



Development Control Committee

Additional Item

Agenda: *Development Control Committee*

Date: *Monday 2 April 2012*

Time: *5.30 pm*

Session: *One*

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 Information Relating to Committee Matters

Site Inspection

Other Matters

Additional Item Meeting Agenda

Session One – Commencing 5.30pm

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 249	247-335
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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)
APPLICANT	Mr D Anderson
AUTHOR	D Booth-Senior Assessment Officer

1. RECOMMENDATION PRECIS

1. Development consent No. 256/2008/1 granted on 6 July 2009 be revoked;
2. Development consent No. 256/2008/1 be regranted with alterations as reflected in the amended plans received by Council on 2 March 2012;
3. The altered terms to the revoked consent and its conditions in 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. Council apply to the Land and Environment Court of NSW for orders validating the re-grant of development consent No. 256/2008/1; and
5. Council advise those persons who lodged submissions to the application.

2. DELEGATION

The matter is referred to the full Council via the Development Control Committee as an R-item for determination as it involves a matter that is the subject of Class 4 Land and Environment Court proceedings.

3. PREAMBLE

The original DA was approved under delegated authority on 6 July 2009. It involves a substantial addition to the top, roof terrace level of the southern component (tower building) of an existing residential flat building development. The approved addition is to the roof terrace level of an existing 3 bedroom penthouse unit and contains a kitchen, living room, bedroom, bathroom and study. An existing stairwell provides access to the new level which is currently a roof terrace, plant room and stairwell. The addition also involves a colorbond butterfly roof with clerestory.

The owners of 432 Edgecliff Rd subsequently commenced Class 4 proceedings in the Land and Environment Court on the basis that the notification of the DA did not include reference to the 15/353 Edgecliff Rd address of the subject site, only the 2 New South Head addresses. Accordingly, they had not considered the impact of the proposal upon their amenity, in particular views.

Council's solicitors have provided the following chronology of key events since the commencement of the Class 4 proceedings:

21/2/2011	Judgement handed down including an order suspending subject development consent until further order is made in accordance with s25C of the <i>Land & Environment Court Act 1979</i> .
25/2/2011	Further orders made including the terms which would validate the suspended consent and the listing of the matter before Justice Craig on 31 May 2011.
23/3/2011- 6/4/2011	Development application re-notified and re-advertised. Approximately 10 submissions received.
31/5/2011	Proceedings adjourned to 15 August 2011 for mention to enable Council to retain independent town planning consultant David Ryan to assist and advise it in relation to the carrying out of its statutory functions including compliance with the terms which would validate the consent.
15/8/2011	Proceedings adjourned to 11 October 2011 for mention as difficulties were encountered in relation to David Ryan obtaining access to some of the objector's properties.
7/9/2011	David Ryan provides a report indicating that he does not support the development the subject of the suspended consent and recommends that the land owners be offered the opportunity to submit amended plans.
30/9/2011	First amended development proposal submitted.
17/10/2011	Proceedings adjourned to 5 December 2011 for mention to enable David Ryan to prepare a report in relation to the first amended plans.
21/10/2011	David Ryan provides a preliminary assessment of the first amended plans, recommending that they be notified to neighbouring properties and that height poles be erected during the notification period.
11/2011- 12/2011	Height poles reflecting the amended proposal are erected at the subject property and the amended plans are notified to neighbouring properties. Approximately three submissions received.
5/12/2011	Proceedings adjourned to 21 February 2012 for further mention to enable the notification of the first amended plans to be completed and to enable David Ryan to prepare a report.
13/1/2012	David Ryan provides a report in relation to the amended plans in which he indicates that he does not support the first amended proposal.
15/2/2012	Council receives a request from the land owners to submit a second amended scheme to Council.
21/2/2012	Proceedings adjourned to 27 April 2012 to enable the land owners to submit a second amended scheme, to enable the necessary renotification and assessment and for Council to resolve how it wishes to exercise its statutory functions.
5/3/2012	Second amended scheme submitted.
21/3/2012	End of notification period of the second amended scheme. An extension to 26 March 2012 granted to Dr and Mrs Csillag at their request as their town planning consultant is overseas until 23 March 2012.

4. LEGAL ADVICE

Council's solicitors Wilshire Webb Staunton Beattie have been acting for Council in relation to the Class 4 proceedings and have provided legal advice which is attached as **Annexure 1**.

5. CONSIDERATION OF SECOND AMENDED SCHEME BY COUNCIL'S INDEPENDENT PLANNING CONSULTANT

The assessment report of the subject (second) amended scheme prepared by Council's independent planning consultant David Ryan is attached to the legal advice as **Appendix "A"**. Plans and elevations of the existing building and the subject amended scheme are attached to the legal advice as **Appendix "B"**.

6. NOTIFICATION OF MEETING

Council's solicitors have undertaken the notification of interested parties that the subject amended scheme will be considered by the DCC at the meeting of 2 April 2012. This was undertaken on 29 March 2012.

7. BODY CORPORATE APPROVAL NOT REQUIRED

Council's solicitors have advised that body corporate approval is not required for the subject amended scheme.

8. CONCLUSION

Based upon the legal advice from Council's solicitors and the support of the second amended scheme by Council's independent planning consultant, 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 second amended scheme.

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

THAT based upon the advice from our solicitors and the support of the second amended scheme by Council's independent planning consultant, Council:

1. Revoke Development consent No. 256/2008/1 granted on 6 July 2009 pursuant to section 103(3) of the EP&A Act;
2. Re-grant Development consent No. 256/2008/1 for the alterations as reflected in the second amended plans pursuant to section 103(3) of the EP&A Act;
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
5. Advise those persons who lodged submissions to the application.

David Booth
SENIOR ASSESSMENT OFFICER

Nick Economou
TEAM LEADER

ANNEXURE

1. Legal advice provided by Council's solicitors Wilshire Webb Staunton Beattie including 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 subject (second) amended scheme as **Appendix "B"**.

POLITICAL DONATIONS DECISION MAKING FLOWCHART FOR THE INFORMATION OF COUNCILLORS

