Agenda: Development Control Committee

Date: Monday 15 February 2016

Time: 6.00pm
Outline of Meeting Protocol & Procedure:
- The Chairperson will call the Meeting to order and ask the Committee/Staff to present apologies or late correspondence.
- The Chairperson will commence the Order of Business as shown in the Index to the Agenda.
- At the beginning of each item the Chairperson will ask whether a member(s) of the public wish to address the Committee.
- If person(s) wish to address the Committee, they are allowed four (4) minutes in which to do so. Please direct comments to the issues at hand.
- If there are persons representing both sides of a matter (e.g., applicant/objector), the objector speaks first.
- At the conclusion of the allotted four (4) minutes, the speaker resumes his/her seat and takes no further part in the debate unless specifically called to do so by the Chairperson.
- If there is more than one (1) person wishing to address the Committee from the same side of the debate, the Chairperson will request that where possible a spokesperson be nominated to represent the parties.
- The Chairperson has the discretion whether to continue to accept speakers from the floor.
- After considering any submissions the Committee will debate the matter (if necessary), and arrive at a recommendation (R items which proceed to Full Council) or a resolution (D items for which the Committee has delegated authority).

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

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

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

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

Committee Membership: 7 Councillors

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

Development Control Committee – 15 February 2016

In accordance with the provisions of the Local Government Act 1993, I request your attendance at Council’s Development Control Committee meeting to be held in the Thornton Room (Committee Room), 536 New South Head Road, Double Bay, on Monday 15 February 2016 at 6.00pm.

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

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<td>Leave of Absence and Apologies</td>
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<td>2.</td>
<td>Late Correspondence</td>
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<tr>
<td>3.</td>
<td>Declarations of Interest</td>
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**Items to be Decided by this Committee using its Delegated Authority**

D1  Confirmation of Minutes of Meeting held on 1 February 2016............................... 7

D2  DA2015/165/2 - 2-22 Knox Street Double Bay (Perons)................................. 8
    *See Recommendation Page 25

D3  DA341/2015/1 252 Glenmore Road Paddington .................................................. 39
    *See Recommendation Page 74

D4  DA478/2015/1 26/4 Mitchell Road Darling Point ............................................. 151
    *See Recommendation Page 161

D5  DA615/2015/1 382 Oxford Street Paddington .................................................... 183
    *See Recommendation Page 207

D6  Register of Current Land and Environment Court Matters and Register for
    Court Proceedings for Building Control, Environmental Control and Health
    Control...................................................................................................................... 291

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

Nil ‘R’ items
Item No: D1  Delegated to Committee  
Subject: CONFIRMATION OF MINUTES OF MEETING HELD ON 1 FEBRUARY 2016  
Author: Sue O’Connor, Secretarial Support - Governance  
File No: 16/17243  
Reason for Report: The Minutes of the Development Control Committee of 1 February 2016 were previously circulated. In accordance with the guidelines for Committees’ operations it is now necessary that those Minutes be formally taken as read and confirmed.

Recommendation:

That the Minutes of the Development Control Committee Meeting of 1 February 2016 be taken as read and confirmed.
MEMO TO ALL COUNCILLORS

Item No: D2
File No: DA165/2015/2
Address: 2-22 Knox Street, Double Bay (Perons Café)
Proposal: Alterations and additions to the existing licensed premises known as 'Perons' including changes to the takeaway counter, use of the premises as a restaurant and increasing the hours of operation from 7am-11pm (M-W), 7am-11:30pm (Th-Sat) and 11:30am-11:30pm (Sun) to 7am-12midnight (Mon-Sat) and 8am-10pm (Sun)
Author: Sarah Richards, Senior Assessment Officer

Please note that Item D3 was called at the Application Assessment Panel meeting held on Wednesday 27 January 2016 by Councillor Luise Elsing.

Reason for calling item:

- Police report does not support the application
- Council condition including reviewable conditions, trial periods, as opposed
- Whether an acoustic report is required
- Enable residents to present to the Development Control Committee (given the Australia Day/Christmas disruption to usual timetable)

The DA report follows on the next page:
SECTION 96 APPLICATION ASSESSMENT REPORT

ITEM No. D2
FILE No. DA165/2015/2
ADDRESS 2-22 Knox Street, Double Bay (Perons Café)
ZONING B2 Local Centre
EXISTING CONSENT Alterations and additions to the existing licensed premises known as 'Perons' including changes to the takeaway counter, use of the premises as a restaurant and increasing the hours of operation from 7am-11pm (M-W), 7am-11:30pm (Th-Sat) and 11:30am-11:30pm (Sun) to 7am-12midnight (Mon-Sat) and 8am-10pm (Sun)
DATE OF CONSENT 11/08/2015
TYPE OF CONSENT Local development
CONSENT AUTHORITY Woollahra Council
PROPOSED MODIFICATION Modification to Conditions I.2, I.3, I.4 and I.15 (in relation to trading hours, outdoor seating and music)
DATE S96 LODGED 08/10/2015
APPLICANT Mr G C Kelly
AUTHOR Ms S Richards
TEAM LEADER Mr D Waghorn
SUBMISSIONS 3
RECOMMENDATION Approval

SUMMARY

1. LOCALITY PLAN

[Map showing location of premises]
2. LEVEL OF DELEGATION

The application is to be determined by the Application Assessment Panel (AAP) as it involves changes to conditions imposed by AAP.

3. SUMMARY OF APPROVED DEVELOPMENT

DA 165/2015/1 was approved by the Application Assessment Panel on 11/08/2015 and involved the following:

- The use of the premises as a restaurant for a total of 70 patrons (40 inside and 30 outside)
- Footpath seating (for 30 patrons)
- Existing take away counter to be demolished and new take-away counter
- New black powder coated roller shutter, new bulkhead and new pivot door

Indoor hours of operation were approved Monday to Saturday 7am to 12 midnight and Sundays 8am to 10pm. The panel amended the reviewable condition (Condition I.2) to reduce the hours of operation for the outdoor areas from 12 midnight to 10.45pm Monday – Saturday.

4. SUMMARY OF PROPOSED MODIFICATION

The Section 96 application involves the following works:

- Modification of Conditions I.2, I.3 and I.15 in relation to trading hours, outdoor seating and music as follows:
  o The outdoor seating hours be amended to allow operation to midnight Mondays to Saturdays (8am to 10pm Sundays)
  o The number of patrons under Condition I.3 should be increased from 30 to 40 outdoors (a total of 80 patrons)
  o Condition I.15 to be amended to allow outdoor music

The conditions to be amended read as follows:

1.2 Extended hours of operation for licensed premises – Reviewable Condition

The hours of operation for the outdoor areas of the licensed premises are extended as follows:

i) 10pm to 10.45p.m. Monday – Saturday nights

This condition is a reviewable condition as referred to under the Act, s.80A (10B-10D). The extended trading hours will be reviewed in accordance with Condition I.18.

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

Note: Council’s consideration of the extended hours of operation of licensed premises will take into account:

i) compliance of the premises in terms of security and its general management;
ii) the number and nature of substantiated complaints regarding the operation of the premises;
iii) compliance with the conditions of this consent; and
iv) any other matters considered relevant to the environmental evaluation of the premises.

Standard Condition: I4
I.3 **Maximum Patron Capacity**

The total number of patrons on the premises at any time shall not exceed 70 patrons (40 indoors and 30 outdoors).

Any person/s attending the premises for the purpose of ‘takeaway’ products/services will not be considered a ‘patron’ as detailed above, provided no food and or drink is consumed by those persons on the premises. **Standard Condition: I6**

I.4 **Signage to be Displayed – Licensed Premises**

Signage (in lettering not less than 15mm in height on a contrasting background) is to be erected in a prominent position near the principal entry to the premises in accordance with Clause 98D of the EPA Regulation 2000.

The signage shall state the following and may change from time to time due to reviewable condition in accordance with **Condition I.2:**

```
“Approved hours of operation – Outdoor Areas
  Monday to Saturday 7am to 10.45pm
  Sundays 8am to 10pm

“Approved hours of operation – Indoor Areas
  Monday to Saturday 7am to 12 midnight
  Sundays 8am to 10pm

Approved patron capacity
  70 patrons (40 indoors and 30 outdoors)

Upon leaving please respect local residents by minimising noise.”
```

The signage required by this condition is to be erected prior to the commencement of operations. This condition has been imposed to clearly identify the hours and patron capacity of the licensed premises. **Standard Condition: I9**

I.15 **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.

There is to be no amplified music in the outdoor seating area (or speakers facing directly onto the outdoor seating area).

This condition has been imposed to protect the amenity of the neighbourhood.

Useful links:
Community Justice Centres—free mediation service provided by the NSW Government ([www.cjc.nsw.gov.au](http://www.cjc.nsw.gov.au)).
Department of Gaming and Racing - ([www.dgr.nsw.gov.au](http://www.dgr.nsw.gov.au)).

