

Access Development Control Plan

Repealed by WDCP2015 on 23/05/15

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Contents

1	Preliminary	1
1.1	Introduction.....	1
1.2	Name of this plan.....	1
1.3	Land and development to which this plan applies.....	1
1.4	Objectives.....	2
1.5	How to use this plan.....	2
1.6	Requirements for submitting a development application.....	3
1.7	Relationship to other legislation.....	3
1.8	Approval and commencement of this plan.....	4
2	Accessibility	5
2.1	Why are access and mobility requirements important?.....	5
2.2	Access requirements.....	5
3	Adaptable housing	11
3.1	What is adaptable housing?.....	11
3.2	Adaptable housing requirements.....	12
4	Exceptional circumstances	13
4.1	What are exceptional circumstances?.....	13
4.2	Issues to be considered.....	13

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1 Preliminary

1.1 Introduction

Council has an obligation under the *Environmental Planning & Assessment Act 1979* (the Act) to consider the provision of accessibility for people with a disability when assessing development applications. The objectives of the Act include the promotion of the social welfare of the community and this may be achieved through the provision of accessible and adaptable housing as well as improvements within the public domain. The *Building Code of Australia*, (BCA) contains provisions related to access for people with a disability. The BCA, however, does not require access for people with a disability to all buildings, nor to all parts of a building.

The Commonwealth *Disability Discrimination Act 1992* (DDA) makes it unlawful to discriminate against people with a disability in all areas of public life, including access to and the use of buildings and places. This has meant that development approved by Council, although able to comply with the BCA, may not provide sufficient access under the DDA and may leave the owner/developer subject to complaints to the Human Rights and Equal Opportunity Commission (HREOC).

Council has therefore decided to provide further guidance to developers and Council officers on access requirements for people with a disability in the form of this development control plan.

Access is not just a problem for people with an easily identified disability. Access can be a problem for parents with prams and older people with declining sensory capacity or mobility. Given the ageing of the Australian community and particularly the increasing numbers of Woollahra residents over 55 (25.4% at the 2001 census compared with 20.7% average for metropolitan Sydney), there may be sound economic reasons in catering for the needs of these markets.

1.2 Name of this plan

This plan is called 'Access Development Control Plan'.

1.3 Land and development to which this plan applies

This plan applies to all land within the Municipality of Woollahra, in the manner set out in Table 1.

This plan also applies to Council facilities. Council will comply with the plan in the development of all new Council buildings and facilities and will progressively modify and alter existing buildings and facilities in accordance with the plan where possible.

1.4 Objectives

The objectives of this plan are:

- i) to provide information to increase awareness and understanding of access and mobility issues;
- ii) to ensure that housing options exist for people with a disability as prescribed by the BCA through the provision of accessible and adaptable housing;
- iii) to encourage new buildings and associated spaces to be accessible and useable by all people in the community, including people with a disability;
- iv) to create appropriate levels of access and mobility when alterations and additions are proposed to existing buildings, including existing commercial and industrial buildings;
- v) to promote sustainable development by extending the use of new and existing buildings through the provision of accessible and adaptable housing requirements and by increasing the number of accessible and adaptable houses in the local government area;
- vi) to provide adequate access for people with a disability to disabled car parking, footpaths, bus stops, bus shelters, public toilets, parks and other infrastructure and outdoor areas;
- vii) to provide adequate access for people with a disability, including staff, visitors and those doing business with Council at Council-owned or occupied buildings.

1.5 How to use this plan

This plan should be used in three steps:

Step 1 - Consider whether the plan applies to the particular type of development proposed by checking Table 1.

Step 2 - Consider the requirements that the development must comply with as outlined in Table 1 by referring to the relevant Australian Standards (AS) and the BCA.

Step 3 - An applicant will need to consider the requirements and address compliance with them in a statement of environmental effects. The statement of environmental effects containing a report prepared by an appropriately qualified and experienced person, must be submitted with a development application and must specify how the proposal has addressed the access requirements set out in this plan and the relevant AS in the BCA. The statement must specifically indicate what measures have been taken to ensure that the development proposal complies with these requirements.

