



Development Control Committee

Additional Item

Agenda: *Development Control Committee*

Date: *Monday 23 April 2012*

Time: *8.00pm*

Session: *Two*

Item: *R1*

Outline of Meeting Protocol & Procedure:

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

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

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

Delegated Authority (“D” Items)

To determine all development applications and related applications, which are not required to be determined by the Council under Council’s adopted procedures for the call up of applications **except:**

- a) Applications for review of a determination under section 82A of the *Environmental Planning and Assessment Act 1979* (“*the Act*”) where the DCC determined the original application.
- b) Development applications for development on community land which may not be delegated for determination under section 47E of the LG Act.

Committee Membership: 7 Councillors

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

Additional Item Meeting Agenda

Session Two – Commencing 8.00pm

Item	Subject	Pages
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**Items to be Submitted to the Council for Decision
with Recommendations from this Committee**

R1	DA256/2008 – 15/335 (aka 15/325) New South Head Road (aka 15/353 Edgecliff Road, Double Bay – Alterations & additions to a residential flat building – 7/5/2008 *See Recommendation Page 607	604-671
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SUPPLEMENTARY DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	R1
FILE No.	DA 256/2008/1
ADDRESS	15/335 (AKA 15/325) New South Head Rd (AKA 15/353 Edgecliff Rd, Double Bay
SITE AREA	4299 m ²
ZONING	Residential 2(b)
PROPOSAL	Alterations and additions to a residential flat building
COST OF WORKS	\$230,000
DATE LODGED	07/05/2008 (original lodgement) 30/09/2011 (first amended scheme) 05/03/2012 (second amended scheme) 19/04/2012 (fire safety/access, height amendments)
APPLICANT	Mr D Anderson
AUTHOR	Nick Economou

1. PREAMBLE

At the meeting of 2 April 2012, Council's Development Control Committee resolved as follows:

That Development Application No 256/2008 on land at 15/335 (aka 15/325) New South Head Road, Double Bay be deferred to enable the body corporate and/or applicant to submit additional information verifying the common areas of the development and unit entitlements areas of Unit 15, specifically relating to the roof level, fire stairs, plant room and lift and for Council to assess against the provisions of the BCA (fire regulations and access) and any other relevant planning requirements.

Attached as **Annexure 1** is a copy of the DA assessment report to the DCC meeting of 2 April 2012 which includes legal advice provided by Council's solicitors Wilshire Webb Staunton Beattie, the assessment report of the subject (second) amended scheme prepared by Council's independent planning consultant David Ryan as **Appendix "A"** and plans and elevations of the existing building and the second amended scheme as **Appendix "B"**.

The full Council at its meeting of 16 April 2012, resolved as follows:

- A. *That Development Application No. 256/2008 on land at 15/335 (aka 15/325) New South Head Road (aka 15/353 Edgecliff Road), Double Bay be deferred to the Development Control Committee meeting to be held on 23 April 2012 to enable the body corporate and/or applicant to submit additional information verifying the common areas of the development and unit entitlement areas of Unit 15, specifically relating to the roof level, fire stairs, plant room and lift and for Council to assess against the provisions of the BCA (fire regulations and access) and any other relevant planning requirements.*

- B. *That Delegated Authority be given to the Development Control Committee to determine Development Application No. 256/2008 under the provisions of Section 377 of the Local Government Act 1993, on behalf of Council.*
- C. *That Council's legal representation, be present at the Development Control Committee meeting on the 23 April 2012.*

2. ADDITIONAL INFORMATION

- a) On 19 April 2012, amended plans achieving compliance with Council's 18 m height standard and addressing Building Code of Australia (BCA) required fire safety, access/egress to the proposed additional level and the existing roof top common property including the internal stairwell, lift overrun and plant room were provided. The amended design includes an internal fire isolated chamber directly adjacent to the internal stairs and plant room with separate access doors to the proposed addition and plant room and a minor change to the north-eastern corner of the proposed addition. The amended plans are attached as **Annexure 2**.
- b) Further legal advice from Council's solicitors Wilshire Webb Staunton Beattie on 19 April 2012 providing further advice in relation to the following issues:
- The interpretation of the height control under Woollahra LEP 1995 and the assessment of the proposed development;
 - The interpretation of the floor space ratio control under Woollahra LEP 1995;
 - Access to the plant room and lift overrun;
 - Owners' consent and further approval from the Owners Corporation; and
 - Recommendations for Council's further action.

The legal advice is attached as a **confidential Annexure**.

3. DELEGATION

Based on the legal advice attached as a **confidential Annexure** that the Development Control Committee cannot determine the matter, it is referred to the full Council via the Development Control Committee as an R-item for determination.

4. FURTHER SUBMISSIONS FROM OBJECTORS

The following additional submissions have been made to Council since the DCC meeting of 2 April 2012 and were tabled as late correspondence to the full Council at its meeting of 16 April 2012:

- a) G & E Mendelsohn, the owners of 10/335 New South Head Road, Double Bay;
- b) Mersonn P/L on behalf of the Executive Committee of Strata Plan 58002 (325-335 New South Head Road, Double Bay) including the legal advice from Gadens;
- c) A Csillag-432 Edgecliff Road, Edgecliff; and
- d) Mr & Mrs Chryssochoides-1/335 New South Head Road, Double Bay.