Standard Condition: I56

The approved hours for the indoor area under **Condition I.1** are as follows:

### I.1 Hours of Operation – Indoor and Outdoor Areas of Licensed Premises

The hours of operation for the indoor area of the licensed premises are restricted to:

i) Monday to Saturday 7am to 12 midnight  
ii) Sundays 8am to 10pm

The hours of operation for the outdoor area of the licensed premises are restricted to:

i) Monday to Saturday 7am to 10pm  
ii) Sundays 8am to 10pm

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

**Note:** Deliveries to or dispatches from the site must not be made outside these hours. This condition does not apply to activities such as cleaning which takes place wholly within the building and which are not audible within any adjoining residential dwelling. If internal activities are audible within any adjoining residential dwelling such that they cause a nuisance to the occupants of such dwelling than such internal activities must not occur outside these hours of use. This condition does not restrict the operation of noise pollution laws.

Standard Condition: I3

5. **ISSUES**

**Primary Issues**

<table>
<thead>
<tr>
<th>Issue</th>
<th>Conclusion</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objectors’ concerns</td>
<td>The objectors’ concerns have been considered below under Section 5.2 and do not warrant amendment or refusal of the application. Potential amenity impacts have been addressed by conditions on the original consent, refer to Section 14 below.</td>
<td>5.2 and 14</td>
</tr>
<tr>
<td>Potential noise and amenity impacts</td>
<td>Noise and amenity impacts have been considered under Sections 14.4 and 16. Subject to conditions on the original consent and as recommended to be amended which aim to minimise potential noise and amenity impacts to neighbouring residents, the proposal is considered to be acceptable.</td>
<td>14.4 and 16</td>
</tr>
</tbody>
</table>
### Summary of Submissions

<table>
<thead>
<tr>
<th>Issue</th>
<th>Conclusion</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amenity impacts including loss of acoustic privacy as a result of late operating hours, outdoor music and people entering and leaving the premises</td>
<td>As discussed above under Section 14.4, conditions were adopted in the original consent addressing noise and amenity, requiring compliance with the Plan of Management and requiring a reviewable condition (<strong>Condition 1.2</strong>) for the outdoor seating area to enable Council to consider impacts associated with the extension of hours. Subject to conditions, the proposal is considered to be acceptable with regard to noise and amenity impacts.</td>
<td>14</td>
</tr>
<tr>
<td>Increase in the number of patrons</td>
<td>The proposal includes an increase in the number of patrons from 30 to 40 in the outdoor seating area. No concern is raised with regard to this increase, subject to conditions recommended to address amenity impacts.</td>
<td>14</td>
</tr>
<tr>
<td>The notification of the application contained no details of the application requiring residents to contact Council during limited hours in order to find out any relevant information.</td>
<td>All the details of the application were available on Council’s website and at the customer service counter for review.</td>
<td>-</td>
</tr>
<tr>
<td>Cumulative impact of licensed premises in a concentrated section of Bay Street and lack of appropriate planning by Council</td>
<td>The potential impacts of the development have been considered in Section 14. Appropriate conditions and controls have been put in place on the approvals for licensed premises in the area and it is considered that appropriate planning has been applied.</td>
<td>14</td>
</tr>
<tr>
<td>Council’s Compliance and Environmental Health Officers were opposed to the increase in hours of operation of the outdoor areas in the original application and Council’s staff misrepresented this.</td>
<td>It is considered that the original report did not misrepresent any of the referral officers’ comments, which were attached to the original assessment report.</td>
<td>-</td>
</tr>
<tr>
<td>Reference to operating hours of other late night premises in the original report was not appropriate where the premises did not have outdoor seating or where the premises are not located near Perons.</td>
<td>The table in the original report gave details of operating hours of other restaurants in the vicinity of Perons as a comparison. It is considered that the details in the report were relevant and appropriate.</td>
<td>-</td>
</tr>
<tr>
<td>Mrs Sippy is the only premises that operates outside seating until midnight and this was unopposed through Council as most of the affected residents were not included in the notification of that DA.</td>
<td>Each application must be assessed on its own merits. The application for Mrs Sippy was advertised and notified in accordance with Council’s Advertising and Notifications policy.</td>
<td>-</td>
</tr>
<tr>
<td>The applicant should not have outdoor trading hours in excess of those granted to the Royal Oak Hotel.</td>
<td>Each application must be assessed on its own merits and against the relevant controls. The proposed hours satisfy the relevant controls and objectives and are considered to be acceptable subject to conditions imposed to minimise any adverse amenity impacts.</td>
<td>-</td>
</tr>
</tbody>
</table>
6. SITE AND LOCALITY

**Physical features**

A. Shops 15-16 is a café / restaurant which is currently trading as Peron’s within the Cosmopolitan Centre. The site has frontages to Knox Street to the north (106.0 metres), Bay Street to the west (32.0 metres), and Short Street and Goldman Lane to the south (116.0 metres). The site area is 3,606m$^2$.

**Topography**

The site is relatively flat.

**Existing buildings and structures**

A mixed commercial and residential building exists on the site.

**Environment**

The site is located within the Double Bay commercial area. Surrounding development consists of commercial uses on the ground floor including cafes, restaurants, a hotel (The Royal Oak) and retail shops. Residences are located within the subject site above the premises. The site adjoins a residential area to the west.
7. RELEVANT PROPERTY HISTORY

<table>
<thead>
<tr>
<th>Current use</th>
<th>Cafe / Restaurant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relevant Application History</td>
<td></td>
</tr>
<tr>
<td>DA82/309</td>
<td></td>
</tr>
<tr>
<td>• DA82/309/1 for a health food cafe was approved on 22/12/1982.</td>
<td></td>
</tr>
<tr>
<td>• A variation to Condition 1 of the DA to permit the current hours of use was approved on 5/09/1983.</td>
<td></td>
</tr>
<tr>
<td>• DA82/309/2 for a change to the trading hours was withdrawn on 11/03/2015 in order to submit DA165/2015/1 which consolidated the use of the premises and extension of hours into one new DA.</td>
<td></td>
</tr>
<tr>
<td>DA84/042</td>
<td></td>
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<tr>
<td>• DA84/042/1 for footpath seating was approved on 15/10/2009.</td>
<td></td>
</tr>
<tr>
<td>• DA84/042/2 approved an increase to the footpath seating area to 34.5m² on 15/10/2009.</td>
<td></td>
</tr>
<tr>
<td>• DA84/042/3 approved a change of use from a cafe to a restaurant on 1/10/2009.</td>
<td></td>
</tr>
<tr>
<td>• DA84/042/4 approved a change to the size of the outdoor seating area on 19/11/2009.</td>
<td></td>
</tr>
<tr>
<td>DA165/2015/1</td>
<td></td>
</tr>
<tr>
<td>• DA165/2015/1 approved alterations and additions to the existing licensed premises known as ‘Perons’ including changes to the takeaway counter, use of the premises as a restaurant and increasing the hours of operation from 7am-11pm (M-W), 7am-11:30pm (Th-Sat) and 11:30am-11:30pm (Sun) to 7am-12midnight (Mon-Sat) and 8am-10pm (Sun) on 11/08/2015. The approval is subject to a reviewable condition (Condition I.2) which limits hours of operation to 10.45pm Monday to Saturday, as discussed above under Section 4.</td>
<td></td>
</tr>
</tbody>
</table>

Requests for Additional Information and Replacement Applications

On 30/10/2015 an amended outdoor seating plan was requested by Council’s Fire Officer. This was provided on 3/11/2015.

8. REFERRALS

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<th>Referral</th>
<th>Summary of Referral Response</th>
<th>Annexure</th>
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</thead>
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<tr>
<td>Fire Safety</td>
<td>Council’s Fire Safety Officer is satisfied with the proposal.</td>
<td>2</td>
</tr>
<tr>
<td>Environmental Health</td>
<td>Council’s Environmental Health Officer is satisfied with the proposal, subject to conditions.</td>
<td>3</td>
</tr>
<tr>
<td>Compliance</td>
<td>Council’s Compliance Officer is satisfied with the proposal.</td>
<td>4</td>
</tr>
<tr>
<td>Owner’s consent</td>
<td>Owner’s consent from Council has been provided.</td>
<td>5</td>
</tr>
<tr>
<td>NSW Police</td>
<td>NSW Police are not supportive of the modification of Conditions I.2, I3 and I.15. In summary, NSW Police state that: • Anecdotal information suggests that there have been negative social impacts associated with the increase of trading hours and increased patronage within licensed premises • The restaurant is located within close proximity to residential properties within the Double Bay area • The location of the premises is in close proximity to the Sydney City Liquor and Kings Cross License Freeze Precinct, which prohibits additional licensed premises and increased trading hours under the Liquor Act 2007 and Environmental Planning and Assessment Act 1979 • Police object to the approval of the application for the following reasons: o There will be increased alcohol availability during the nominated times which may contribute to alcohol related crime in the Double Bay area o Increased trade in the outdoor dining area may have an adverse effect on the amenity of the neighbourhood o The applicant has failed to supply any documentation in the form of an acoustic report relating to noise from Perons Cafe boundary or outdoor area</td>
<td>6</td>
</tr>
</tbody>
</table>
**8.1 Planning Comment**

The hours proposed in the original DA were supported by Council staff subject to a reviewable condition and this stance is maintained, despite the comments from NSW Police. Council’s Environmental Health and Compliance Officers have raised no concern with the proposal including the extended hours, increase in patron numbers and outdoor amplified music. Conditions have been imposed on the original consent which aim to minimise amenity impacts including noise from amplified music and patron behaviour.