The notes in this plan do not form part of the plan itself and are included for greater interpretation and additional information.

1.6 Requirements for submitting a development application

Where this plan is relevant to a development proposal, the development application must be accompanied by a report prepared by an appropriately qualified and experienced person detailing that the development application meets the requirements outlined in this plan.

If grounds of exceptional circumstances are to be claimed as a reason why the development cannot comply with the requirements of this plan, the development application must be accompanied by a report:

- prepared by a suitably qualified person with relevant work experience in the field of access provision. (Qualifications and work experience of the person verifying the claim must be provided as part of the report *);
- outlining the claim of exceptional circumstances on the grounds outlined in section 4.2 of this plan.

***Note:** The Association of Consultants in Access Australia Incorporated is a recognised national membership-based professional association for people working to achieve accessibility in the built environment for people with a disability. The website address is www.access.asn.au.

Note: A development consent issued by the Council for Class 2-9 (inclusive) buildings will include conditions that require a certificate of compliance certifying that the completed building complies with the approved plans and the requirements of this plan, prior to the issue of an occupation certificate.

1.7 Relationship to other legislation

This plan has been prepared under section 72 of the *Environmental Planning and Assessment Act 1979* and Part 3 of the *Environmental Planning and Assessment Regulation 2000*.

Woollahra Local Environmental Plan (LEP) 1995 applies to the land to which this plan applies. This plan supplements and elaborates on the provisions of the Woollahra LEP 1995. The statutory provisions of Woollahra LEP 1995 take precedence over this plan.

The statutory provisions of any State environmental planning policy and regional environmental plan that apply to the Woollahra Municipality take precedence over this plan.

There are a number of other development control plans policies and codes that may apply to the land to which this plan applies. In the event of any inconsistency between this plan and other development control plans, policies or codes, this plan prevails unless otherwise specified in this plan or in other plans, policies and codes.

The provisions of this plan do not apply to certain minor development that may be carried out under the provisions of Council's Exempt and Complying Development DCP. Exempt and complying development must, however, comply with any "deemed to satisfy" provisions under the BCA which may also include access requirements applicable to those types of developments.

1.8 Approval and commencement of this plan

This plan was approved by Woollahra Council on 9 February 2004 and came into effect on 18 February 2004.

Repealed by WDCP2015 on 23/05/15

2 Accessibility

2.1 Why are access requirements important?

Access provisions respond to fundamental human rights and social justice. Traditionally, access issues have been concerned with the inequities faced by people with a physical disability. As our population ages, however, the need to provide increased physical access for all sections of the community has become even greater. Access provisions benefit everyone at some stage of their life. Whether someone has a permanent mobility problem, is vision impaired, is a parent of a young child, or is aged or incapacitated for health reasons, many groups in our society rely on, or require, equitable physical access.

Accessible and adaptable housing design requirements form part of the regulations that are aimed at improving access. Accessible housing has been fully designed and built to accommodate the needs of residents with a disability as required by the BCA and is discussed in section 3 of this plan.

2.2 Access requirements

This plan affects certain types of residential, industrial, commercial and retail development.

The main emphasis is on new, larger developments, but alterations and additions to existing buildings may need to comply with certain provisions of this plan. Table 1 outlines the types of developments where accessible and adaptable housing requirements must be met. Table 1 also provides information about whether disabled car parking requirements also apply to particular types of development.

Where a requirement of this plan is less onerous than the BCA, then the BCA prevails.

Table 1 - Access Requirements

Table definitions:

adaptable housing or dwelling means a dwelling that is designed in such a way that it can be modified easily in the future to become accessible to both occupants and visitors with a disability or progressive frailties and which complies with the BCA and AS 4299 to Class A requirements.

fully accessible means buildings designed and built to accommodate the needs of people with a disability and which complies with the BCA and AS 1428.1. Compliance with AS 1428.2 is also encouraged under this plan.

visitor accessible or visitor access means access to a building from a road that allows people with a disability to access the main room of the building through the front door as well as the provision of a toilet that is easily accessible to a wheelchair user and which complies with the BCA and AS 1428.1.

