEP 2003. As such, the 165sqm of additional balconies does not visually contribute to the overall bulk and scale of the building in the same way an enclosed floorspace.
- The proposal will have a positive visual impact on the locality through its design, which incorporates variable setbacks, appropriate levels of articulation on the north elevation and a range of materials. The proposed recessing and modulation and materials to be used reduces its apparent scale and bulk when viewed from surrounding properties and the shared accessway.
• The proposal will not unreasonably detract from the privacy of adjoining properties.
• The bulk of the proposal will not result in an unreasonable additional amount of overshadowing to adjoining properties.
• The proposal will not have any impact on views from adjoining or surrounding properties.

**Boundary Setbacks:**

**Front**  
Clause 5.2.2 sets out that front setbacks should be consistent with those of adjoining properties. The nature and configuration of the site is such that there is no predominant front setback. The entry to the development is set back 1.6m from the common boundary with the shared access way. No objections are raised to the front setback as proposed. The area close to the site frontage is occupied by both pedestrian and vehicle access points whose configuration and location close to the street are critical to the overall functioning of the site. This has been achieved through an integrated design which does not detract from the streetscape.

**Side**  
Clause 4.7.4 sets out that where the site lot width is equal to or exceeds 18m at the front alignment, development has a minimum side boundary setback of 2.5m, increasing on a pro-rata basis by 0.5m for each meter or part thereof that the building height adjacent to the boundary exceeds 5.5m.

At entry lobby and plant levels the eastern side setback varies between 900mm and 1.5m, increasing to between 700mm and 5.3m at the carpark level and to between 1.5m and 8m at first, second and third floor levels. Similarly at entry lobby and plant levels, the western side setback varies between 4.5m and 9.5m, reducing to between 1.5m and 5.3m at the carpark level, between 1.6m and 2.5m at first floor level and 2.5m at second and third floor levels.

In assessing the siting of the development, consideration needs to be given to the planning merits of the proposal and its appropriateness in terms of its compatibility with the surrounding development and locality, the streetscape and the amenity of neighbouring dwellings. In this regard, the siting (i.e. boundary setbacks) of the proposed development are considered to be satisfactory for the following reasons:

• The proposed building will be located substantially above the adjoining dwelling to the east (No 47B Drumalbyn Road). The existing ground level at 47B Drumalbyn Road (located between 1.1m and 2m off the common boundary with the subject site) is RL 54.3, while the subject site has an RL of 64.12 in the area of the proposed building. Views from the new development will therefore be distance views over No 47B towards Dover Heights and Bondi.
• The proposed building is located as far as possible towards the rear of the site (cliff face) to limit visual bulk impacts.
• The proposal will not have any impact on views from surrounding properties.
• The setbacks will allow sufficient separation between dwellings to allow adequate light and ventilation and limit overshadowing impacts.

**Rear**  
At carpark level, the rear setback varies between 1.5m and 4.5m, and between 3.5m and 5m at levels one, two and three. The rear setback as proposed is appropriate considering the location of the cliff face behind.
5.3 Open space and landscaping

Clause 5.3.1 sets out that for residential flat buildings deep soil landscaping should comprise at least 40% of the site area. The proposal leaves 447sqm 46% of site area at ground level for deep soil landscaping. Because of the steeply sloping nature of the site, this area is unlikely to be used for recreational purposes. As a result, the current design incorporates extensive balconies linked to the living areas and bedrooms of each unit, which will improve the internal amenity for future residents without detrimentally affecting the privacy of adjoining dwellings. The applicant has also submitted a landscape plan showing future planting on the site.

5.4 Fences and walls

No new walls or boundary fences are proposed.

5.5 Views

The proposal achieves an RL of 74.9 at its highest point (lift tower), translating to about 10.8m above the existing ground level. As discussed under Height above, no views from adjoining or surrounding sites will be affected by the proposed development. The existing views to Rose Bay and the harbour beyond will be preserved as the building sits on a platform below the top of the cliff, and the properties above (being 101A, 103, 105 and 107 Victoria Road) will continue to look over the top of the building. The proposal will also not impact upon the views currently enjoyed by the properties at 47A and 47B Drumlbyn Road. The dwelling at 47B is below and in front of or to the north of the subject site, while the dwelling on 47A is below but to the side of 47C, with vegetation between the properties.

5.6 Energy Efficiency and overshadowing

The applicant has submitted shadow diagrams indicating shadow impacts from the proposed building. At 9am at the winter solstice, shadow will be confined to the rear (south) of the subject property. At 12 noon, the rear of the subject property and part of the rear yard of No 55 Drumlbyn Road will be overshadowed. At 3pm at the winter solstice, shadow will be extended across the rear of No 55 Drumlbyn Road and to part of the rear of No 47B. Overall, given the orientation and topography of the site, and the siting of the new building, shadow impacts associated with the new development are insignificant.

5.8 Acoustic and visual privacy

As discussed, the proposed building will be located substantially above the adjoining dwelling to the east (No 47B Drumlbyn Road). The existing ground level at 47B Drumlbyn Road (located between 1.1m and 2m off the common boundary with the subject site) is RL 54.3, while the subject site has an RL of 64.12 in the area of the proposed building. No 47B is also oriented towards the east. As such, views from the north-east facing balconies of the proposed development will therefore be distance views over No 47B towards Dover Heights and Bondi, rather than into the open space and living areas of No 47B. The north-east facing balconies are also located between 5.8m and 6.8m from the common property boundary with No 47B. On this basis it is not considered that the proposal generates any significant acoustic and visual privacy concerns.
5.9 *Car Parking and Driveways*

The existing residential flat building has one off-street parking space located within a stone garage at the top of the shared accessway. The proposed development would require six (6) resident and one (1) visitor carspace in accordance with Clause 5.9.3 of WRDCP 2003. Nine (9) spaces are proposed including three (3) visitor spaces with vehicle access to the site to be via a carlift through the shared accessway off Drumalbyn Road. The width of the right of way at its top end allows enough space for a vehicle to wait for the car lift. The car lift can elevate a single vehicle at a time from the lower ground level of the site (RL 54.4) to the basement car park level at RL 63. Overall, given the significant topographical constraints of the site, the proposed parking solution and number of spaces provided is considered adequate.

5.10 *Site facilities*

The proposal provides adequate site facilities (i.e mail boxes, garbage collection areas, laundry facilities, storage areas, etc).

5.13 *Access and Mobility*

The proposal has been designed to ensure adequate pedestrian and disabled access to and within the proposed residential flat building.

9.2 *DCP for off-street carping provision and servicing facilities*

The proposal has been considered against Council’s Car Parking DCP “*Off-Street Car Parking Provision and Servicing Facilities*” for guidance purposes only. As discussed, the existing residential flat building has one off-street parking space located within a stone garage at the top of the shared accessway. The proposed development would require six (6) resident and two (2) visitor carspaces. Nine (9) spaces are proposed including three (3) visitor spaces with vehicle access to the site to be via a carlift through the shared accessway off Drumalbyn Road. Council’s Engineers are satisfied with the basement layout and driveway gradients subject to conditions.

9.3 *Woollahra Access DCP*

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

10. **APPLICABLE REGULATIONS**

Clause 92 of the EPA Regulation 2000 requires that Council take into consideration Australian Standard AS 2601-1991: The demolition of structures, as in force at 1 July 1993. This requirement is addressed via **Condition No 51**.

11. **THE LIKELY IMPACTS OF THE PROPOSAL**

All likely impacts of the proposed development have been assessed elsewhere in this report.
12. **THE SUITABILITY OF THE SITE**

Excavation associated with the proposal is considered to be satisfactory with regard to hydrogeological and geotechnical issues, subject to **Conditions Nos 27-33** and in all other respects the subject site is suitable for the proposed development.

13. **SUBMISSIONS**

The proposal was advertised and notified in accordance with Council’s Advertising and Notifications DCP. In response, six (6) objections were received from the following:

- Greg Smith – 47A Drumalbyn Road
- JV and MP Steglick – 107 Victoria Road
- Sam Gazal – 1/47B Drumalbyn Road
- Michael Hulme on behalf of 105 Victoria Road
- John and Jo-Anne Diedrich – 55 Drumalbyn Road
- Fundamental Group Legal on behalf of Sam Gazal

The following matters were raised:

1. **The scale, height, bulk and floorspace of the development is unreasonable and unacceptable. It exceeds the FSR by at least 49% and building footprint by at least 35%. The scale is overbearing.**

   **Comment**
   
   The above matters have been discussed in detail in the report. The height of the building has been lowered 3m in comparison to the scheme, which was previously withdrawn and the top of the new building will be substantially below the level of the cliff face behind. In addition much of the bulk of the building and floor space will be below ground level, reducing its overall scale. The proposal also needs to be assessed given the surrounding built context, which is characterised by several large residential buildings.

2. **The subject site has previously been the subject of various development applications and Land and Environment Court actions since 1998. The issues and problems associated with the previous reasons for the various rejections have not substantially changed. The driveway is currently subject to a Council Notice with an intention to issue an order to repair or replace. It is not in a condition to take the level of traffic required for the proposed construction. We would also argue that the carriageway rights do not entitle the applicant to use this area for car parking or staging construction zones for excavation.**

   **Comment**
   
   On 24 September 2001, an application for a construction certificate was refused because the application failed to adequately address safety issues associated with the construction of the proposed development. In particular it was identified that there would be a substantial increase in excavation and resultant truck movements which would risk the stability of the access drive. Inadequate information was submitted regarding the carrying capacity of the driveway, certainty of monitoring devices and the practicality of the proposed winch system.
The driveway has since been reconstructed as part of the recent redevelopment of No 47A Drumalbyn Road. A condition is recommended that a dilapidation report on the new driveway and adjoining retaining walls shall be submitted to Council prior to the commencement of any demolition, excavation or construction works. The report should be completed by a practising structural engineer and should detail the maximum vehicle size and loads to use the shared accessway (refer condition 27).