An acoustic report (by Renzo Tonin & Associates dated 19 June 2015 ref TH432-01F01) was carried out for the Royal Oak which is in close proximity (across Bay Street) to the subject premises. A noise measurement device was placed in the footpath seating area of Peron’s on Saturday 13 June 2015 between 9-12:50am. The report found the following:

*The purpose of these noise measurements was to ascertain whether there would be any adverse noise impacts as a result of extending the hours of operation of the outside seating area to midnight which is the subject of a S96 application. In respect of the time period 10pm-midnight, this is a time when sleep disturbance to the residents in the Cosmopolitan Centre is a potential issue. It is assumed that if the outside seating area remains open after 10pm then noise from the outside seating area will be similar to that measured during the survey. It is noted during the survey there were 14-19 patrons in that area. The approved area is 40sqm in size but there is no limit on the numbers of patrons in the 2013 Development Consent. However, even if the numbers of patrons were to double in size the additional patrons would not increase the noise levels, only the number of noise events would increase.*

*The LA90 in these samples is approximately 63dB(A). Therefore the EPA's sleep disturbance threshold is(63+15=)78 LAmax. The noise events attributable to patrons in the outside seating area in pages B1-B3 are identified as yellow circles with an average level of 72 LAmax. As this does not exceed the threshold, no further analysis is required.*
In addition, it is evident from the results in page B6 that the LA90 does not decrease between 10pm and midnight but remains essentially unchanged.

The Acoustic Report goes on to conclude as follows:

It was found that noise from the outside seating area on Bay Street would be acceptable even if the use of that area were extended to midnight. This can be explained by the observation that Bay Street is a very busy precinct at night and noise from people in the street and passing traffic subsumes the noise from the outside seating area.

The report shows that noise levels outside the Cosmopolitan Centre are acceptable to 12 midnight. Despite the applicant not providing their own acoustic report it is considered that due to the close proximity of the Royal Oak to the subject premises, any noise measurements would be taken in a similar location and similar conclusions could be drawn.

It should be noted that Condition 1.8 continues to apply which only permits liquor to be sold with or ancillary to a genuine meal and patrons shall be seated while consuming liquor.

Furthermore, where associated with a lawful food and drink premises, footpath dining areas are exempt development under SEPP (Exempt and Complying Development) 2008 with the only restriction being subject to a license agreement for use of the footpath.

Accordingly, the proposal is recommended for approval.

**ASSESSMENT UNDER SECTION 96**

The application is assessed under Section 96 of the Environmental Planning and Assessment Act 1979.

9. **SECTION 96(2): OTHER MODIFICATIONS**

Section 96(2) relates to the modification of a development consent for all other modifications.

The considerations in Section 96(2) require Council to consider the following:

a) It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all)

The subject modifications to the development consent are considered to be cumulatively minor relative to the scope of the approved works, and therefore the development consent, as proposed to be modified, is considered to be substantially the same development as that originally approved.

b) It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent

Not applicable.
c) It has notified the application in accordance with:
   i) The regulations, if the regulations so require, or
   ii) A development control plan, if the consent authority is a council that has made
       a development control plan that requires the notification or advertising of applications
       for modification of a development consent

Refer to Section 11.

d) It has considered any submissions made concerning the proposed modification within the
   period prescribed by the regulations or provided by the development control plan, as the case
   may be

Refer to Sections 5.2 and 11.

10. SECTION 96(5): THREATENED SPECIES

Not applicable.

ENVIRONMENTAL ASSESSMENT UNDER SECTION 79C

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

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

11. ADVERTISING AND NOTIFICATION

Submissions

The application was advertised and notified from 21/10/2015 to 4/11/2015 in accordance with
Chapters A2.2.1, A2.3.1 and A2.8 of the Woollahra DCP 2015. Three submissions were received
from:

1. Ms A Oliver of 3 Henrietta Street, Double Bay
2. Ms J Adams of Apt 7D, 2-22 Knox Street, Double Bay
3. MJ & EJ Boland of 5A/22 Knox Street, Double Bay

The submissions have been considered above under Section 5.2.
Statutory Declaration

The applicant has completed the statutory declaration dated 4/11/2015 declaring that the site notice for DA165/2015/2 was erected and maintained during the notification period in accordance with Chapter A2.3.5 of the Woollahra DCP 2015.

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

The land is within the Sydney Harbour catchment but is outside the Foreshores and Waterways Area and therefore there are no specific matters for consideration.

13. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

Part 1.2: Aims of Plan

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

Land Use Table

The proposal is permitted and is consistent with the objectives of the B2 Local Centre zone.

Part 4.3: Height of Buildings

Part 4.3 limits development to a maximum height of 18.1m.

<table>
<thead>
<tr>
<th>Maximum Building Height</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>18.1m</td>
<td>&lt;18.1m</td>
<td>&lt;18.1m</td>
<td>18.1m</td>
<td>Yes</td>
</tr>
</tbody>
</table>

The proposal complies with the maximum building height prescribed by Part 4.3 of Woollahra LEP 2014. It is also acceptable with regard to the relevant objectives under Part 4.3(1) of Woollahra LEP 2014.

14. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

Chapter D5: Double Bay Centre

Bay Street – 5.4.5 and Knox Street – 5.4.6

The property address is Knox Street however the proposed works to the shopfront face Bay Street. The proposal does not involve any physical works to the building and is acceptable with regard to both Sections 5.4.5 and 5.4.6.

Outdoor eating – 5.6.4.4

The proposal provides outdoor eating in a suitable location and satisfies the requirements under Section 5.6.4.4
Environmental amenity – 5.6.5

Acoustic privacy – 5.6.5.2

Objectives:

O1 aims to ensure that adequate acoustic privacy to residential apartments and private open spaces in the centre.

O2 aims to protect the acoustic privacy of residential neighbours adjacent to the centre.

O3 aims to ensure the viability of housing, and greatly increase the amenity of dwellings, by minimising the impact of external noise sources.

Controls:

C4 Restaurants should be designed to minimise the impact of noise associated with late night operation on nearby residents.

The proposed modifications involve an increase in the trading hours from the following approved hours:

Indoor hours:

Monday to Saturday 7am to 12 midnight
Sundays 8am to 10pm

Outdoor hours:

Mondays to Saturdays 7am to 10pm
Sundays 8am to 10pm

A reviewable condition (Condition I.2) permits extended hours for the outdoor areas Monday to Saturday from 10pm to 10.45pm.

The proposal involves the following:

- The outdoor seating hours be amended to allow operation to midnight Mondays to Saturdays (8am to 10pm Sundays) under Condition I.2
- The number of patrons under Condition I.3 to be increased from 30 to 40 outdoors (a total of 80 patrons)
- Condition I.15 to be amended to allow outdoor background music

Objectors have raised concerns about potential impacts of late night trading, in particular acoustic impacts as a result of the use of the outdoor area, increase in patron numbers and the use of outdoor music.
Given the close proximity of the premises to residential properties, the original assessment report recommended that approval for outdoor seating be given until 10pm (7 days a week) in Condition I.1 with extension of the outdoor seating area between 10pm and 12 midnight (Mon-Sat) in the form of a reviewable condition (Condition I.2) which would allow Council and NSW Police to assess the impact the outdoor seating is having on the neighbouring amenity. At the meeting of the Application Assessment Panel on 11 August 2015, the Panel limited the outdoor seating to 10.45pm Monday to Saturday.

The applicant states that the purpose of the increase in trading hours is to provide greater service to patrons of the restaurant and to compete with other nearby restaurants that have approval to be open later. The applicant states that it is non-viable to restrict trade outdoors to 10.45pm.

Council’s Environmental Health and Compliance Officers have raised no concern with the proposed hours. Council’s Compliance Officer states that since 2009 there has only been one noise disturbance which was promptly addressed. There has been no further evidence to suggest any other concerns have been raised regarding the use and amenity of the outdoor seating area.

Further, as discussed in Part 8.1 (above), an acoustic report (by Renzo Tonin & Associates dated 19 June 2015 ref TH432-01F01) was carried out for the Royal Oak which is in close proximity (across Bay Street) to the subject premises. The report shows that noise levels outside the Cosmopolitan Centre are acceptable to 12 midnight. Despite the applicant not providing their own acoustic report it is considered that due the close proximity of the Royal Oak to the subject premises, any noise measurements would be taken in a similar location and similar conclusions could be drawn.

Accordingly, the original proposal for outdoor hours to 12 midnight Monday to Saturday was considered to be acceptable subject to a reviewable condition and this position is maintained.