Access Requirements for Class 1 to Class 1b

Building Code of Australia Classification	1 to 4 dwellings or rooms*	5 to 9 dwellings or rooms*	10 or more dwellings or rooms*	Parking
Class 1: a single dwelling being a detached house	Encourage visitor access to the dwelling	Encourage visitor access to the dwelling	Encourage visitor access to the dwelling	Encourage compliance with AS2890.1
Class 1a: a single dwelling being one or more attached dwellings, each being a building, separated by a fire resisting wall, including a row house, terrace house, town house or villa unit	Encourage visitor access to the dwelling	1 visitor accessible dwelling	1 in 10 dwellings or part thereof to be adaptable	One AS2890.1 disabled space for each visitor accessible or adaptable dwelling
Class 1b: a boarding house, guest house, hostel or the like with a total floor area not exceeding 300m ² and in which not more than 12 persons would ordinarily be resident, which is not located above or below another dwelling or another class of building other than a private garage.	Encourage visitor access to the building	1 visitor accessible room	1 in 10 rooms or part thereof to be adaptable and the building must be visitor accessible	One AS2890.1 disabled space for each visitor accessible or adaptable room

*** Room numbers apply to Class 1b and Class 3 buildings only.**

Table 1 - Access Requirements

Access Requirements for Class 2 to Class 4

Building Code of Australia Classification	1 to 4 dwellings or rooms*	5 to 9 dwellings or rooms*	10 or more dwellings or rooms*	Parking
Class 2: a building containing 2 or more sole-occupancy units each being a separate dwelling	Encourage visitor access to the building	1 visitor accessible dwelling	1 in 10 dwellings or part thereof to be adaptable & all SEPP 5** dwellings to be adaptable	One AS2890.1 disabled space for each visitor accessible dwelling or adaptable dwellings
Class 3: a residential building, other than a building of Class 1 or 2, which is a common place of long term or transient living for a number of unrelated persons, including (a) a boarding house, guest house, hostel, lodging house, or backpackers accommodation; or (b) a residential part of a hotel or motel, or (c) a residential part of a school, (d) accommodation for the aged, disabled or children; (e) a residential part of a health-care building which accommodates members of staff; or (f) a residential part of a detention centre	Encourage visitor access to the building	1 visitor accessible room and all common areas fully accessible	1 in 10 rooms or part thereof to be adaptable and all common areas fully accessible	One AS2890.1 wide disabled space for each visitor accessible or adaptable room
Class 4: a dwelling in a building that is Class 5, 6, 7, 8, or 9 if it is the only dwelling in the building.	Encourage visitor access	Encourage visitor access	Encourage visitor access	Encourage compliance with AS2890.1
Alterations and additions to Class 1 to Class 4 inclusive will be assessed on the basis of compliance as a new building.				
*Room numbers apply to Class 1b and Class 3 buildings only.				
** SEPP 5 means State Environmental Planning Policy No. 5 – Housing for Older People or People with a Disability.				

Table 1 - Access Requirements

Access and Facility Requirements for Class 5 to Class 6

Building Code of Australia Classification	New building	Alterations or additions	Change of use not involving alterations or additions	Facilities	Parking
Class 5: an office building used for professional or commercial purposes, excluding buildings of Class 6, 7, 8 or 9	Fully accessible	Fully accessible subject to the provisions of clause 94 of the EP&A Regulation 2000*	Encourage visitor access	Fully accessible	Disabled parking complying with AS2890.1 and in numbers provided by Table C1 of AS2890.1
Class 6: a shop or other building for the sale of goods by retail or the supply of services direct to the public, including: (a) an eating room, café, restaurant, milk or soft-drink bar; (b) a dining room, bar shop or kiosk portion of a hotel or motel; (c) a hairdresser's or barber's shop, public laundry, or undertaker's establishment; (d) market or sales room, showroom, or service station.	Fully accessible	Fully accessible subject to the provisions of clause 94 of the EP&A Regulation 2000*	Encourage visitor access	Fully accessible	Disabled parking complying with AS2890.1 and in numbers provided by Table C1 of AS2890.1

***Clause 94** (1)(a) and (2) of the Environmental Planning and Assessment Regulation 2000 applies to development applications for rebuilding, alterations and additions where the proposed building work, together with any other building work completed or authorised within the previous 3 years, represents more than half the total volume of the building, as it was before any such work was commenced, measured over its roof and external walls.