Whether or not the carriageway rights entitle the applicant to use this area for car parking or staging during construction is a private matter between the parties concerned.

*The current zoning is residential 2(a), restricting development to single dwellings. It is wrong to conclude that existing use rights prevail.*

**Comment**
The matter of existing use rights has been discussed in detail in this report. Current legal advice is that the site does benefit from existing use rights.

*The proposed balconies and living areas look directly into our private areas.*

**Comment**
The balconies and living areas are orientated to take advantage of distance views towards the north-east, rather than into the yards of adjoining properties.

*The proposed development would burden the amenity by vastly increasing population and traffic. The proposed method of access to the site via a carlift would increase traffic congestion at the top of the steep driveway.*

**Comment**
It is not considered that the proposed car lift will increase traffic to unacceptable levels. A Revised driveway parking location and report prepared by Transport & Traffic Planning Assoc identifies a location for vehicles to stand to the right of the ROW back from the access to No 47A. This location is considered satisfactory, but will require linemarking and signage and will be subject to conditions (refer condition 26).

*The proposed construction management plan does not adequately deal with practical construction and site access issues.*

**Comment**
The construction management plan has been examined by Council’s Engineers and has been found to be adequate subject to conditions (refer conditions 15-17).

*The extraordinary steepness of the site, together with the unstable and unknown subsoil conditions would indicate the proposed over-development is not suited to the site. Danger associated with excavation, erosion and removal were particularly identified as major reasons for previous rejection.*

**Comment**
There is no doubt that the site has significant physical constraints. However overall, it is considered that the current design is responsive to the constraints of the site. Matters relating to excavation, erosion and construction can be dealt with via appropriate conditions of consent.
The upward slope of the roof to the north east will be particularly noticeable from our property and we would prefer to see a flat roof. We suggest a non-reflective green coloured roof to blend in with the landscaping/tree canopy.

Comment
A condition is recommended that the roof be painted in non-reflective green colours to blend in with the landscaping/tree canopy.

We strongly support the removal of the Port Jackson Fig Trees and any trees on the southern boundary which grow higher than the cliff face.

Comment
Clearly the residents in Victoria Road support the removal of the Port Jackson Fig only because it will improve their view. However a condition is recommended that the applicant plant suitable replacement trees in the south east corner of the site, as directed by Council’s Tree Management Officer.

Our home (No 55 Drunalbyn Road) will suffer substantial loss of sunlight.

Comment
The height of the current design has been lowered by 3m compared to the previous scheme which was withdrawn. Overshadowing associated with the proposal has been reduced to an acceptable level.

14. CONCLUSION - THE PUBLIC INTEREST

The site has significant physical constraints, which are in part responsible for its considerable history. The existing building is outdated and due to be replaced. The scheme submitted to Council is responsive to the constraints of the site and the surrounding built and natural context, being of a scale in keeping with adjoining buildings. The design of the building will ensure a high level of internal amenity, without significantly affecting the amenity of adjoining properties. From a distance, the profile of the new building will also be within the cliff face behind. Construction issues can be dealt with by appropriate conditions of consent. The proposal is considered to be satisfactory with regard to Section 79C considerations, subject to conditions.

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

THAT the Council, as the consent authority, grant development consent to Development Application No. 504/2004 for the demolition of the existing two-storey residential flat building and the construction of a new residential flat building over four levels (including basement) consisting of 3 units with basement parking for 9 cars on land at 47C Drunalbyn Road Bellevue Hill, subject to the following conditions:

1. New development

The development must be carried out in accordance with plans numbered BHDA 00-BHDA 22 Revision A, dated July 2004 drawn by Hightrade Design, all of which carry a Council stamp “Approved DA Plans” and the signature of a Council officer, except where amended by the following conditions.
2. **Tree Management**

That suitable mature replacement trees shall be planted (to the satisfaction of Council’s Trees Officer) close to the south-eastern and north western corners of the site. Details to be provided with the application for a Construction Certificate.

*Reason*

*This will help limit the loss of visual and environmental amenity in the locality*

3. **Roof Materials**

That the roof shall be painted in non-reflective green colours to blend in with the landscaping/tree canopy. Details to be provided with the application for a Construction Certificate.

*Reason*

*To reduce the visually intrusive nature of the future roof.*

4. **Stormwater Management Plan including On-Site Detention**

Prior to the issue of the Construction Certificate, a Stormwater Management Plan for the development site must be submitted and approved by the Accredited Certifier. This Condition is imposed to ensure site stormwater is disposed in a controlled and sustainable manner.

The Stormwater Management Plan must be in accordance with Council’s Draft Stormwater Development Control Plan and Local Approval Policy (DCP-LAP), and generally in accordance with the drainage plans and documentation prepared by Demlakian Consulting Engineers No's H2 B to H3 B dated May 2003

Stormwater run-off from the proposed development must drain to the recently constructed common drainage line in the private R.O.W. New drainage systems must be designed having regard to the need to prevent stormwater from entering buildings in accordance with the Building Code of Australia (BCA).

**An on-site stormwater detention (OSD) system must be provided** The minimum (On) Site Storage Requirements (SSR) and the Peak Site Discharge (PSD) from the site must be designed according to the following storage/discharge relationships taken from Council’s *Draft* Stormwater Development Control Plan.

<table>
<thead>
<tr>
<th></th>
<th>P.S.D</th>
<th>L/s</th>
<th>Min. Volume</th>
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<td>4.2</td>
<td>2</td>
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<tr>
<td>100 Year ARI</td>
<td>35.7</td>
<td></td>
<td>28.3</td>
<td>(Residential Flat Building)</td>
</tr>
</tbody>
</table>

The Stormwater Management Plan must include the following specific requirements:
a. Layout plan

A detailed drainage plan at a scale of 1:100 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:

- All pipe layouts, dimensions, grades, lengths and material specification
- Location of On-Site Detention unit
- All invert levels reduced to Australian Height Datum (AHD)
- Location and dimensions of all drainage pits
- Point and method of connection to Councils drainage infrastructure
- Overland flow paths over impervious areas.

b. On-site Detention (OSD) details:

- Internal dimensions and volume of the proposed detention storage.
- Diameter of the outlet to the proposed detention storage basin.
- Plans, elevations and sections showing the detention storage basin invert level, centre-line level of outlet, top water level, finished surface level and adjacent structures.
- Details of access and maintenance facilities.
- Construction and structural details of all tanks and pits and/or manufacturer’s specifications for proprietary products.
- Details of the emergency overland flow-path (to an approved Council drainage point) in the event of a blockage to the on-site detention system.
- Non-removable fixing details for orifice plates where used.

c. Copies of certificates of title, showing the creation of private easements to drain water by gravity, if required.

d. Subsoil Drainage

- Subsoil drainage details, clean out points, discharge point.

5. On-Site Detention requirements

The on-site detention system must be designed having regard to the following requirements:

a. On-Site Detention (OSD) storage’s must, generally, be as close as possible to the lowest point of the site and be designed to collect all piped and surface stormwater run-off from the site. The location and design of the OSD storage must not have a detrimental impact on upstream or adjacent properties.

b. Storage’s must not be located in drainage easements and/or overland flow paths, which convey catchment flows through the site.

c. Where all of a site cannot be drained through the OSD storage, additional storage (attenuation) is required in accordance with the following table.
The area bypassing the OSD system must not exceed 20 percent of the total site area and the total outflow from the site (from the OSD tank and from any bypass areas) must not exceed the required Peak Site Discharge (PSD) specified. Areas not draining to the OSD system must be discharged to a Council approved drainage point.

d. Where the development requires changes to the land titling to accommodate more than one residential dwelling or commercial premise the following apply:
   - For Sub-division, Dual Occupancy, Villa or Torrens Title, separate on-site detention storage must be provided for each dwelling
   - For Strata development, storage shall generally be located in common areas. Council may consider the use of private spaces for storage (subject to satisfactory overland flow paths and freeboards) where difficult site conditions occur. In these instances, the below ground storage component for aboveground storage’s will be increased to 50%.

e. Discharge restriction from OSD systems must be by the use of appropriately sized short length of reduced diameter pipe or non-removable orifice plate (Dyna-bolted with 2-part epoxy). Discharge control pits must be fitted with screens. Screens must be able to be easily removed for routine maintenance. The screen must:
   - Protect the outlet from blockage,
   - Dissipate the kinetic energy of inflows creating static conditions around the discharge restriction, which help to achieve predictable discharge coefficients, and
   - Retain litter and debris, which would degrade downstream waterways

f. Below-ground Storage
   - Building floor levels must be set above the top water level (TWL) of OSD storages’ with 150mm freeboard where the OSD storage is located near buildings. This requirement applies to both new and existing buildings.
   - Backwater protection device(s) must be provided where there is the potential for backwater from OSD system into areas that are below the OSD system overflow level.

g. Storage in Landscaped Areas
   - Storage’s in landscaping areas will require an extra 25% volume to compensate for vegetation growth and construction variation (design of the hydraulic controls must be based on the normal volume).
- Landscape design in the area of the surface storage must avoid the use of materials susceptible to creating blockages. This would include floatable landscaping materials (such as bark) and trees or planting’s that drop leaves. Adequate subsoil drainage must be provided in the aboveground storage to retain the amenity of the area after a storage event.

h. Construction, Access and Maintenance

- Bondek must not be used in a composite slab design.
- Internal supporting walls must be minimised to ease maintenance. Typically, internal supports must only be considered for spans greater than 3m.
- Tank needs to be checked for normal earth, surcharge, traffic and hydrostatic loads. Where free draining soils do not exist around the tank, buoyancy must be considered.
- Excavation for the tank must be checked for impact on the zone of influence of adjacent footings and structures.
- A depression within the OSD system is not to be used to provide a silt/sediment trap. Where required a proprietary silt/oil arrestor must be provided (treatment of runoff from vehicle parking areas)
- Access for cleaning (typically slushing) must be provided at the upstream and downstream ends of the tank. Access must also be provided in the immediate vicinity of the discharge point. Generally, grated access points must be provided to enable venting. Where access points need to be sealed, alternative ventilation means (incl mechanical, if required,) must be provided.
- The on-site detention must have a minimum access opening size of 600mm x 600mm for tank depths less than 1.5m and 900mm x 900mm opening size for deeper tanks. The access point must be fitted with a hinged, lockable galvanised grate and be placed over the outlet. Step irons must be placed at the access point to enable entry for maintenance and inspection. The designer must consider the provisions of AS 2865-1986 ‘Safe working in a confined Space’ and other work cover requirements.