In terms of patron numbers, NSW Police submitted that an additional ten (10) patrons may lead to an increase in noise levels. However, no concern has been raised by Council’s Environmental Health and Compliance Officers in this regard. The increase in outdoor patron numbers from 30 to 40 is considered to be acceptable, subject to the approved conditions which aim to minimise amenity impacts on surrounding residents.

It should be noted that in terms of the hours and eating capacity for outdoor dining areas, that provided the outdoor dining is associated with a lawful food and drink premises (which this is) the footpath dining areas are exempt development under SEPP (Exempt and Complying) 2008 without further restriction.

In terms of the outdoor amplified music, NSW Police state that this will increase the ambient noise of the Double Bay area. Council’s Environmental Health and Compliance Officers have raised no concern with deleting the requirement that there be no amplified music in the outdoor seating area. It is considered that conditions included in the original consent aim to minimise adverse amenity impacts to neighbouring properties and therefore an amendment to delete this requirement in Condition I.15 is recommended. It is considered that Conditions I.15 (as amended) and I.16 will adequately minimise the potential amenity impacts on nearby residences. Condition I.19 requires all amplification equipment to be controlled by a noise limiter.

Subject to amendments to Conditions I.2, I.3 and I.15, the proposal is recommended for approval.
Chapter E1: Car Parking

Car parking calculation excludes footpath dining areas so the increase of 10 patrons does not generate any additional parking.

Chapter F3: Licensed Premises

Under F3.2, the proposed restaurant has a **low rating**.

Considerations in C1 include the proximity of residential and other sensitive uses, the type of licensed premises, size and capacity, trading hours, existing and likely cumulative impacts, proposed management practices, the density of licensed premises, availability of car parking and proximity to public transport and any recommendations from NSW Police.

C2 and C3 limits the following trading hours for low rated premises as follows:

- Base hours of 8am to 12 midnight, extended to 2am for internal areas
- Base hours of 8am to 10pm, extended to 12 midnight for external areas

The proposed hours of operation are within the extended hours for external areas.

As discussed above, the proposed hours are considered to be acceptable subject to an amendment to the reviewable condition, **Condition I.2**.

15. **THE LIKELY IMPACTS OF THE PROPOSAL**

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

16. **THE PUBLIC INTEREST**

In determining whether or not the proposal is in the public interest, both the wider public interest and the sectionalised public interest (protecting residential amenity of surrounding residential properties) must be taken into consideration. In the event that the wider public interest outweighs the sectionalised public interest, the proposal can be determined to be in the public interest.

The proposal involves an increase in trading hours, increase in patron numbers and deletion of a condition which prohibits outdoor music, as discussed under Section 4. There have been three objections to the proposal, which are discussed above.

As with the original application, the public interest must be closely analysed as restaurants in general have been the cause of conflict between local residents who want to retain or improve their amenity and owners/developers who want to provide better service to their customers in a highly competitive market.

In Randall Pty Ltd vs Leichhardt Council (2004) NSWLEC 277, the Commissioner considered the principles to be applied when assessing an application for an extension or intensification of a use which may have an adverse impact on residential amenity.
Is the impact of the operation of the existing use on residential amenity acceptable?

If the answer is no, then an extension or intensification, would be unacceptable unless there is no overall increase in impact or there are measures proposed which would mitigate the existing impact.

Council’s Compliance Officer states that there has been one (1) noise disturbance complaint in the last 10 years (February 2012) regarding the use of outdoor speakers on Friday and Saturday nights. This complaint was referred to the NSW Licensing Police and no further action was taken or required. No further complaints have been received since that time.

Accordingly, it is considered that the impact of the operation of the existing use on residential amenity is acceptable.

If the answer is yes, is the impact of the proposed extension or intensification still acceptable?

In answering the first question, it is not sufficient to assume that a use operating in compliance with its approval has an acceptable impact.

As discussed above, there are residences within the same building and nearby that could be affected by the extended hours. **Condition I.2** imposes a reviewable condition on the outdoor seating area in order to assess the impacts. Subject to **Condition I.2** and additional noise and management conditions in Conditions I.1-I.17 on the original consent, the extension is considered to be acceptable.

In Vinson vs Randwick Council (2005) NSWLEC 142, the following matters were also discussed:

- Departing patrons and residential amenity
- Parking
- Noise from within the premises

These issues have been included in the planning principle.

What are the adverse impacts of the present trading hours, permitted number of patrons and permitted activities?

Evidence of anti-social behaviour at or linked to the premises taken from records such as the police COPS system and/or other police records and/or diaries kept by local residents is preferable to generalised anecdotal evidence that cannot be tested by the applicant against any records kept by the operator of the premises.

A similar position applies to complaints about other amenity impacting behaviour such as noise from people on the premises or its plant and equipment; noise from entertainment provided on the premises or the noise necessarily arising from patrons such as car doors, engines starting or late-night conversations in residential streets in the vicinity. Demand for on-street parking may also be relevant.

In assessing the likely adverse impact of increased trading hours, permitted number of patrons or permitted activities for licensed premises, the objectors’ fears of adverse impacts, no matter how genuinely felt, are relevant only to the extent that there is a reasonable probability that impacts will occur.
The site is currently operating as a café / restaurant and a review of Council’s records reveals that only one (1) complaint has been made in 10 years, as discussed above. There has been no further evidence that there have been any further complaints regarding the use and amenity.

It is considered that, subject to Conditions I.1-I.18 on the original consent there will be no significant adverse impacts to neighbouring properties.

**What measures are in place to address those impacts?**

*Measures include the number and times of engagement of security personnel, designated duties performed by them together with patrolling patterns. Identification of and responses to specific trouble spots should be considered. The method and timing of street litter collection are also relevant. For premises that provide entertainment, noise control measures that do not require intervention by an operator may also be relevant.*

The applicant submitted a Plan of Management with the development application which includes measures to mitigate adverse impacts on neighbouring property’s amenity including taking reasonable steps to control the behaviour of patrons leaving the premises. The Plan of Management is to be amended to include a complaints register (Condition F.3 on the original consent).

As discussed, appropriate conditions have been recommended to mitigate the potential impacts from noise, anti-social behaviour, litter and management of the premises (refer to Conditions I.1-I.17).

**How are those measures documented?**

*A well-documented management plan for the premises and its availability to local residents is a positive factor. The measures that are currently in place to record and respond to complaints made by residents are also relevant.*

Condition F.3 requires the Plan of Management to be amended to include a complaints register. The complaints register will record the full details of the complaint and is required to be responded to in a timely manner (refer to Condition I.5).

**Have those measures been successful?**

*The period during which the control measures (for the current trading hours, permitted number of patrons and permitted activities) have been operating is relevant to enable assessment of the likely success of their being applied to extended hours.*

*If the present management regime has been in operation for a relatively short period, or has been unsuccessful or not fully implemented, less weight can be given to it than to a management regime which has succeeded in reducing antisocial behaviour.*

It is considered that the measures contained in the Plan of Management are sufficient, subject to Condition F.3. The reviewable condition (Condition I.2) will allow NSW Police and Council the opportunity to gauge whether appropriate measures are in place to manage the potential impacts of the outdoor seating on surrounding residents.
What additional measures are proposed by the applicant or might otherwise be required?

*If any extension of hours, numbers or activities is likely to be acceptable but only subject to additional measures to reduce noise or anti-social behaviour, a trial period may be appropriate to test those measures.*

As discussed, a reviewable condition has been imposed for the outdoor seating in **Condition I.2**.

**Conclusion**

Subject to amendments to conditions, the proposal is considered to be in the public interest.

17. **DISCLOSURE STATEMENTS**

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

**RECOMMENDATION: Pursuant to Section 96 of the Environmental Planning and Assessment Act, 1979**

THAT the Council, as the consent authority, modify development consent to Development Application No. 165/2015/1 for alterations and additions to the existing licensed premises known as 'Perons' including changes to the takeaway counter, use of the premises as a restaurant and increasing the hours of operation from 7am-11pm (M-W), 7am-11:30pm (Th-Sat) and 11:30am-11:30pm (Sun) to 7am-12midnight (Mon-Sat) and 8am-10pm (Sun) on land at 2-22 Knox Street, Double Bay, subject to the following:

**Amendment of the following conditions:**

1.2 **Extended hours of operation for licensed premises – Reviewable Condition**

The hours of operation for the outdoor areas of the licensed premises are extended as follows:

i) 10pm to 12 midnight on Monday – Saturday nights

This condition is a reviewable condition as referred to under the Act, s.80A (10B-10D). The extended trading hours will be reviewed in accordance with **Condition I.18**.

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

**Note:** Council’s consideration of the extended hours of operation of licensed premises will take into account:

i) compliance of the premises in terms of security and its general management;
ii) the number and nature of substantiated complaints regarding the operation of the premises;
iii) compliance with the conditions of this consent; and
iv) any other matters considered relevant to the environmental evaluation of the premises.