In determining a development application to which this clause applies, Council must consider whether it would be appropriate to require the existing building to be brought into total or partial conformity with the BCA which may include access requirements.

Table 1 - Access Requirements

Access & Facility Requirements for Class 7 to Class 10a

Building Code of Australia Classification	New Building	Alterations or additions	Change of use not involving alterations or additions	Facilities	Parking
Class 7: a building which is: (a) a carpark; or (b) for storage, or display of goods or produce for sale by wholesale.	Fully accessible	Fully accessible subject to the provisions of clause 94 of the EP&A Regulation 2000*	Encourage visitor access	Fully accessible	Disabled parking complying with AS2890.1 and in numbers provided by Table C1 of AS2890.1
Class 8: a laboratory, or a building in which a handicraft or process for the production, assembling, altering, repairing, packing, finishing or cleaning of goods or produce is carried on for trade, sale or gain.	Fully accessible	Fully accessible subject to the provisions of clause 94 of the EP&A Regulation 2000*	Encourage visitor access	Fully accessible	Disabled parking complying with AS2890.1 and in numbers provided by Table C1 of AS2890.1
Class 9a: a building of a public nature: a health-care building, including those parts set aside as a laboratory; or	Fully accessible	Fully accessible subject to the provisions of clause 94 of the EP&A Regulation 2000*	Encourage visitor access	Fully accessible	Disabled parking complying with AS2890.1 and in numbers provided by Table C1 of AS2890.1
Class 9b: a building of a public nature: an assembly building including a trade workshop, laboratory or the like in a primary or secondary school, but excluding any other parts of the building that are of another Class.	Fully accessible	Fully accessible subject to the provisions of clause 94 of the EP&A Regulation 2000*	Encourage visitor access	Fully accessible	Disabled parking complying with AS2890.1 and in numbers provided by Table C1 of AS2890.1
Class 9c: a building of a public nature: an aged care building	Fully accessible	Fully accessible subject to the provisions of clause 94 of the EP&A Regulations 2000*	Encourage visitor access	Fully accessible	Disabled parking complying with AS2890.1 and in numbers provided by Table C1 of AS2890.1
Class 10a: a non-habitable outbuilding or structure a non-habitable building being a private garage, carport, shed or the like.	Encourage visitor access	Encourage visitor access	N/A	N/A	N/A

*Clause 94 (1)(a) and (2) of the Environmental Planning and Assessment Regulation 2000 applies to development applications for rebuilding, alterations and additions where the proposed building work, together with any other building work completed or authorised within the previous 3 years, represents more than half the total volume of the building, as it was before any such work was commenced, measured over its roof and external walls.

In determining a development application to which this clause applies, Council must consider whether it would be appropriate to require the existing building to be brought into total or partial conformity with the BCA, which may include access requirements.

Table 1 - Access Requirements				
Access & Facility Requirements for Class 10b				
Building Code of Australia Classification	New facility	Alterations and additions to a facility	Facilities	Parking
Class 10b: a non-habitable outbuilding or structure a structure being a fence, mast antenna, retaining or free-standing wall, swimming pool, or the like.	The area around a swimming pool and the swimming pool itself must be accessible in compliance with AS1428.1 where a swimming pool is proposed within or associated with a building required to be adaptable or fully accessible.	The area around a swimming pool and the swimming pool itself must be accessible in compliance with AS1428.1 where a swimming pool is proposed within or associated with a building required to be adaptable or fully accessible.	Fully Accessible	N/A

Note: Regardless of the provisions and Australian Standards referred to in this DCP, applications must still comply with the relevant provisions of the BCA.