6. Positive Covenant - Drainage system

A Positive Covenant, pursuant to Section 88E of the Conveyancing Act, must be created on the title of the subject property. The Covenant must provide for the indemnification of Council from any claims or actions and the on-going maintenance of the on-site detention and/or pump and sump system in the development. This includes all ancillary gutters, pipes, drains, walls, kerbs, pits, pumps, grates, tanks, chambers, basins and surfaces designed to temporarily detain stormwater.


7. Compliance with the Stormwater Management Plan

The stormwater drainage system must be constructed in accordance with the Stormwater Management Plan as prepared by Demlakian Consulting Engineers No's H2 B to H3 B dated May 2003
The stormwater run-off from the proposed development must drain to the recently constructed common drainage line in the private R.O.W.

8. **Stormwater Certification and Work-As-Executed (WAE) Plans**

Prior to the release of the Final Building Certificate, Certification and Work-As-Executed (WAE) plans must be submitted and approved by the Accredited Certifier demonstrating that the site drainage system has been provided according to the submitted calculations and/or approved plans.

Certifications must be provided by a suitably qualified engineer. WAE plans must be prepared and certified by a Registered Surveyor.

The following must be provided:

a. Certification that:

   - The drainage system has been installed in accordance with the drainage Conditions of Development Consent.
   - That all drainage components, including the on site detention, are structurally adequate and have been installed in accordance with the relevant Codes and Standards and/or specifications.
   - That the on-site detention system will provide the detention storage volume and attenuation in accordance with the submitted calculations.
   - Buffer storage volume and pump discharge rates are in accordance with the submitted calculations and plans.

b. Work-As-Executed (WAE) plans showing:

   - Pipe and drainage system layout, including all pits, pipe diameters, grades, materials, invert levels and surface levels.
   - Details (exact point and method) of connection to Council system
   - OSD tank dimensions, location and orifice plate/outlet details.
   - Contours indicating the direction in which water will flow should the OSD storage overflow.

9. **Compliance with erosion and sediment control plan**

The erosion and sediment control plan must be implemented during site works and construction activities in accordance Sediment Control and Construction Management Plan prepared by Demlakian Consulting Engineers No H4 B dated May 2003. All controls in the Plan must be maintained at all times. A copy of the Plan must be kept on-site at all times and made available to the accredited certifier and Council officers on request.

10. **Sediment removal from vehicle wheels**

A vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, must be installed to prevent mud and dirt leaving the site and being deposited on the street.
11. **Display of Council’s warning sign for soil and water management**

Throughout the demolition, excavation and construction period, Council’s warning sign for soil and water management must be displayed on the most prominent point of the building site, visible both from the street and site.

A copy of the sign is available from Council.

12. **Stockpiles**

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

13. **Location of building operations**

Building operations such as brick cutting, washing tools or brushes and mixing mortar must not take place on public roadways or footways or in any other location which could lead to the discharge of materials into the stormwater drainage system.

Footpaths, gutters and roadways must be swept regularly to keep them free from sediment.

14. **Temporary disposal of roof water**

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

15. **Compliance with the construction management plan**

All excavation, demolition and construction work and traffic movements must be carried out in accordance with the approved Construction Management Plan prepared by Demlakian Consulting Engineers dated 17 July 2003 and Supplementary Report dated 29 July 2004.

All controls in the Plan must be maintained at all times. A copy of the Plan must be kept on-site at all times and made available to the PCA or Council on request.

16. **Site fencing**

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

17. **Works Zone**

A Work Zone (Construction Zone) is required for this development. Prior to issue of the Construction Certificate an application for the required Works Zone must be submitted to Woollahra Council, for consideration by the Woollahra Local Traffic Committee.
Prior to commencement of any demolition, land clearing, piling, piering, excavation, construction or like work or the issue of a Notice of Commencement of building works, any Works Zone approval by the Woollahra Local Traffic Committee shall be implemented strictly in accordance with the Committee’s terms and conditions.

Note:
- The Woollahra Local Traffic Committee meets monthly.
- A minimum of eight weeks is required for assessment and determination of a Works Zone application.
- Failure to comply with this condition may result in fines and proceedings pursuant to Part 6 of the Environmental Planning & Assessment Act 1979.

18. **Damage security deposit**

A security deposit of **$32,000** for the cost of making good any damage to Council property caused as a consequence of the construction work, plus an administration fee of **$154.00**, must be paid to Council prior to the issue of the Construction Certificate. The security deposit, which may be in the form of a bank guarantee, has been calculated in accordance with the following schedule.

<table>
<thead>
<tr>
<th>Estimated cost of work</th>
<th>Deposit</th>
</tr>
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<tr>
<td>Works up to $50,000</td>
<td>$2,000</td>
</tr>
<tr>
<td>Works in excess of $50,000 &amp; up to $100,000</td>
<td>$4,000</td>
</tr>
<tr>
<td>Works in excess of $100,000</td>
<td>$4,000 + $200/$10,000 estimated cost &gt; $100,000</td>
</tr>
</tbody>
</table>

Council may use all or part of the Damage Security Deposit to complete damage restoration works if they do not meet Council’s requirements.

19. **Protection of services**

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

20. **Road Opening Permit**

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

21. **Storage of materials and plant on Council’s footpath**

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

A safe pedestrian circulation route a minimum of 1.5m wide and with a pavement free of trip hazards must be maintained at all times on or adjacent to the public footpaths fronting the construction site. Where the footpath is damaged, repair works must be carried when directed by Council officers and in accordance with the relevant clauses of the current edition of AUS-SPEC.

Where circulation is diverted on to the roadway clear directional signage and protective barricades must be installed in accordance with Aust AS1742-3 1996 “Traffic Control Devices for Work on Roads”.

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

23. Completion of infrastructure work

All infrastructure works must be completed and be certified by the accredited certifier as meeting all Council requirements and as-built drawings are to be submitted to Council’s Development Engineer, prior to the release of the Infrastructure Works Bond. Works generally must be in accordance with the relevant clauses of the current edition of AUS-SPEC.

24. Repair of Damaged Infrastructure

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

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

25. Vehicular access and garaging

Driveways and access ramps must be designed not to scrape the underside of cars.

In all other respects, proposed garage/car park/basement car park, driveways and access ramps must be designed to comply with Australian Standard AS 2890.1 – “Off-Street car parking.”

26. Vehicular Lift Queuing and visitor parking spaces

An intercom system and all necessary signage must be provided to inform and enable visitors to access and use the designated visitor spaces inside the car park. The visitor spaces must be clearly signposted in the car park and notification of their existence and location must be provided at the lift/property entrance.

The proposed lift waiting carpark space as defined in the report prepared by Transport & Traffic Planning Assoc dated 16 Feb 2003 is to:
• be signposted and
• linemarked, including directional markings to and from the car lift.
• have an intercom in be provided for visitors and
• be able to access controls for the lift operation

All details must be submitted to Council or an Accredited Certifier prior to issue of a Construction Certificate.

27. Dilapidation survey

A dilapidation survey of the property and infrastructure must be conducted prior to any site work. The lateral extent of the survey must cover the likely “zone of influence” of any dewatering and/or construction induced vibration. A practicing structural engineer must prepare a full dilapidation report on the structural condition of all existing structures at the following locations:

• 107 Victoria Road,
• 105 Victoria Road
• 103 Victoria Road
• 101 Victoria Road
• *93 Victoria Road
• *55 Drumalbyn Road
• 47B Drumalbyn Road
• the existing common driveway between No 47A, 47B, 40 and 45 Drumalbyn Road and adjoining retaining walls

*see the Geotechnical and Hydrogeological report prepared by Jeffery & Katauskus dated 9 May 2003 Ref: 17153W2rpt for reference to the stability of structures in the properties

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

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

28. Preparation of Additional geotechnical and hydrogeological reports and Recommended Initial Works

Additional Geotechnical and Hydrogeological Reports with supporting information and plans must be submitted to Council or an Accredited Certifier prior to issue of a Construction Certificate and prior to commencement of excavation or dewatering for excavation. This will include all requirements of the Geotechnical and Hydrogeological report/s prepared by Jeffery & Katauskus dated 9 May 2003 Ref: 17153W2rpt and Supplementary Report 17153W3 dated 23 July 2004 which includes:

• The site clearing vegetation is to be removed from the cliff face for the full site length and the area to be mapped by a geotechnical engineer
• A further 2 boreholes be drilled in the area of the entry and Car Lift
• Detailed excavation procedure
• Rock Catch Fence - is to be constructed along the full length of the proposed excavation before demolition or excavation to protect building on 47B as outlined in Sect 4.6

The Geotechnical and Hydrogeological reports must be prepared in accordance with the Council guideline “Guidelines for Preparation of a Geotechnical and Hydrogeological Reports”.