Standard Condition: I4
I.3 **Maximum Patron Capacity**

The total number of patrons on the premises at any time shall not exceed 80 patrons (40 indoors and 40 outdoors).

Any person/s attending the premises for the purpose of ‘takeaway’ products/services will not be considered a ‘patron’ as detailed above, provided no food and or drink is consumed by those persons on the premises.

*Standard Condition: I6*

I.4 **Signage to be Displayed – Licensed Premises**

Signage (in lettering not less than 15mm in height on a contrasting background) is to be erected in a prominent position near the principal entry to the premises in accordance with Clause 98D of the EPA Regulation 2000.

The signage shall state the following and may change from time to time due to reviewable condition in accordance with **Condition I.2:**

```
“Approved hours of operation – Outdoor Areas
    Monday to Saturday 7am to 12 midnight
    Sundays 8am to 10pm

“Approved hours of operation – Indoor Areas
    Monday to Saturday 7am to 12 midnight
    Sundays 8am to 10pm

Approved patron capacity
    80 patrons (40 indoors and 40 outdoors)

Upon leaving please respect local residents by minimising noise.”
```

The signage required by this condition is to be erected prior to the commencement of operations. This condition has been imposed to clearly identify the hours and patron capacity of the licensed premises.

*Standard Condition: I9*

I.15 **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.

This condition has been imposed to protect the amenity of the neighbourhood.

Useful links:
  Community Justice Centres—free mediation service provided by the NSW Government ([www.cjc.nsw.gov.au](http://www.cjc.nsw.gov.au)).
  Association of Australian Acoustical Consultants—professional society of noise related professionals ([www.aaac.org.au](http://www.aaac.org.au)).
  Department of Gaming and Racing - ([www.dgr.nsw.gov.au](http://www.dgr.nsw.gov.au)).

Standard Condition: I56

Addition of the following conditions:

1.19 Noise Limiters

All amplification equipment used in the premises is to be controlled by a root mean square (RMS) noise limiter, calibrated by an acoustic engineer. The equipment must be tamper proof and only operable by the management or their nominee.

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

Standard Condition: I13 (Autotext: I113)

Annexures

1. Seating Plan
2. Referral Response - Fire Safety
3. Referral Response - Health
4. Referral Response - Compliance
5. Referral Response - NSW Police
REFERRAL RESPONSE – FIRE SAFETY

FILE NO: DA 165/2015/2
ADDRESS: 2-22 Knox Street DOUBLE BAY 2028
PROPOSAL: Modification to Conditions I2, I3 and I15 (in relation to trading hours, outdoor seating and music)
FROM: Richard Smith - Fire Safety Officer
TO: Ms S Richards

1. DOCUMENTATION

I refer to the following documents received for this report:

- Architectural Plans, referenced PERONS CAFE OUTDOOR SEATING-SECTION 96 , prepared by UNKNOWN, dated UNDATED,

2. RESEARCH

The following research was undertaken in the preparation of this assessment:

- A site inspection was carried out on the following date: 11 November 2015

3. BUILDING DESCRIPTION

Type of Construction: A
Class: 6 & 2

4. ASSESSMENT

Comments have been prepared on the following. Where Approval is recommended, Conditions of Consent follow at the end of the comments.

5. RECOMMENDATION

The seating arrangement is satisfactory conditioning the development in relation to the BCA is not necessary. Signage must be located in a prominent position adjacent to the entrance notifying the numbers of patrons allowed within the premises in accordance with the requirements of Clause 98D of the Environmental Planning & Assessment Regulation 2000.

Nil

Richard Smith
Fire Safety Officer       Date: 11 November 2015
REFERRAL RESPONSE - ENVIRONMENTAL HEALTH

FILE NO: Development Applications/ 165/2015/2
ADDRESS: 2-22 Knox Street DOUBLE BAY 2028
PROPOSAL: Modification to Conditions I2, I3 and I15 (in relation to trading hours, outdoor seating and music)
FROM: Graeme Reilly Environmental Health Officer
TO: Ms S Richards

1. ISSUES

- Noise

2. DOCUMENTATION

3. RESEARCH

The following research was undertaken in the preparation of this assessment:

The proposal includes the modification of Condition I.2 to permit outdoor dining to 12 midnight Monday to Saturday and the modification of Condition I.15 to permit amplified music in the outdoor seating area.

The proposed trading hours for the outdoor dining area are consistent with three similar licensed premises in the area.

The modification to Condition I.2 is considered acceptable subject to a reviewable condition. A reviewable condition is the best method to deal with this situation and has been recently used on similar licensed premises for the Royal Oak Hotel and Alpaca, Sake and Mistelle Restaurants.

The modification of Condition I.15 is considered reasonable given that amplified background music has been provided to the outdoor seating area since 2009.

4. SUMMARY OF PROPOSAL

Modification to Conditions I2, I3 and I15 (in relation to trading hours, outdoor seating and music)

5. ASSESSMENT

Comments have been prepared on the following. Where Approval is recommended, Conditions of Consent follow at the end of the comments.

6. RECOMMENDATION

Council’s Environmental Health Officer has determined that the proposal is satisfactory, subject to the following conditions:
A. General Conditions

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

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

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

E. Conditions which must be satisfied during any development work

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

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

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

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

I.1 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.

This condition has been imposed to protect the amenity of the neighbourhood.


Useful links:
Community Justice Centres—free mediation service provided by the NSW Government (www.cjc.nsw.gov.au).

Standard Condition: I50
I.2 Noise from licensed premises

The $L_{A10}$ noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8k Hz inclusive) by more than 5dB(A) between 07:00 am and 12:00 midnight at the boundary of any affected residence.

The $L_{A10}$ noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8k Hz inclusive) between 12:00 midnight and 07:00 am at the boundary of any affected residence.

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00 am.

This condition has been imposed to protect the amenity of the neighbourhood.

Note: dB(A) is a value used for ‘A-weighted’ sound pressure levels ‘A’ frequency weighting is an adjustment made to approximate the response of the human ear.

Note: Licensed premises means premises licensed under the Liquor Act 2007

Note: For the purposes of this condition, the $L_{A10}$ is the A-weighted sound pressure level that is exceeded for 10% of the time over which a given sound is measured.

Note: The background noise level is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the $L_{A90}$ level measured by a sound level meter over the applicable period.

Note: This condition is identical to the minimum standard condition imposed by the Casino Liquor and Gaming Control Authority (the Authority). The Authority may specify other standards in respect of the above condition under the Liquor Act 2007, and associated Regulations. Section 79 of the Liquor Act 2007 provides an informal mechanism for complaints to be made (by residents, Police, local consent authorities and others) where the amenity of local neighbourhoods is unduly disturbed by the conduct of licensed premises including registered clubs (or their patrons). The Director of Liquor and Gaming is responsible for resolving such complaints and may impose temporary or permanent conditions on any licence. For further information go to the NSW Office of Liquor and Gaming and Racing’s website: (www.olgr.nsw.gov.au).

Note: Interior noise levels of licensed premises which exceed safe hearing levels are not supported or condoned by Council.

Standard Condition: I52

J. Miscellaneous Conditions

Nil.

K. Advisings

Nil

Graeme Reilly
Environmental Health Officer

Date: 10/12/2015
REFERRAL RESPONSE

FILE NO: DA 165/2015/2

ADDRESS: 2-22 Knox Street DOUBLE BAY 2028

PROPOSAL: Modification to Conditions I2, I3 and I15 (in relation to trading hours, outdoor seating and music)

FROM: M Easton, Compliance Officer

TO: Ms S Richards

The proposal includes the modification of Condition I.2 to permit outdoor dining to 12 midnight Monday to Saturday and the modification of Condition I.15 to permit amplified music in the outdoor seating area.

The proposed trading hours for the outdoor dining area are consistent with three similar licensed premises in the area. Potential noise impacts and disturbances to nearby residential properties are generally a result of late night licensed venues at the edge of residential areas. However, since 2009 outdoor seating has been provided to 11pm Monday to Wednesday and to 11.30pm Thursday to Saturday and only one noise disturbance complaint has been received during this time regarding the use of outdoor speakers on a Friday and Saturday night.

The modification to Condition I.2 is considered acceptable subject to a reviewable condition. A reviewable condition is the best method to deal with this situation and has been recently used on similar licensed premises for the Royal Oak Hotel and Alpaca, Sake and Mistelle Restaurants.

The modification of Condition I.15 is considered reasonable given that amplified background music has been provided to the outdoor seating area since 2009. Only one noise disturbance complaint has been received (February 2012) regarding the use of outdoor speakers at midnight on a Friday and Saturday night, which was promptly addressed by the applicant. This demonstrates that the music to the outdoor dining area is not intrusive to neighbouring premises. Amplified music to the outdoor seating area is considered acceptable providing it is recorded music and played at not more than 5dba above background noise level and properly licensed.