The submissions raised the following concerns:

- The proposed additional level constitutes a self-contained dwelling;
- Inappropriate external appearance of the proposed addition including excessive bulk and scale;

- BCA non-compliances relating to fire safety/access to the existing roof top common property including the internal stairwell, lift overrun and plant room;
- Accuracy of view analysis questioned;
- Issues regarding Council's independent Town Planners Assessment Report specifically relating to method of height assessment, failure to undertake a site inspection in relation to the second amended proposal, and view assessment;
- Owners' consent (body corporate) not provided to the amended schemes;
- Compliance with Council's 18 m height standard questioned (interpretation of WLEP 1995 height definition also questioned);
- Conflict of rights of access to common roof top areas the unit entitlements areas of Unit 15;
- Compliance with Council's floor space ratio standard questioned.

5. CONSIDERATION

The above-mentioned concerns have been addressed previously in the development assessment report tabled to the DCC meeting of 2 April 2012 (see **Annexure 1**) with the exception of the following:

BCA Issues

Council's Fire Safety Officer has reviewed the development proposal, including the amended floor plan, specifically relating to BCA requirements in terms of fire safety, access/egress to the proposed additional level and the existing roof top common property including the internal stairwell, lift overrun and plant room.

Council's Fire Safety Officer is of the opinion that the proposal, as amended, is satisfactory in terms of compliance with the relevant provisions of the BCA. Refer to **Annexure 3** for full comments.

Height definition interpretation

Legal advice provided by Council's solicitors Wilshire Webb Staunton Beattie in relation to the measurement of the height of the proposal having regard to the definitions of "height" and "existing ground level" prescribed under Woollahra LEP 1995 has concluded that the proposal complies with Council's 18 m height standard (see **confidential Annexure**).

Owners' consent (body corporate) not provided to the amended schemes

Legal advice provided by Council's solicitors Wilshire Webb Staunton Beattie states that body corporate approval for the amended schemes, in addition to that provided with the lodgement of the original development application, is not required (see **confidential Annexure**).

Conflict of rights of access to common roof top areas the unit entitlements areas of Unit 15

This matter is addressed in the legal advice provided by Council's solicitors Wilshire Webb Staunton Beattie (see **confidential Annexure**).

Planning assessment of additional submissions Council's independent planning consultant

Attached as **Annexure 4** is the supplementary planning assessment by Council's independent planning consultant of the remainder of the above-mentioned objectors' concerns. In summary, the report concludes that the amended proposal is satisfactory.

6. CONCLUSION

Based upon the further legal advice from Council's solicitors, the continued support of the latest amended scheme by Council's independent planning consultant and the support of Council's Fire Safety Officer, it is considered that Council should revoke the existing consent granted on 6 July 2009 and regrant the development consent with the alterations as reflected in the latest amended scheme.

7. RECOMMENDATION

THAT based upon the advice from our solicitors, the continued support of the latest amended scheme by Council's independent planning consultant and the support of Council's Fire Safety Officer, Council:

1. Revoke Development consent No. 256/2008/1 granted on 6 July 2009 pursuant to section 103 of the EP&A Act;
2. Regrant Development consent No. 256/2008/1 with alterations as reflected in the latest amended plans received 19 April 2012 pursuant to section 103 of the EP&A Act, Division 3 of Part 3 of the *Land and Environment Court Act 1979* and the orders of the Land and Environment Court in proceedings no. O075 of 2009;
3. The altered terms to the revoked consent and conditions of the new consent be prepared by the relevant Council officer in consultation with Council's consultant town planner for inclusion within the Committee's recommendation to full Council;
4. Apply to the Land and Environment Court of NSW for orders validating the regrant of development consent No. 256/2008/1 and for other orders under s25C of the *Land and Environment Court Act 1979*; and
5. Advise those persons who lodged submissions to the application.

Nick Economou
TEAM LEADER

ANNEXURES

1. A copy of the DA assessment report to the DCC meeting of 2 April 2012 which includes legal advice provided by Council's solicitors Wilshire Webb Staunton Beattie, the assessment report of the subject (second) amended scheme prepared by Council's independent planning consultant David Ryan as **Appendix "A"** and plans and elevations of the existing building and the second amended scheme as **Appendix "B"**.
2. Amended plans addressing height and Building Code of Australia (BCA) required fire safety, access/egress to the proposed additional level and the existing roof top common property including the internal stairwell, lift overrun and plant room.
3. BCA related comments provided by Council's Fire Safety Officer.
4. Supplementary planning assessment by Council's independent planning consultant.
5. Confidential legal advice provided by Council's solicitors Wilshire Webb Staunton Beattie dated 19 April 2012. (Distributed separately)

POLITICAL DONATIONS DECISION MAKING FLOWCHART FOR THE INFORMATION OF COUNCILLORS