29. Compliance with the recommendations of the geotechnical and hydrogeological reports and Recommended Initial Works

The development works are to be undertaken in accordance with the recommendations of the Geotechnical and Hydrogeological report/s prepared by Jeffery & Katauskus dated 9 May 2003 Ref: 17153W2rpt, Supplementary Report 17153W3 dated 23 July 2004 and the required additional reports.

30. Hydrogeological and Geotechnical Monitoring Program

Excavation works associated with the proposed development must be overseen and monitored by a qualified and practising geotechnical engineer. A Hydrogeological and Geotechnical Monitoring Program must be produced to ensure that all geotechnical matters are regularly assessed during the construction.

The Hydrogeological and Geotechnical Monitoring Program for the construction works must be consistent with the recommendations of the Geotechnical and Hydrogeological Report prepared by Jeffery & Katauskas dated 9 May 2003 Ref: 17153W2rpt, Supplementary Report 17153W3 dated 23 July 2004 and other geotechnical reports.

Prior to the issue of a Construction Certificate, the applicant must submit to the Accredited Certifier details of the proposed Hydrogeological and Geotechnical Monitoring Program. A suitably qualified and practising geotechnical engineer must prepare the Program, which must consist of the following:

• Recommended hold points to allow for inspection by a geotechnical engineer during the following construction procedures;
  – Excavation of the site (face of excavation, base, etc)
  – Installation and construction of temporary and permanent shoring/retaining walls.
  – Foundation bearing conditions and footing construction.
  – Installation of sub-soil drainage.

• Location, type and regularity of further geotechnical/hydrogeological investigations and testing.

31. Compliance with the Hydrogeological and Geotechnical Monitoring Program

Excavation and construction works must be undertaken in accordance with the “Geotechnical and Hydrogeological Monitoring Program” submitted as required by condition of consent.

A qualified and registered geotechnical engineer shall provide certification to the Accredited Certifier that all earth works have been carried out;

• In accordance with the relevant Australian Standards and Codes of Practise.
• In a manner that does not compromise the structural integrity of all adjacent structures, property and infrastructure.
• In accordance with the Hydrogeological and Geotechnical Monitoring Program.

The certification and a complete record of inspections, testing and monitoring (with certifications) must be submitted in report form to the Accredited Certifier for approval, prior to the issue of a Final Building Certificate.

32. Vibration Monitoring Program

Vibration resulting from construction activities can adversely affect surrounding property and infrastructure. To ensure that vibration created by the method of construction does not adversely impact on the existing building, surrounding property and infrastructure, a Vibration Monitoring Program must be implemented.

Prior to the issue of the Construction Certificate, the applicant must submit to the Accredited Certifier details of the proposed Vibration Monitoring Program. A qualified and practising geotechnical and/or hydrogeological engineer must prepare the Vibration Monitoring Program and undertake all associated investigations. Details to be included in Vibration Monitoring Program to include:

a) pre-set acceptable limits for the variation of:
   – settlement
   – deflection or movement of retaining mechanisms such as shoring and bracing and
   – vibration in accordance with AS 2187.2 1993 Appendix J, including acceptable velocity of vibration.

b) the location and type of monitoring systems to be used

c) recommended hold points to allow for inspection and certification by a geotechnical engineer and

d) a contingency plan should the pre-set acceptable limits be exceeded.

33. Certification of Vibration Monitoring

A record of inspections and monitoring of vibration in accordance with the Vibration Monitoring Program must be submitted in a report form to the Accredited Certifier prior to release of the Certificate of Occupancy or final building inspection as appropriate. A qualified and practising geotechnical and/or hydrogeological engineer must prepare certification.

34. Requirement for a Construction Certificate

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

(a) detailed plans and specifications of the building have been endorsed with a Construction Certificate by:
   (i) Council; or
   (ii) an accredited certifier; and
(b) a principal certifying authority (PCA) has been appointed and the Council has been notified in writing of the appointment, and

(c) at least two days notice, in writing, has been given to Council of the intention to commence work.

35. Materials

Details of the colour, texture and substance of all external materials must be submitted to Council or the accredited certifier prior to the issue of a Construction Certificate and are to be to the satisfaction of an authorised Council assessment officer or the accredited certifier.

36. Drawings to show levels and heights

The reduced levels of the ground floor, first floor and the overall height of the roof in relation to Australian Height Datum must be shown on the drawings submitted with the Construction Certificate Application to ensure that building construction complies with the development consent.

37. Structural details

Structural engineering details and design calculations, prepared and certified by a qualified practising Structural Engineer, must be submitted with Construction Certificate application, for all reinforced concrete work, structural steel work, retaining walls, brick fences, shoring and underpinning, isolated piers, chimneys, parapets and other structural members.

This condition is imposed to ensure the structural integrity of the proposed building work.

38. Services and electrical sub-station

All electrical and telephone services to the subject property must be placed underground. If an electrical sub-station is required, it must be situated within the boundaries of the subject property and suitably screened.

39. Layout of buildings

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

40. Demolition, excavation and construction hours

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

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

42. Levels

For the purpose of indicating relative levels in terms of Australian Height Datum and boundary clearances, and to ensure that building construction complies with the development consent, survey certificates must be provided to the PCA in respect of the building/s layout and ground floor level/s prior to pouring of concrete or laying of timber floor boards.

43. Building Inspections

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

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

44. Requirement for a Compliance Certificate

A Compliance Certificate must be issued prior to the issue of an Occupation Certificate certifying that the development has been built and completed in accordance with the development consent and that all the conditions of development consent have been satisfied.

45. Occupation of premises (Class 2-9 buildings)

The premises must not be occupied prior to the issue of an Occupation Certificate.

46. Wet areas

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

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

48. **Long Service Levy Payment**

A Long Service Levy under Section 34 of the *Building & Construction Industry Long Service Payment Act*, 1986, must be paid and proof of payment provided prior to the issue of a Construction Certificate.

The Levy can be paid directly to the Long Services Payments Corporation or to Council.

49. **Water conservation**

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

50. **Energy efficiency**

The development must be designed and constructed so that each dwelling achieves a performance rating of 3.5 stars (NatHERS or equivalent). A NatHERS certificate, or equivalent, is to be submitted by an accredited NatHERS assessor. (A list of accredited assessors is available from Council’s Customer Services Counter or from the Sustainable Energy Development Authority).

51. **Standard for demolition**

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

52. **Compliance with Building Code of Australia**

(a) All building work must be carried out in accordance with the provisions of the *Building Code of Australia*.

(b) This condition does not apply to the extent to which an exemption is in force under Clause 187 or 188, of the *Environmental Planning and Assessment Regulation 2000*, subject to the terms of any condition or requirement referred to in Clause 187 (6) or 188 (4) of the Regulation.

53. **Residential building work**

(a) Building work that involves residential building work (within the meaning of the *Home Building Act 1989*) must not be carried out unless the principal certifying authority (PCA) for the development to which the work relates:
in the case of work to be done by a licensee under that Act:

(i) has been informed in writing of the licensee's name and contractor license number; and
(ii) is satisfied that the licensee has complied with the requirements of Part 6 of that Act; or

in the case of work to be done by any other person:

(iii) has been informed in writing of the person's name and owner-builder permit number; or
(iv) has been given a declaration, signed by the owner of the land, that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of owner-builder work in Section 29 of that Act,

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

Note: The amount referred to in paragraph (a) (iv) above is prescribed by regulations under the Home Building Act 1989. As at the date on which this Regulation was Gazetted, that amount was $3,000. As those regulations are amended from time to time, so that amount may vary.

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

54. Excavations and backfilling

(a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.

(b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

55. Retaining walls and drainage

If the soil conditions require it:

(a) retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil must be provided; and

(b) adequate provision must be made for drainage.
56. Support for neighbouring buildings

(a) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

(i) must preserve and protect the building from damage; and
(ii) if necessary, must underpin and support the building in an approved manner; and
(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(b) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

(c) In this condition, allotment of land includes a public road and any other public place.

57. Signs to be erected on building and demolition sites

(a) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:

(i) stating that unauthorised entry to the work site is prohibited; and
(ii) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.

(b) Any such sign must be removed when the work has been completed.

(c) This clause does not apply to:

(i) building work carried out inside an existing building; or
(ii) building work carried out on premises that must be occupied continuously (both during and outside working hours) while the work is being carried out.

58. Toilet facilities

(a) Toilet facilities must be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

(b) Each toilet provided:

(a) must be a standard flushing toilet; and

(b) must be connected:

(i) to a public sewer; or
(ii) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council; or
(iii) if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.

(c) The provision of toilet facilities in accordance with this clause must be completed before any other work is commenced.

(d) In this condition:

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

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

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

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

59. **Residential building work over $12,000 in value**

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

(a) the proposed builder's details (in writing); and

(b) proof of payment of the required insurance premium pursuant to Part 6 of the Home Building Act 1989.