M Easton
Compliance Officer
24th November, 2015

Woollahra Municipal Council
Redleaf Council Chambers
536 New South Head Road,
Double Bay NSW 2028

SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979
SUBMISSIONS TO COUNCIL

APPLICATION NUMBER: DA165/2015/2
APPLICATION TYPE: Modification to Conditions I2, I3 and I15 (in relation to trading
hours, outdoor seating and music)
PROPERTY: 2-22 Knox Street Double Bay 2028
SUB CATEGORY: Restaurant
APPLICANT: Mr G C Kelly

Police **object** to this application to modify conditions I2, I3 and I15 in relation to trading hours,
outdoor seating and music to development DA165/2015. Further to the above police will
highlight a number of concerns contained within the application and associated documents
which are increasingly considered negative to the local social impact, not in the public interest
and not conducive to community expectations.

1. **Overview:**

1.1. The business authorised by this licence must not operate with a greater overall level of
social impact on the well being of the local and broader community than what could be
reasonably expected from the information contained in the application. The direct
correlation between a saturation of licensed premises including all licence types and
alcohol related crime is unchallenged. Anecdotal information suggests that there have
been negative social impacts associated with the increase of trading hours and increase
patronage within licensed premises.

1.2. This restaurant is located within close proximity to residential properties with the Double
Bay area.
1.3. In the application, the venue would like to extend their outdoor trade till midnight.

1.4. Increase outdoor seating capacity from 30 patrons to 40 patrons.

1.5. The installation of amplified music in the outdoor seating area.

1.6. The venue is located within a small precinct of licensed premises at 2-22 Knox Street, Double Bay. In the immediate vicinity, the area consists of two hotels (Royal Oak Hotel and Golden Sheaf Hotel) several restaurants, including but not limited to, (Mrs Sippy's, Pelicano, Limoncello and Sake) and a general bar (Casablanca Bar and Lounge).

1.7. The venue is in close proximity to residential premises. The venue is surrounded by the suburbs of Double Bay where a large contingency of residential premises are located.

1.8. The location is in close proximity to the Sydney City Liquor and Kings Cross Licence Freeze Precinct, which prohibits additional licensed premises and increased trading hours under the Liquor Act 2007 and Environmental Planning and Assessment Act 1979.

2. Comment

2.1. Police object to the approval of this application due to the following reasons;

2.1.1. Reasons relating to the modification of point 1.2 of DA 165/2015;

2.1.1.1. There will be increased alcohol availability during the nominated times which may contribute to alcohol related crime in the Double Bay area.

2.1.1.2. Police strongly submit that by increasing extended trade in the outdoor dining area of the venue that may have an adverse effect on the amenity to the neighbourhood. Police are guided by the Liquor Act 2007 and the Environmental Planning and Assessment Act 1979 when providing submissions to Council and take in consideration Section 49, Subsection (8) of the Liquor Act 2007 which states; (b) the extended trading period will not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the licensed premises.

2.1.1.3. Police believe that extending this venues outdoor trade will affect the quiet and good order of the neighbourhood. In the applicant's submission dated 7th October, 2015 the applicant stated; "The acoustic report commissioned by the Royal Oak Hotel, taken from in front of Perons Cafe' confirmed noise levels to be within Council guidelines". The applicant has failed to supply any documentation in a form of an acoustic report to support this statement. As it reads, it appears that the Royal Oak Hotel was testing noise emitting from the Royal Oak Hotel and not from the Perons Cafe' boundary or outdoor area.
2.1.4. The submission also failed to mention the time frame and date/s of the acoustic testing conducted by the Royal Oak Hotel. The time and date that the test is conducted will affect the final outcome of the report.

2.1.2. Reasons relating to the modification of point I.3 of DA 165/2015;

2.1.2.1. Police have observed the outdoor dining area of the venue. Police submit that any consideration made by Council to increase patron capacity in this area will be made in line in accordance with relevant criteria specified in the Building Code of Australia (BCA).

2.1.2.2. Police submit that by adding another ten (10) patrons to this outdoor area may lead to an increase in noise levels emitting from the premises. As no acoustic report was submitted it is difficult to determine if increasing the patronage in this area will “amplify” the noise emitting from the premises.

2.1.3. Reasons relating to the modification of point I.15 of DA 165/2015;

2.1.3.1. As stated earlier, the applicant is submitting to Council that “background music to enhance the dining experience and not impose on conversation levels”. Police find it difficult to comment on this as no acoustic sound report has been submitted with the Section 96 application to Council.

2.1.3.2. Police submit that allowing amplified music to be played into the outdoor area will increase the ambient noise of the Double Bay area and as it stands, the general background noise of Double Bay during peak trade days is quite noisy. The noise is emitting from patrons migrating to and from licensed venues, vehicle noise picking up and dropping off patrons to the area, noise emitting from venues and patron noise.

2.1.3.3. The condition was imposed on the consent to “protect the amenity of the neighbourhood”, allowing the modification of the above conditions may cause undue disturbance to an already busy area.

If Woollahra Municipal Council were to consider approving the medications on the application Police request the above concerns be clarified and rectified prior to any approval.

Police seek that the amended conditions be placed on a trial basis for a period of 12 months to allow for research and analysis for the newly amended conditions.

Jamie Zahra
Senior Constable
Licensing Supervisor
Rose Bay LAC
24th November, 2015

Michael Capon
Sergeant
Crime Coordinator
Rose Bay LAC
24th November, 2015
## 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>DA341/2015/1</td>
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<td>ADDRESS</td>
<td>252 Glenmore Road PADDINGTON</td>
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<tr>
<td>SITE AREA</td>
<td>256m²</td>
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<tr>
<td>ZONING</td>
<td>R2 Low Density Residential</td>
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<tr>
<td>PROPOSAL</td>
<td>Extensive alterations &amp; additions to the rear of the existing terrace dwelling including demolition of existing garage &amp; proposed new garage; new swimming pool and associated landscaping</td>
</tr>
<tr>
<td>TYPE OF CONSENT</td>
<td>Local development</td>
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<tr>
<td>COST OF WORKS</td>
<td>$700,000</td>
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<tr>
<td>DATE LODGED</td>
<td>02/07/2015 (Original application)</td>
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<td></td>
<td>18/11/2015 (Replacement application)</td>
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<tr>
<td>APPLICANT</td>
<td>POCO Designs</td>
</tr>
<tr>
<td>OWNER</td>
<td>Mr A D &amp; Mrs J A Walker</td>
</tr>
<tr>
<td>AUTHOR</td>
<td>Ms R Coull</td>
</tr>
<tr>
<td>TEAM LEADER</td>
<td>Mr G Fotis</td>
</tr>
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<td>SUBMISSIONS</td>
<td>Four (4)</td>
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<td>RECOMMENDATION</td>
<td>Approval</td>
</tr>
</tbody>
</table>

## SUMMARY

1. **LOCALITY PLAN**

![Subject site and Objectors map showing the paddington society]

The Paddington Society
2. LEVEL OF DELEGATION

The application is to be determined by the Development Control Committee because there is a non-compliance with the building height development standard in excess of 10%.

This is an existing non-compliance. The proposal will not further exceed the height of the existing building.

3. PROPOSAL

The proposal involves the following works:
- Extensive alterations & additions to the rear of the existing terrace dwelling including demolition of existing garage & proposed new garage, a new swimming pool and associated landscaping.

The proposal was amended on 18/11/2015 as a replacement application was lodged under Clause 55 of the Environmental Planning and Assessment Regulation 2000. It involved the following changes:
- The proposed loft over the garage was deleted.
- The existing garage is to be rebuilt with a sloping skillion roof.
- The proportions of the window openings on the first and second floor levels were amended from square to vertical panels.
- Excavation for the ground floor level to approximately 570mm depth.
- Increased setback for excavation at the lower ground floor level from the north eastern boundary ranging between 495mm to 705mm and 300mm from the south western boundary.