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3 **Adaptable housing**

3.1 **What is adaptable housing?**

Adaptable housing is designed and built in such a way that it can be modified easily in the future as people's housing needs change, to become accessible to both occupants and visitors with a disability or progressive frailties. Adaptable housing is built to have the potential to be easily and cost effectively adapted to suit an individual's needs should it be required at a later stage. It is also built in such a way that older people or people with a disability can visit and use some facilities from the moment it is built. Typical features that may be incorporated into the building design and available on construction of the house include: level and wide doorways; non-slip surfaces; reachable power points; and easy-use door handles.

The advantages of providing adaptable housing to developers and the community include:

- greater marketability of housing as it offers a choice in housing for a wide range of people looking for features that allow occupation over a longer period;
- low initial costs when compared with the costs associated with modifying an existing standard home to provide for accessibility;
- improved visitor access as adaptable housing is able to be visited by people with a disability and older people, allowing greater participation in normal community activities;
- reduced welfare, medical and nursing costs as people are able to live more independently and defer nursing care for longer;
- promotes the economic and efficient use of building resources and materials; and it,
- helps address the responsibilities and potential liability of developers to action under the DDA.

The BCA contains the requirements for adaptable housing. The BCA provides for three classes of adaptable housing, with each class meeting varying levels of essential and desirable features.

3.2 Adaptable housing requirements

The BCA requires compliance with AS 4299 -1995– Adaptable Housing for those developments required to provide adaptable housing.

All residential flat buildings and other residential buildings comprising ten or more dwellings must provide a minimum of 10% of the dwellings constructed to meet Class A adaptable housing standards. Class A requires all essential and desirable features to be incorporated into the adaptable dwelling. Adaptable housing is encouraged in all housing types, including dwelling-houses (single dwellings) and dual occupancies.

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4 Exceptional circumstances

4.1 What are exceptional circumstances?

This plan adopts a consistent approach with the DDA where claims of exceptional circumstances will be considered during the development assessment process.

‘Unjustifiable hardship’ is a mechanism in the DDA for the consideration of instances where access and mobility requirements are unreasonable, impractical or not cost effective. Whilst exceptional circumstances under this plan are based on the DDA concept of “unjustifiable hardship” they do not necessarily represent all the issues considered under this legislation.

4.2 Issues to be considered

A claim of exceptional circumstances may be accepted as a reason why a development proposal cannot comply with access requirements. Where such a claim is made, the applicant must submit a report outlining the reasons for the claim and address the elements below.

When assessing claims of exceptional circumstances Council will take into account more than the monetary cost to the owner of complying with the requirements of the BCA. The assessment will include consideration of the benefits of the premises being accessible.

When assessing claims for exceptional circumstances the following elements will be considered:

- the degree of use by the public of a building or proposal;
- the degree of exclusion to people with a disability which may arise;
- the cost of undertaking the modifications to make the building or space accessible when compared to the overall project costs;
- the impact on the heritage significance of a building, place or streetscape;
- the topography or slope of the land;
- any other relevant matter.

Note: Whilst these elements are based on the DDA concept of “unjustifiable hardship” they do not necessarily represent all the types of issues considered under the DDA.

Council will consider the reasonableness of the claim in its assessment but, may still require full or part compliance with this plan. For example, Council might find that a developer has made a case for exceptional circumstance with regard to providing wheelchair access to a second floor of a small two-storey commercial building but Council may still require appropriate handrails, as well as colour contrast and non-slip strips on stairs so as to provide access for people who have vision impairments.

Council may refer the claim and report to an independent suitably qualified and experienced consultant for assessment prior to the development application being determined. A fee outlined in Council's Schedule of Fees will be associated with this type of independent assessment. The fee must be paid when the development application is lodged with Council.

Should Council accept the claim as reasonable, given the circumstances of the case, the defence of unjustifiable hardship resulting from an action taken under the DDA will rest with the applicant. It is the applicant's responsibility to address compliance with the DDA and substantiate any claim of unjustifiable hardship under Commonwealth legislation. A claim for exceptional circumstances therefore needs to be weighed against the cost of a possible complaint being made under the DDA.