60. **Photographic archival recording of buildings with little or no heritage significance that are to be demolished:**

A photographic archival record of the building and landscape elements to be demolished is to be submitted, to the satisfaction of Council’s heritage officer, prior to the commencement of demolition work and prior to the issue of a Construction certificate.

The photographic archival recording is to be bound in an A4 format and is to include the following:

- Site plan at a scale of 1:200 (or 1:500) if appropriate of all structures and major landscape elements including their relationship to the street and adjoining properties.
- Postcard sized photographs of:

  (i) each elevation,
  (ii) each structure and landscape feature;
  (iii) internal or external details if nominated in Council’s heritage officer’s assessment report; and
  (iv) views to the subject property from each street and laneway or public space.
Each photograph to be mounted, labelled and cross-referenced in accordance with recognised archival recording practice.

One original coloured photographic set and a coloured photocopy are to be submitted to the satisfaction of Council's heritage officer prior to the commencement of demolition work and prior to the issue of a construction certificate. The original will be retained by Council and the coloured photocopy will be provided to the Woollahra Local History Library.

Andrew Biller
ASSESSMENT OFFICER

Nick Economou
TEAM LEADER

ADVISINGS

1. Appeal

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

2. Application for a Construction Certificate

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

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

3. Other approvals

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

- an Application for Approval under Section 68 of the Local Government Act 1993 for an activity under that Act, including the erection of a hoarding. All such applications must comply with the Building Code of Australia.
- an application for an Occupation Certificate under Section 109(C)(2) of the Environmental Planning and Assessment Act 1979.
- An application for an Occupation Certificate may be lodged with Council if the applicant has nominated Council as the Principal Certifying Authority.
• an Application for a Subdivision Certificate under Section 109(C)(1)(d) of the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed;
• an Application for Strata Title Subdivision under the *Strata Schemes (Freehold Development) Act 1973*, if strata title subdivision of the development is proposed.

4. **Works and requirements of other authorities**

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

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

• *Australia Post* has requirements for the positioning and dimensions of mail boxes in new commercial and residential developments. A brochure is available from your nearest Australia Post Office.

• *AGL Sydney Limited* has requirements for the provision of gas connections.

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

• *Telstra* has requirements concerning access to services that it provides.

5. **Occupational Health and Safety**

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

6. **Hazardous Material Management**

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

7. **Hazardous waste removal (including asbestos)**

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

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

Details of the exact nature, quantity, location, method of storage and packing of any material covered by the *Dangerous Goods Act, 1975*, must be submitted to the WorkCover Authority in accordance with its requirements.

9. **Model**

If you submitted a model with the application it must be collected from the Council offices within fourteen (14) days of the date of this determination. Models not collected will be disposed of by Council.

10. **Compliance with the Disability Discrimination Act**

This decision does not ensure compliance with the *Disability Discrimination Act*. You should therefore investigate your liability under that Act. *Australian Standard 1428 - Design for Access and Mobility*, Parts 2, 3 and 4 may assist in determining compliance with the Disability Discrimination Act.

11. **Modifications to the consent**

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

12. **Storage bins on footpath and roadway**

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

13. **Home Building Act insurance**

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

14. **Building Code of Australia classification**

The classification of the building pursuant to the Building Code of Australia is Class 2 & 7.

15. **Long Service Levy**

The current rate of the levy required by this consent is 0.2% of the cost all building and construction work costing $25,000 or more.

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**ANNEXURES**

1. Plans and elevations
### 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 1070/2003/2</td>
</tr>
<tr>
<td>ADDRESS:</td>
<td>23 Wilberforce Avenue, Rose Bay</td>
</tr>
<tr>
<td>EXISTING CONSENT:</td>
<td>The demolition of an existing dwelling-house and the erection of a residential flat building containing 2 dwellings</td>
</tr>
<tr>
<td>TYPE OF CONSENT:</td>
<td>Local development</td>
</tr>
<tr>
<td>DATE OF CONSENT:</td>
<td>11 November 2004</td>
</tr>
<tr>
<td>ZONING:</td>
<td>Residential 2 (b)</td>
</tr>
<tr>
<td>PROPOSED MODIFICATIONS:</td>
<td>External modifications to rear of residential flat building</td>
</tr>
<tr>
<td>DATE S96 LODGED:</td>
<td>22/04/2005</td>
</tr>
<tr>
<td>CONSENT AUTHORITY:</td>
<td>Land &amp; Environment Court</td>
</tr>
<tr>
<td>APPLICANT:</td>
<td>Ercole Palazzetti Pty Ltd</td>
</tr>
<tr>
<td>OWNER:</td>
<td>Theodor Homes Pty Ltd</td>
</tr>
<tr>
<td>AUTHOR:</td>
<td>Mr D Booth</td>
</tr>
</tbody>
</table>

**LOCALITY PLAN**

![Locality Plan](image-url)
1. SUMMARY

Reason for report

The original development application was recommended for approval by Council's Senior Assessment Officer. Council's Development Control Committee refused the development application on 21 June 2004. An amended scheme was subsequently approved by the Land & Environment Court on 11 November 2004. On the basis that the proposed modifications to the rear of the residential flat building render the scheme identical to that originally considered by the Development Control Committee, the Section 96 application is referred to the committee for determination.

Issues

- rear setback non-compliance
- floor space ratio non-compliance
- south-eastern side boundary setback non-compliance
- building footprint non-compliance
- objectors’ concerns

Objections

Two

Recommendation

The proposed modifications to the development consent are recommended for approval because:

- they are considered to be satisfactory with regard to the relevant provisions under Section 96 and Section of 79C of the Environmental Planning and Assessment Act 1979
- the consent, as proposed to be modified, is considered to be substantially the same as that originally granted
- they will not adversely affect the amenity of the public domain or adjoining properties such that refusal is justified

2. DESCRIPTION OF APPROVED PROPOSAL

The approved proposal involves the demolition of an existing dwelling-house and detached carport and the erection of a two storey, residential flat building containing two x three bedroom residential units over a basement carpark level facilitating parking for five vehicles. The approved residential flat building has a hipped, pitched roof form.

3. DESCRIPTION OF PROPOSED MODIFICATIONS

The proposed modifications involve the south-eastern extension of the rear loggia at ground floor level and the rear balcony at first floor level by 1.7 m, the addition of a 3 x 5m “meal” room to the south-eastern corner of the ground floor level, the addition of a 3 x 3m “meal” room to the south-eastern corner of the first floor level and a 3.3 m rear extension of the roof over the first floor addition and the planter adjacent to the south-eastern elevation at first floor level.
The proposed modifications increase the gross floor area of the approved scheme by 24m² and the building footprint by approximately 20.8 m².

4. DESCRIPTION OF SITE AND LOCALITY

The site is located on the south-western side of Wilberforce Avenue at the intersection with Albemarle Lane. The site has a 13.715m frontage to Wilberforce Avenue, a north-western boundary (Wilberforce Lane frontage) 42.67 m in length; a south-eastern boundary 42.67m in length and a south-western (rear) boundary width of 13.715m. The area of the site is 585.2m². The site has been cleared of all structures.

Adjoining development to the south-east (No. 25 Wilberforce Avenue) consists of a two storey dwelling-house. To the north of the site is Rose Bay Public School. To the rear of the site is a single storey dwelling-house and a double garage (12 Albermarle Avenue).

Development within the vicinity of the site (along Wilberforce Avenue) is characterised by a mix of dwelling-houses and recently constructed residential flat buildings.

5. PROPERTY HISTORY

The original development application was recommended for approval by Council's Senior Assessment Officer. Council's Development Control Committee refused the development application on 21 June 2004 for the following reasons:-

1. The proposal does not comply with Council’s site frontage standard and is inconsistent with Objectives A and D under Clause 10A of WLEP 1995;
2. The proposed north-western side boundary setback does not comply with Council’s setback control as prescribed under Part 5.2 of WRDCP 1999;
3. The north-western excavation to the basement level is sited less than Council’s prescribed 1.5m setback control;
4. The proposal does not comply with Council’s 40% building footprint control;
5. The proposal does not comply with Council’s 40% deep soil landscaping requirement and;
6. The proposal is not in the public interest.

The applicant subsequently appealed against the refusal of the development application. Prior to the hearing, amendments were voluntarily made to the refused development application (not requested by the Land & Environment Court), involving the deletion of the elements proposed to be added under the subject Section 96 application. The amended proposal was approved by the Land & Environment Court on 11 November 2004. The proposed modifications to the rear of the residential flat building render the scheme identical to that originally considered by the Development Control Committee.

6. REFERRALS

No referrals required.

ASSESSMENT UNDER S96

7.1 S96 (1) Correction of minor error, misdescription or miscalculation

Not applicable.
7.2 S96 (1A) Modification involving minimal environmental impact

Not applicable.

7.3 S96 (2) Other modifications

Potential adverse environmental impacts associated with the proposed modifications are loss of amenity impacts upon adjoining residential properties involving overshadowing, visual impact and loss of privacy. Accordingly, the subject Section 96 Application is deemed to fall within this category.

7.4 S96AA Modification of a consent granted by the Court

This clause enables Council to modify a development consent granted by the Court providing that:

(a) 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 the consent as originally granted was modified (if at all).

The proposed modifications to the development consent are the first. The proposed extensions to the rear of the development are minor relative to the scope of the development consent (a new residential flat building) such that the development consent, as proposed to be modified, is considered to be substantially the same as that originally approved.

(b) it has notified the application in accordance with the regulations and Council's DCP for Advertising and Notification of Development Applications and Applications to Modify Development Consent.

The proposed modifications were advertised in the Wentworth Courier and notified to surrounding properties on 4 May 2005.