4. ISSUES

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

<table>
<thead>
<tr>
<th>Clause</th>
<th>Development Standard</th>
<th>Departure from Control</th>
<th>Conclusion</th>
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<tbody>
<tr>
<td>Part 4.3</td>
<td>Height of Buildings</td>
<td>3.5m or 37% departure from the 9.5m control</td>
<td>Satisfactory</td>
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</table>

4.2. Primary Issues

<table>
<thead>
<tr>
<th>Issue</th>
<th>Conclusion</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Height</td>
<td>Satisfactory. There is no change to the existing ridge height. The proposal achieves the underlying intent of the objectives of Clause 4.3 of the Woollahra LEP 2014. Therefore, strict compliance with the height development standard is considered unreasonable and unnecessary in this instance. The Clause 4.6 objection is well founded and the proposal is considered acceptable.</td>
<td>11.3</td>
</tr>
<tr>
<td>Tree impacts</td>
<td>Satisfactory. Council’s Tree and Landscape officer considers the proposal acceptable subject to Conditions A2, A4, A5, C1(a), B4 &amp; E28 to protect the Jacaranda tree located on the adjoining property.</td>
<td>11.5, 12.8, 12.20</td>
</tr>
<tr>
<td>Excavation</td>
<td>Satisfactory, for the following reasons:</td>
<td>11.8 &amp; 12.7</td>
</tr>
<tr>
<td></td>
<td>• A Geotechnical and Hydrogeological Investigation and Monitoring Plan, prepared by GeoEnviro Consultancy Pty Ltd, dated 23/06/2015 was submitted with the development application.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• A Structural Report, prepared by Romanous &amp; Associates, dated 16/11/2015 was also submitted with the development application.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• The excavation under the principal building form has been setback 495mm from the north-eastern boundary and 300mm to the south-western boundary to ensure the excavation is setback from existing footings. Detailed section drawings have been provided showing structural details for the new addition and its relationship to the existing adjoining structures.</td>
<td></td>
</tr>
</tbody>
</table>
### Issue

<table>
<thead>
<tr>
<th>Conclusion</th>
</tr>
</thead>
</table>
| • Council’s Development Engineer considers the proposed excavation acceptable, subject to **Conditions A2, A3, B3, C2, C3, C5, C6, C7, C8, C9, C10, D2, D3, D4, D5, D9, E3, E7, E8, E9, E10, E11, E12, E13, E18, F2, H3, K12 & K13**.  
• The majority of the excavation relates to an existing sub-floor area within the existing building footprint. The extent of the proposed excavation is not considered to be excessive and will not result in any significant adverse impacts to the existing or adjoining buildings. |

### Relationship of the paired group

Satisfactory. The proposed alterations and additions at the rear relate to an altered rear wing and will not adversely impact the contribution and relationship of the building to the paired group with No. 250 Glenmore Road.  

### Extent of glazing

Satisfactory. The glazing to the lower levels of the rear wing is largely screened by the garage structure at the rear. The proposed glazing at the lower ground floor (basement) and ground floor (void) will clearly read as a sympathetic contemporary design. The glazing to the first and second floor balconies and new second floor window opening will be visible from the public domain. The proportions of the windows to the first and second floor were amended to be vertically proportioned. **Condition C1(c)** is recommended to delete the sidelights to the French doors on the first and second floor levels resulting in an acceptable solid-to-void ratio.  

### Garage

Satisfactory. The loft over the garage was deleted. The height and proportions of the proposed garage are considered acceptable and compatible with the pattern of garages along the laneway, subject to **Condition C1(d)** to reduce the parapet height of the garage by 500mm.  

### Solar unit

Satisfactory. The height of the proposed solar unit on the roof over the rear wing is not specified. **Condition C1(b)** is recommended to ensure that the solar unit located on the roof over the rear wing shall not exceed 200mm above the roof level and match the roof profile.  

### Pool equipment

The location of the pool equipment has not been specified. **Condition C1(e)** is recommended to require any pool equipment to be located within the proposed garage.  

### 4.3. Summary of Submissions

<table>
<thead>
<tr>
<th>Issue</th>
<th>Conclusion</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>The height, bulk, scale, alignment and character of the rear addition. Paddington HCA DCP 2015</td>
<td>Satisfactory. The effect of the proposed development on the heritage significance of the Paddington Heritage Conservation Area will not be adverse. The proposal is considered acceptable in terms of the relevant objectives and controls of the Woollahra Development Control Plan 2015.</td>
<td>12</td>
</tr>
<tr>
<td>The extent of glazing, window proportions and materials</td>
<td>Satisfactory. The glazing to the lower levels of the rear wing is largely screened by the garage structure at the rear. The proposed glazing at the lower ground floor (basement) and ground floor (void) will clearly read as a sympathetic contemporary design. <strong>Condition C1(c)</strong> is recommended to delete the sidelights to the French doors on the first and second floor levels resulting in an acceptable solid-to-void ratio.</td>
<td>12</td>
</tr>
<tr>
<td>Visual privacy</td>
<td>Satisfactory. The proposal will not result in any unreasonable overlooking impacts of the main living areas and private open space areas of adjoining and adjacent properties.</td>
<td>12.10</td>
</tr>
<tr>
<td>Excavation</td>
<td>Satisfactory. A Geotechnical and Hydrogeological Investigation and Monitoring Plan and a Structural Report were submitted with the development application. The excavation setbacks are considered acceptable. The majority of the excavation relates to an existing sub-floor area within the existing building footprint. The extent of the proposed excavation is not considered to be excessive and will not result in any significant adverse impacts. Council’s Development Engineer considers the proposed excavation acceptable, subject to <strong>Conditions A2, A3, B3, C2, C3, C5, C6, C7, C8, C9, C10, D2, D3, D4, D5, D9, E3, E7, E8, E9, E10, E11, E12, E13, E18, F2, H3, K12 &amp; K13</strong>.</td>
<td>11.8 &amp; 12.7</td>
</tr>
<tr>
<td>Issue</td>
<td>Conclusion</td>
<td>Section</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>---------</td>
</tr>
<tr>
<td>The shared chimney</td>
<td>The chimney is located on the adjoining property, 250 Glenmore Road, not within the subject site.</td>
<td>N/A</td>
</tr>
<tr>
<td>Fencing &amp; balustrades</td>
<td>Satisfactory. There are no changes to the streetfront zone. The proposed balcony balustrades at the rear are considered acceptable.</td>
<td>12.14</td>
</tr>
<tr>
<td>Full-width upper level balcony and includes size of window openings</td>
<td>Satisfactory. The existing rear wings of the paired group have been altered. The proposed upper level balcony is considered acceptable. <strong>Condition C1(c)</strong> is recommended to delete the sidelights either side of the new French doors.</td>
<td>12.3 &amp; 12.14</td>
</tr>
<tr>
<td>Garage door width and pedestrian gate</td>
<td>Satisfactory. The design of the garage is considered acceptable and compatible with the character of the laneway, subject to <strong>Condition C1(d)</strong> requiring the parapet height of the garage to be lowered by 500mm.</td>
<td>12.16</td>
</tr>
<tr>
<td>Tree impacts</td>
<td>Satisfactory. <strong>Conditions A4 &amp; C1(a)</strong> are recommended to ensure the primary branches of the Jacaranda tree are protected.</td>
<td>11.5, 12.8, 12.20</td>
</tr>
<tr>
<td>Loft structure over garage</td>
<td>The loft over the garage has been deleted from the application.</td>
<td>N/A</td>
</tr>
<tr>
<td>Errors on drawings</td>
<td>The information submitted with the development application is considered adequate for assessment.</td>
<td>N/A</td>
</tr>
</tbody>
</table>

**PROPERTY DETAILS AND REFERRALS**

5. **SITE AND LOCALITY**

**Physical features**

The subject site is rectangular in shape with a site area of 256m². The site has frontage of approximately 6.45m to Glenmore Road (front) and 5.46m to Goodhope Lane (rear).

**Topography**

The site falls approximately 3m from the front to the rear of the site (RL 31.9 to RL 28.5).

**Existing buildings and structures**

The subject dwelling is one of a pair of houses, Nos. 250 and 252 Glenmore Road. The mid-Victorian semi-detached terrace house has been subject of an earlier building application in 1983 and is not part of an unaltered group.

**Surrounding Environment**

The site is not a heritage item.
The site is in the vicinity of the following heritage items:
- Glenmore Road Public School (18-20 Cambridge St)
- St. George’s Anglican Church (245 Glenmore Rd)
The site is within the Paddington Heritage Conservation Area.
6. RELEVANT PROPERTY HISTORY

<table>
<thead>
<tr>
<th>Current use</th>
<th>Residential</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relevant Application History</td>
<td></td>
</tr>
<tr>
<td>• BA 1983/197</td>
<td></td>
</tr>
<tr>
<td>Relevant Compliance History</td>
<td></td>
</tr>
<tr>
<td>Not applicable.</td>
<td></td>
</tr>
<tr>
<td>Pre-DA</td>
<td>Nil</td>
</tr>
<tr>
<td>Requests for Additional Information and Replacement Applications</td>
<td></td>
</tr>
<tr>
<td>On 8/7/2015 the following information was requested:</td>
<td></td>
</tr>
<tr>
<td>• Construction Impact Statement (provided 27/7/2015).</td>
<td></td>
</tr>
<tr>
<td>On 9/10/2015 an Unsatisfactory DA letter was issued in relation to:</td>
<td></td>
</tr>
<tr>
<td>• Various planning, trees and engineering matters (a replacement application was submitted on 18/11/2015).</td>
<td></td>
</tr>
<tr>
<td>The replacement application included the following:</td>
<td></td>
</tr>
<tr>
<td>• Amended architectural drawings, prepared by Invision Design, Rev B, dated October 2015)</td>
<td></td>
</tr>
<tr>
<td>• A letter responding to Council’s letter, prepared by Lockrey Planning &amp; Development Solutions, dated 17/11/2015.</td>
<td></td>
</tr>
<tr>
<td>• Heritage impact statement (amended), prepared by Ruth Daniell, dated 13/11/2015.</td>
<td></td>
</tr>
<tr>
<td>• BASIX certificate (amended).</td>
<td></td>
</tr>
</tbody>
</table>