(c) it has notified any person who made a submission in respect of the original development application.

The notification of the proposed modifications included the persons who objected to the original development application.

(d) it has considered any submissions made concerning the proposed modifications

In response to the advertising/notification of the proposed modifications, two submissions were received; the nature of which is discussed below under the section 13 Submissions.

7.5 Substantially the same development

The proposed modifications to the development consent are the first. The proposed extensions to the rear of the development are minor relative to the scope of the development consent (a new residential flat building) such that the development consent, as proposed to be modified, is considered to be substantially the same as that originally approved.
7.6 S96 (2) (b) Consultation with Minister, public authority or approval body

Not applicable.

7.7 Threatened species

The subject modifications will not result in any adverse impact upon any threatened species.

ENVIRONMENTAL ASSESSMENT UNDER S.79C

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

8. RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION

8.1 SEPPs

SEPP 55 – Remediation of Land

Under clause 7 (1) (a) of State Environmental Planning Policy No 55-Remediation of Land, consideration is required to be given as to whether the land is contaminated. The assessment of the original development application concluded that the proposal did not require further consideration under clause 7 (1) (b) and (c) of SEPP 55. The same conclusion applies to the proposed modifications.

8.2 REPs

Sydney Regional Environmental Plan No. 23 – Sydney and Middle Harbours

The provisions of Clause 18 and the objectives stated under Clause 2 of this instrument require Council to consider the visual impact that a development proposal may have upon Sydney Harbour and adjacent foreshore areas. The proposed modifications would not be visible from Sydney Harbour or adjoining foreshore areas and, accordingly, are considered to be satisfactory with regard to the provisions of this instrument.

8.3 Other relevant legislation

There is no other legislation relevant to the proposed modifications.

9. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

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

The proposed modifications are considered to be consistent with the aims and objectives of the LEP and the relevant objectives of the Residential 2(b) zone.
9.2 Statutory compliance table

<table>
<thead>
<tr>
<th>Site Area (585.2 m²)</th>
<th>Approved development</th>
<th>Proposed modifications</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site frontage (m)</td>
<td>13.715</td>
<td>13.715</td>
<td>15</td>
<td>Approved non-compliance</td>
</tr>
<tr>
<td>Overall Height (m)</td>
<td>9.3</td>
<td>9.3</td>
<td>9.5</td>
<td>YES</td>
</tr>
<tr>
<td>Floor Space Ratio</td>
<td>0.77:1 (451.3 m²)</td>
<td>0.81:1 (475.3 m²)</td>
<td>0.75:1 (438.9 m²)</td>
<td>NO</td>
</tr>
</tbody>
</table>

9.3 Site frontage

Clause 10B(1) of Woollahra LEP 1995 states that “a site must not be developed for the purpose of a residential flat building containing three dwellings or fewer unless the width of the site at the first alignment is 15 metres or more”.

Whilst the subject site has a frontage of 13.715 m to Wilberforce Avenue and therefore does not comply with the minimum site frontage requirement, a SEPP 1 objection to the development standard was supported by the Land and Environment Court in the approval of the original development application. The subject Section 96 application does not seek to vary the dimensions of the allotment or the number of units. Accordingly, the proposed modifications do not involve a further non-compliance with this development standard.

9.4 Height

The maximum height of the approved development is 9.3 m. The proposed modifications involve a maximum height of 9.3 m which complies with Council’s 9.5 m height standard.

9.5 Floor space ratio

The proposed modifications involves an additional 24 m² of gross floor area and will increase the floor space ratio of the subject development from 0.77:1, as approved, to 0.81:1, thereby exceeding Council’s maximum floor space ratio development standard of 0.75:1 by 36.4 m².

The non-compliance with the floor space ratio standard can be attributed to the gazettal of Amendment No 46 to Woollahra LEP 1995 on 27 February 2004 which reduced the floor space ratio control for the subject site from 0.875:1 to 0.75:1. The original development application was lodged prior to the gazettal of Amendment No 46, and the development, as approved, complied with the floor space ratio standard applicable at that time, being 0.875:1.

Whilst an objection to Council’s floor space ratio development standard under SEPP No 1–Development Standards is not required for a Section 96 Application, the objectives of the standard are relevant. The objectives of the FSR standard are as follows:

(a) to set the maximum density for new development
(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
(c) to minimise adverse environmental effect on the use or enjoyment, or both, of adjoining properties
(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
Having regard to the above-mentioned objectives and the non-compliance with Council’s floor space ratio control, the proposed additional gross floor area of 24 m² to the approved development is considered to be satisfactory for the following reasons:-

- the proposed modifications do not increase the density of the development in terms of residential capacity
- the minor additional floor area of 24 m² involves a 3-3.3 m extension of the south-eastern side elevation towards the rear boundary at ground and first floor levels. These modifications will not be visible from Wilberforce Avenue and only obliquely visible from a minor section of Albemarle Lane. The proposed modifications will not have any significant adverse impact upon the public domain
- the extension of the south-eastern side elevation towards the rear boundary involves a maximum external wall height of approximately 7.4 m, a setback from the south-eastern side boundary of 1.67-3.7 m and a setback from the south-western (rear) boundary of 10.44-10.7 m. Whilst these extensions are adjacent to the rear yard and rear terrace area of the adjoining property to the south-east (No 25 Wilberforce Avenue), the visual amenity of this adjoining property will be maintained by the substantial articulation provided by the increase to the side boundary setback of the rear extension from 1.67 m at ground floor level to 3.7 m at first floor level, by planting to the extended planter adjacent to the south-eastern elevation at first floor level and by substantial landscaping adjacent to the common side boundary
- the proposed extension of the approved residential flat building towards the rear boundary will not have any significant adverse visual or loss of privacy amenity impacts upon the adjoining property to the rear (No 12 Albemarle Ave) due to the location of existing double brick garages and established garden area adjacent to the common boundary providing a sufficient distance of separation between the proposed modifications and the rear private open space area and rear elevation of the adjoining property of 17.6-31.1 m
- the privacy of the adjoining property to the south-east (No 25 Wilberforce Avenue) will be maintained subject to the treatment of the additional window to the south-eastern elevation at first floor level to prevent overlooking to the rear yard/rear patio area (see Condition No 74)
- solar access will be maintained to adjoining properties in accordance with the provisions of Woollahra RDCP 2003
- views from adjoining properties and public domain will not be adversely affected
- the approved deep soil landscaped area is not diminished and existing significant vegetation is not compromised by the proposed modifications

Accordingly, no objection is raised in relation to this area of non-compliance.

### 9.6 Other special clauses/development standards

**Clause 25 Water, wastewater and stormwater**

Clause 25 of Woollahra LEP 1995 requires Council to take into consideration the provision of adequate stormwater drainage and the provision of adequate water and sewerage services. The proposed modifications do not increase the demand for water or the generation of wastewater. The development consent contains conditions addressing the issue of stormwater drainage. The subject application does not seek to modify those conditions, which adequately address the issue of management of the additional stormwater run-off associated with the proposed modifications.
Clause 25D Acid Sulfate Soils

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

9. DRAFT AMENDMENTS TO STATUTORY CONTROLS

Section 79C(1)(a)(ii) of the Act requires that in determining a development application, a consent authority is to take into consideration any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority.

Draft Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2004

This draft planning instrument is aimed at repealing several existing planning instruments including SREP 23 Sydney and Middle Harbours. The draft SREP requires the consideration of similar issues as SREP 23 such as the visual impact of development upon Sydney Harbour and adjacent foreshore areas.

The proposed modification will not be seen from Sydney Harbour. Accordingly, the proposal is considered to be satisfactory with regard to the provisions of this instrument.

10. DEVELOPMENT CONTROL PLANS

10.1 Numeric Compliance table - Woollahra Residential Development Control Plan 2003

<table>
<thead>
<tr>
<th>Site Area (585.2 m²)</th>
<th>Approved development</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ground Floor</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rear (south-west)</td>
<td>10.4-13.6</td>
<td>10.4-10.7</td>
<td>10.67</td>
<td>NO (Partial)</td>
</tr>
<tr>
<td>side (south-east)</td>
<td>1.67</td>
<td>1.67</td>
<td>1.5-1.7</td>
<td>NO (Partial)</td>
</tr>
<tr>
<td>First Floor</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rear (south-west)</td>
<td>10.4-13.6</td>
<td>10.4-10.7</td>
<td>10.67</td>
<td>NO (Partial)</td>
</tr>
<tr>
<td>side (south-east)</td>
<td>1.67–5.5</td>
<td>1.67–3.7</td>
<td>1.7-3.7</td>
<td>NO (Partial)</td>
</tr>
<tr>
<td>Building Footprint</td>
<td>40.9% (239.4 m²)</td>
<td>44.5% (260.2 m²)</td>
<td>40% (234.1 m²)</td>
<td>NO</td>
</tr>
<tr>
<td>Solar Access to Ground Level Open Space of Adjacent Properties</td>
<td>&gt;35m²-2 hours</td>
<td>&gt;35m²-2 hours</td>
<td>35m²-2 hours</td>
<td>YES</td>
</tr>
</tbody>
</table>

Desired future precinct character objectives and performance criteria

The proposed modifications do not involve any non-compliance with the performance criteria stipulated under section 4.9 Rose Bay Precinct of Woollahra RDCP 2003.

The relevant desired future character objectives of the Rose Bay Precinct aim to encourage development scale in relation to the function and role of the streets they address (a range of housing types on the minor streets) and to maintain the evolution of residential building styles through the introduction of well-designed contemporary buildings.
The proposed modifications will not be visible from Wilberforce Avenue and only obliquely visible from a minor section of Albemarle Lane. The proposed modifications will not have any significant adverse impact upon the public domain. Accordingly, the proposed modifications are considered to be consistent with the above-mentioned objectives.

Streetscape performance criteria

The provisions of Part 5.1 Council's RDCP 2003 requires development to achieve consistency with the desired future character for the locality and contribute to cohesive streetscapes and desirable pedestrian environments.

As discussed above, the proposed modifications are satisfactory with the desired future character objectives and performance criteria for the Rose Bay Precinct contained in Woollahra RDCP 2003. The proposed modifications will not have any significant adverse impact upon the public domain.

The proposal complies with the performance criteria stipulated under Part 5.1 of Council's RDCP 2003.

Building size and location performance criteria

The proposed modifications involve non-compliances with the maximum building footprint and minimum rear and south-eastern side setback requirements stipulated under Part 5.2 of Woollahra RDCP 2003.

The objectives of Part 5.2 of Woollahra RDCP 2003 involve:

- the preservation of established tree and vegetation networks and the promotion of new networks by ensuring sufficient areas for deep soil planting and sufficient setbacks between the rear of buildings
- to ensure the size and location of buildings allow for the sharing of views and preserve privacy and sunlight access for neighbouring residents
- to ensure the form and scale of development is not excessive and maintains the continuity of building forms and front setbacks in the street
- to limit site excavation and minimise cut and fill to ensure that building form relates to the topography and to protect the amenity of adjoining properties both during and after construction

The extent and significance of the setback non-compliances, with regard to the above-mentioned objectives, is discussed as follows:

Building footprint

The proposed modifications increase the building footprint from 40.9% of the site area to 44.5% of the site area; a non-compliance of 26.1 m² with Council's maximum building footprint control of 40% of the site area.

The Land and Environment Court judgment of the original development application is relevant to the consideration of the building footprint non-compliance in that it states:

“The Council calculates the proposed development at 44.3 % and the applicant at 41.4%. In my view, the difference is not significance in the determination of this issue… the additional footprint will not be noticeable when viewed in its context.”
The additional building footprint associated with the extension to the loggia and the introduction of the meals room to the rear elevation at ground floor level replaces the approved rear terrace and therefore does not reduce the deep soil landscaped area or impact upon existing vegetation.

The minor additional building footprint of 20.8 m² involves a 3-3.3 m extension of the rear elevation towards the rear boundary at ground and first floor levels. These modifications will not be visible from Wilberforce Avenue and only obliquely visible from a minor section of Albemarle Lane. The proposed modifications will not have any significant adverse impact upon the public domain.

The extension of the south-eastern side elevation towards the rear boundary involves a maximum external wall height of approximately 7.4 m, a setback from the south-eastern side boundary of 1.67-3.7 m and a setback from the south-western (rear) boundary of 10.44-10.7 m. Whilst these extensions are adjacent to the rear yard and rear terrace area of the adjoining property to the south-east (No 25 Wilberforce Avenue), the visual amenity of this adjoining property will be maintained by the substantial articulation provided by the increase to the side boundary setback of the rear extension from 1.67 m at ground floor level to 3.7 m at first floor level, by planting to the extended planter adjacent to the south-eastern elevation at first floor level and by substantial landscaping adjacent to the common side boundary.

The proposed extension of the approved residential flat building towards the rear boundary will not have any significant adverse visual or loss of privacy amenity impacts upon the adjoining property to the rear (No 12 Albemarle Ave) due to the location of existing double brick garages and established garden area adjacent to the common boundary providing a sufficient distance of separation between the proposed modifications and the rear private open space area and rear elevation of the adjoining property of 17.6-31.1 m.

The privacy of the adjoining property to the south-east (No 25 Wilberforce Avenue) will be maintained subject to the treatment of the additional window to the south-eastern elevation at first floor level to prevent overlooking to the rear yard/rear patio area (see Condition No 74).

Solar access will be maintained to adjoining properties in accordance with the provisions of Woollahra RDCP 2003. Views from adjoining properties and public domain will not be adversely affected.

Accordingly, no objection is raised in relation to this area of non-compliance.

**South-western (rear) setback**

The proposed modifications are set back 10.4-10.7 m from the south-western (rear) boundary which is partially less than Council's minimum requirement of 10.67 m (25% of the site length). The areas of non-compliance relate to two 250 x 600 mm masonry nibs and a 6 m long step at ground floor level and to two 250 x 600 mm masonry nibs and a 1.3 m x 400mm section of planter adjacent to the rear balcony at first floor level.

These areas of non-compliance are minor in nature, having no significant adverse impact upon the amenity of adjoining properties or the public domain. Accordingly, no objection is raised in relation to them.
**South-eastern side setback**

The proposed modifications are set back 1.67-3.7 m from the south-eastern side boundary which is partially less than Council's minimum requirement of 1.7-3.7 m. The areas of non-compliance relate to the upper 60mm of the 3.3 m long ground floor level addition and the 700 mm high x 3.3 m long planter at first floor level.

The non-compliance at ground floor level is extremely minor in nature and will not have any adverse impact upon the adjoining property to the south-east (No 25 Wilberforce Ave). The planter, whilst more substantial in scale, will be adequately screened from the adjoining property by existing vegetation adjacent to the common side boundary. In the absence of any significant impact upon the amenity of the adjoining property and no adverse impact upon the public domain, no objection is raised in relation to these areas of non-compliance.

**Solar access**

Whilst not an area of non-compliance, the impact of the proposed modifications upon the solar access of adjoining properties is discussed as the owners of the adjoining property to the south-east (No 25 Wilberforce Avenue) and the adjoining property to the to the south-west (No 12 Albemarle Avenue) have objected to the proposal on the basis of additional overshadowing.

The Land and Environment Court judgment of the original development application is relevant to the consideration of solar access in that it states the following:

“As the proposal satisfies the solar access requirements in the DCP, I agree that it is acceptable.”

Performance Criterion C5.2.13 requires sunlight to be provided to at least 50% (or 35 m² with minimum dimension 2.5 m, whichever is smaller) of the main ground level private open space of adjacent properties for a minimum of two hours between 9 am and 3 pm on June 21. Where existing overshadowing is greater than this, sunlight is not to be further reduced.

Shadow diagrams submitted with the Section 96 application indicate that whilst the proposed modifications would result in minor additional overshadowing to the rear yard of No 12 Albemarle Ave during winter morning periods and moderate additional overshadowing to the rear yard of No 25 Wilberforce Avenue during winter midday and afternoon periods, solar access to both adjoining properties will be maintained in accordance with the above-mentioned requirement.

Performance Criterion C5.2.14 stipulates that north-facing windows to habitable rooms of neighbouring dwellings do not have an of the sunlight reduced to less than 3 hours between 9 am and 3 pm on June 21.

The windows to the north-western elevation of the adjoining property to the south-east (No 25 Wilberforce Avenue) are orientated 51 degrees east of true north, which is outside the range of the definition of “north-facing” contained in Woollahra RDCP 2003.

**Open space and landscaping performance criteria**

The proposed modifications to not reduce the provision of the private open space or deep soil landscaped area from that as approved. The proposed modifications do not impact upon existing significant vegetation. As such, the proposed modifications are considered to be satisfactory with regard to the relevant objectives and performance criteria stipulated under Part 5.3 of WRDCP 2003.
Stormwater management performance criteria

The provisions of Part 5.7 of Council's RDCP 2003, require adequate stormwater management. The development consent contains conditions addressing the issue of stormwater drainage. The subject application does not seek to modify those conditions, which adequately address the issue of management of the additional stormwater run-off associated with the proposed modifications.

Acoustic and visual privacy performance criteria

The provisions of Part 5.8 of WRDCP 2003 require the maintenance of the visual and acoustic privacy of adjoining properties.

The owners of both the adjoining property to the south-east (No 25 Wilberforce Avenue) and the adjoining property to the south-west (No 12 Albemarle Ave) have objected to the proposed modifications on the basis of loss of privacy.

The proposed extension of the approved residential flat building towards the rear boundary will not have any significant loss of privacy amenity impacts upon the adjoining property to the rear (No 12 Albemarle Ave) due to the location of existing double brick garages and established garden area adjacent to the common boundary providing a sufficient distance of separation between the proposed modifications and the rear private open space area and rear elevation of the adjoining property of 17.6-31.1 m.

The privacy of the adjoining property to the south-east (No 25 Wilberforce Avenue) will be maintained subject to the treatment of the additional window to the south-eastern elevation at first floor level to prevent overlooking to the rear yard/rear patio area (see Condition No 74).

The proposed modifications are considered to be satisfactory with the performance criteria and objective under Part 5.8 of WRDCP 2003.

Access and mobility performance criteria

The provisions of Part 5.13 of Council's RDCP 2003 require the provision of adequate access to the development by all people in the community including people with disabilities. The proposed modifications are considered to be satisfactory in this regard.

10.2 Other DCPs, codes and policies

Woollahra Access DCP

The Woollahra Access DCP requires the provision of adequate access to and within a development including for elderly and disabled persons. The proposed modifications are considered to be satisfactory in this regard.

DCP for SREP 23

This DCP requires the consideration of the design and siting of development with the purpose of preventing any adverse visual impact upon Sydney Harbour. The proposed modifications are considered to be satisfactory in this regard.
11. **APPLICABLE REGULATIONS**

There are no other regulations applicable to the subject Section 96 Application.

12. **THE LIKELY IMPACTS OF THE MODIFIED DEVELOPMENT**

All likely impacts of the proposed development have been assessed elsewhere in this report.

13. **SUBMISSIONS**

The proposed modifications were advertised and notified in accordance with Council’s Advertising and Notifications DCP. In response, 2 letters of objection were received. The objections were received from:

1. R. Todd-No 12 Albemarle Ave, Rose Bay
2. C. and S. Staff-No 25 Wilberforce Ave, Rose Bay

The following concerns were raised:

- loss of privacy
- overshadowing
- non-compliance with Council's minimum frontage standard
- non-compliance with Council's building footprint control
- excessive bulk/insufficient articulation to the south-eastern elevation
- non-compliances with Council's boundary setback and deep soil landscaping requirements

The above-mentioned concerns have been addressed previously.

15. **CONCLUSION - THE PUBLIC INTEREST**

The proposal is acceptable against the relevant considerations under S96 and S79C.

16. **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. 1070/2003 for the demolition of an existing dwelling-house and the erection of a residential flat building containing 2 dwellings on land at 23 Wilberforce Avenue, Rose Bay, in the following manner:

The modification of Condition No 1 as follows:

1. **Approved Plans**

The development must be carried out in accordance with plans numbered 01B, 02B and 03B, dated November 2003, drawn by EA, including landscape plan No LP-01, dated 26 November 2003, drawn by LandArc, endorsed with the Land and Environment Court’s stamp, and the Statement of Environmental Effects, dated November 2003 as amended by the works shown in colour on plans numbered 01A, 02A and 03A dated November 2003, drawn by EA on which there is a Council stamp “Approved S96 plans”.

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The addition of the following condition:

74. Treatment of window

In order to maintain the visual privacy of the adjoining property to the south-east (No 25 Wilberforce Avenue) the window to the south-eastern elevation of the “meal” room at first floor level is to consist of fixed translucent glazing to a height of 1.7 m above first floor level. Such is to be indicated on plans submitted with the construction certificate application.

Mr D Booth
SENIOR ASSESSMENT OFFICER

Mr N Economou
TEAM LEADER

ADVISING

1. Appeal

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

2. Application for a Construction Certificate

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

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

ANNEXURES

1. Plans and elevations
Item No: D7  Delegated to Committee  
Subject: Swimming Pool covers  
Author: Brett Daintry - Manager Development Control  
File No:  
Reason for Report: Council’s Adopted Notice of Motion 11/7/2005 - Swimming Pool Covers  

Recommendation: THAT the proposed new standard development condition requiring swimming pool covers/blankets be adopted and implemented within Council’s new standard conditions but only applied where BASIX does not apply.

Background: Council resolved 11/7/2005 on the motion of Councillors Comino and Petrie:

"THAT Council report on the implementation of a standard condition of consent to be attached to all future development applications, where a new pool or lap pool is being constructed or an existing pool is being altered or enlarged such condition to require that a pool cover/blanket must be installed so as to prevent/reduce water loss through evaporation."

Statutory Provision: Conditions are meant to enable or enhance development, the impact of which would otherwise be unacceptable. Although common, conditions are not compulsory. Section 80A of the Environmental Planning and Assessment Act 1979 (the "Act") provides that when determining an application for consent, a consent authority may impose conditions if: "it relates to any matter referred to in section 79C (1) of the Act of relevance to the development the subject of the consent, or..."  

Of relevance section 79C of the Act requires the consideration of Environmental Planning Instruments and the public interest.

Legal Principles: Case law limits section 80A of the Act. Council does not have free rein.  

Conditions must be:

(i) imposed for a planning, not an ulterior, purpose (however desirable it may be in the public interest) - Newbury Principle.
(ii) fairly and reasonably relate to the proposed development - Newbury Principle.
(iii) reasonable i.e. not so unreasonable that no reasonable authority would have imposed them - Newbury & Wednesbury Principles.
(iv) final i.e.final and certain, not defer any essential matter for later consideration
(v) related to the development for which consent is sought (nexus test)
(vi) be reasonably enforceable.
Application of statutory requirements and legal principles:

The relevant objectives of the Act are:

Section 5

"(a) to encourage:

(i) 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,

(v) the provision and co-ordination of community services and facilities, and

(vii) ecologically sustainable development, and

The relevant objectives of Woollahra Local Environmental Plan 1995 is:

Clause 2

" (2) The objectives of this plan are:

(n) to promote and encourage water conservation."

There are no relevant DCP objectives or controls.

The consideration of the public interest, having regard to the objectives of the Act and WLEP 1995, dictates that where reasonably possible new development must provide for water conservation. This is inherent in the BASIX requirements that have progressively come into force over the last year.

The public interest

The total amount of water used by pools within the Sydney area is estimated to be more than 9.6 million litres a day. Research\(^1\) undertaken by Sydney Water indicates that water use could be reduced by at least 1.7 million litres a day, saving almost enough water to fill two Olympic swimming pools.

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Water use associated with public swimming pools is:

**Typical water use breakdown in a community swimming pool**

- 10% Leakage (Makeup and Amenities)
- 15% Makeup for evaporative & other losses
- 30% Makeup for backwash
- 1% Other (Cleaning, cafes, irrigation)
- 25% Showers
- 19% Amenities

**Source:** Sydney Water

The use of covers to prevent evaporation has the potential to conserve up to 15% of a public swimming pools typical consumption of water. In relation to private swimming pools, setting aside amenities, making reasonable reductions in makeup, showers, cleaning and leakage the percentage conservation of water from evaporation is likely to be significantly higher.

The use of a standard development consent condition requiring swimming pool covers and their ongoing use is possible under section 80A of the Act having regard to relevant legal principles however, BASIX provides overriding provisions.

**The effect of BASIX**

Under SEPP Building Sustainability Index, provisions in LEPs or DCPs which seek to reduce water consumption and improve thermal performance are of no effect.

Clauses 8 and 9 of the policy provide:

"**8 Other environmental planning instruments do not apply to BASIX commitments**

The competing provisions of an environmental planning instrument, whenever made, are of no effect to the extent to which they aim:

(a) to reduce consumption of mains-supplied potable water, or reduce emissions of greenhouse gases, in the use of a building to which this Policy applies or in the use of the land on which such a building is situated, or

(b) to improve the thermal performance of a building to which this Policy applies.

**Note:** See, for example, the energy efficiency requirements set out in Schedules 4 and 5 to State Environmental Planning Policy No 60—Exempt and Complying Development
9 Development control plans do not apply to BASIX commitments

The competing provisions of a development control plan under section 72 of the Act, whenever made, are of no effect to the extent to which they aim:
(a) to reduce consumption of mains-supplied potable water, or reduce emissions of greenhouse gases, in the use of a building to which this Policy applies or in the use of the land on which such a building is situated, or
(b) to improve the thermal performance of a building to which this Policy applies."

The policy defines competing provision as follows:

"competing provision" means a provision:

(a) that establishes development standards, or
(b) that requires a consent authority to have regard to, or take into consideration, any matter when considering or determining an application for a development consent, or
(c) that requires a consent authority to be satisfied as to any matter before it grants a development consent, or
(d) that requires a consent authority to impose a condition on a development consent, or
(e) that affects the granting of a development consent, or the conditions on which a development consent is granted,

other than a provision that encourages, or offers incentives for, the adoption of measures beyond those required by provisions of the kind referred to in paragraphs (a)–(e).

The purpose of these provisions is to ensure that there is a consistent set of sustainability requirements across the State. The effect of these provisions is that we cannot impose 'sustainability' requirements that are more onerous than those required by a BASIX certificate.

Therefore, for development the subject of BASIX, we will not be able to impose a requirement for a pool cover if it is not a commitment made by an applicant upon the BASIX certificate.

However, for development that is not subject to BASIX such as residential flat buildings up to 1 October 2005, we can impose such a condition. After 1 October 2005, BASIX will also apply to residential flat buildings so after this date we will not be able to impose our own sustainability conditions.

Council's BASIX condition

1. The effect of BASIX Commitments

The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate No. # other than superseded by any further amended consent and BASIX 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,."
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."


**Proposed Condition:**

1. **Swimming Pool Cover**

   Prior to the issue of any occupation certificate or any use of the swimming pool or spa pool a swimming/spa pool cover must be fitted to the pool. This cover must be in place when the pool is not in use so that evaporation of pool water is reduced and where heated, heat loss is limited.

This condition will only be imposed in relation to new or renovated swimming pools not subject to BASIX.

**Conclusion:**

It is both legally possible and reasonable to require new or renovated swimming pools to be provided and maintained with swimming pool covers by a condition such that evaporation of water from swimming pools is reduced and heat loss limited where heated. However, *competing provision* are of no effect under the *SEPP Building Sustainability Index* and no condition can be imposed where a BASIX Certificate is in force. In most cases the commitments set out in a BASIX Certificate include water conservation measures such as swimming pool covers.

Brett Daintry
Manager Development Control

Allan Coker
Director Planning & Development

**Annexures:** NONE
Item No: D8  Delegated to Committee
Subject: Register of Current Land and Environment Court Appeals for Building and Development Applications
Author: Les Windle, Manager - Governance

Council, at its meeting of 17 August 1994 resolved in the following terms:

THAT the Register of current Land and Environment Court Appeals for Building and Development Applications presented in the Development and Building Applications Summary be transferred to the Development Control Committee to be considered at each meeting.

Please find attached a copy of the current register.

Recommendation:

THAT the attached register of current Land and Environment Court Appeals for Building and Development Applications be received and noted.

Les Windle
Manager - Governance