| Land and Environment Court Appeal(s) |
| Not applicable. |

7. REFERRALS

Technical Services

Satisfactory, subject to the following conditions:
- **Condition A2** - Approved plans and supporting documentation.
- **Condition A3** – Ancillary aspect of development (repair damaged infrastructure)
- **Condition B3** – Public road assets prior to any work/demolition
- **Condition C2** – Security deposits/fees
- **Condition C3** – Road and public works – Council approval required
- **Condition C5** – Soil and water management plan – submissions and approval
- **Condition C6** – Structural adequacy of existing supporting structures
- **Condition C7** – Engineers details
- **Condition C8** – Geotechnical and hydrogeological design, certification and monitoring
- **Condition C9** – Parking facilities
- **Condition C10** – Stormwater discharge to existing stormwater drainage system
- **Condition D2** – Dilapidation reports for existing buildings
- **Condition D3** – Adjoining structures – loose foundations
- **Condition D4** – Construction management plan
- **Condition D5** – Work (construction) zone – approval and implementation
- **Condition D9** – Erosion and sediment control installation
- **Condition E3** – Compliance with construction management plan
- **Condition E7** – Public footpaths – safety, access and maintenance
- **Condition E8** – Maintenance of environmental controls
- **Condition E9** – Compliance with geotechnical/hydrogeological monitoring program
- **Condition E10** – Support of adjoining land and buildings
- **Condition E11** – Vibration monitoring
- **Condition E12** – Erosion and sediment controls – maintenance
- **Condition E13** – Disposal of site water during construction
- **Condition E18** – Replacement of sandstone kerb or gutter
- **Condition F2** – Commissioning and certification of systems and works
- **Condition H3** – Completion of roadworks
- **Condition K12** – Dilapidation report conditions
- **Condition K13** – Roads Act application

Refer to Annexure 2.

**Trees and Landscaping**

Satisfactory, subject to the following conditions:

- **Condition A2** - Approved plans and supporting documentation.
- **Condition A5** – Tree preservation and approved landscaping works.
- **Condition B4** – Arborists inspection of excavations.
- **Condition A4 & C1(a)** – Modification of details of the plans.
- **Condition E27** – Tree preservation.

Note: the loft over garage has been deleted from the development application. Notwithstanding this, **Conditions A4 and C1(a)** are recommended to ensure no pruning of a primary branch of the Jacaranda tree standing on 250 Glenmore Road.

Refer to Annexure 3.
Heritage

Council’s Heritage Officer reviewed the original proposal and recommended refusal. The reasons for refusal have been satisfactorily addressed by the Replacement Application plans as follows:

1. **Reason for refusal - Character elements.**
   The proposal would alter the proportion, scale and the cohesion in the pair of terrace houses; is most unlikely to blend with the existing building fabric; and does not respond positively to the historical context. This does not comply with the Introduction to C1.2.3 of the DCP.

2. **Reason for refusal - Desired future character**
   The proposal does not respect the distinctive patterns or the significance of the semi-detached pair of terrace houses. This does not comply with C1.2.4 of the DCP.

3. **Reason for refusal - Rear elevations, rear additions, significant outbuildings and yards**
   The full length of the north-eastern wall and the full length of the north-western wall of the rear wing at the level of the ground-floor are floor to ceiling glass. This does not comply with point d) of Control C6 of C1.4.3 of the DCP.

4. **Reason for refusal - Rear elevations, rear additions, significant outbuildings and yards**
   The proposed use of large areas of glass to the ground-floor is most unlikely to achieve a united whole with the mid-Victorian terrace house and is not consistent with the character of the site, the streetscape or the Heritage Conservation Area. This does not comply with point c) of Control C11 of C1.4.3 of the DCP.

Comment: A Replacement Application was submitted and included the following changes:

- Garage loft - the proposed loft over the garage was deleted and the existing garage is to be rebuilt with a sloping skillion roof.
- Windows - the proportions of the window openings on the first and second floor levels were amended from square to vertical panels.
- Excavation - the ground floor level excavation is to a depth of approximately 570mm and the lower ground floor level excavation will be setback 495mm to 705mm to from the north eastern boundary and 300mm from the south western boundary.

The Replacement Application is considered acceptable for the following reasons:

- The two semi-detached dwellings have undergone alterations to the rear wing.
- The extent of proposed glazing at the upper levels has been minimized and includes windows with traditional proportions. **Condition C1(c)** is recommend to delete the sidelights either side of the French doors at the first and second floor levels.
- The existing rear elevation of the subject terrace has been considerably modified and includes large areas of glazing (Figure 1). The rear elevation of the terrace is not part of a consistent group. There are limited views towards the lower levels of the rear elevation of the built from Goodhope Lane (refer to Figures 2, 3 & 4). It is therefore considered that contemporary design is an appropriate and sympathetic outcome in this location.
Opportunities for new alterations in a contemporary manner are afforded by the fact that the rear elevation has a low degree of original integrity, it is not part of a consistent group, and it is not prominent from the public domain. In such “appropriate circumstances” the conservation area is best served through ensuring a high quality of new design, thus contributing a significant new layer to the conservation area.

The proposed glazing at the lower ground floor (basement) and ground floor (void) will clearly read as a sympathetic contemporary design.

The glazing will allow for improved internal amenity. The proposed alterations and additions at the rear will not have an adverse impact on the heritage significance and character of the building, the relationship of the pair or the character of the streetscape and Heritage Conservation Area. The traditional and distinctive elements of the terrace house will be retained and preserved.
5. **Reason for refusal - Excavation**  
   The proposed excavation under the principal building form may have the potential to compromise external heritage features of the building or those of its neighbours. This does not comply with Objectives O1, O2 and O7 of C1.4.7 of the DCP.
6. **Reason for refusal - Excavation**

   None of the proposed habitable rooms under the principal building form and under the rear wing have at least one external wall fully above existing ground level, and with the exception of the kitchen/dining/living space that opens onto the rear yard, none will receive adequate natural light and ventilation. This does not comply with point g) of Control C1 of C1.4.7 of the DCP.

Comment: A Replacement Application was submitted and included the following changes:

- Excavation - the ground floor level excavation is to a depth of approximately 570mm and the lower ground floor level excavation will be setback 495mm to 705mm to from the north eastern boundary and 300mm from the south western boundary.

   This Replacement Application was supported by more detailed architectural drawings and a Structural Report.

The Replacement Application is considered acceptable for the following reasons:

- The majority of the lower ground floor level (basement) includes a sub-floor area. The extent of excavation to accommodate the lower ground floor and ground floor levels is not considered to be excessive. The excavation under the principal building form is setback from footings.

- The overall height of the rear addition is similar to the existing. The changes to levels will be integrated with the existing levels of the principal building form, the first floor of the rear wing and the rear yard. The changes to the levels will not be discernible from the public domain and will not adversely affect neighbouring developments.

- A Geotechnical Report, prepared by Geo-environmental Engineering, dated 23/06/2015, was submitted in support of the application and demonstrates that the ground conditions are suitable for the proposed excavation.

- A Structural Report, prepared by John Romanous & Associated Consulting, dated 16/11/2015, was submitted in support of the application and demonstrates that the proposed excavation can be undertaken without compromising the structural integrity of the dwelling and adjoining properties.

- Council’s Development Engineer considers the proposed excavation acceptable subject to Conditions A2, A3, B3, C2, C3, C5, C6, C7, C8, C9, C10, D2, D3, D4, D5, D9, E3, E7, E8, E9, E10, E11, E12, E13, E18, F2, H3, K12 & K13. The conditions include requirements for engineering details, structural adequacy and support, geotechnical/ hydrogeological design, dilapidation reports and construction management.

- Habitable rooms within the dwelling will receive adequate light and ventilation. Standard conditions are recommended which require compliance with the Building Code of Australia.
7. **Reason for refusal - Loft over garages**
The proposal shows the loft extending from side boundary to side boundary. This does not comply with Control C1 g) of C1.5.7 of the DCP.

8. **Reason for refusal - Loft over garages**
The proposal is for a loft with a transverse gable, which is gable-ended to the side boundaries. This does not comply with Control C1 h) of C1.5.7 of the DCP.

9. **Reason for refusal - Loft over garages**
The proposed loft has a 1.8 metre-square window on the roof plane facing the dwelling. This does not comply with Control C1 i) of C1.5.7 of the DCP.

10. **Reason for refusal - Loft over garages**
The proposal has wide dormer-style forms with a shallow-pitched roof on the rear accessway-facing roof plane and on the roof plane facing the dwelling. This does not comply with Control C2 d) of C1.5.7 of the DCP.

**Comment:** A Replacement Application was submitted and included the following changes:

- Garage loft - the proposed loft over the garage was deleted.

Refer to Annexure 4.

**ENVIRONMENTAL ASSESSMENT UNDER SECTION 79C**

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

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

**8. ADVERTISING AND NOTIFICATION**

**8.1. Submissions**

The application was advertised and notified from 15/07/2015 to 29/07/2015 in accordance with Chapters A2.2.1, A2.3.1 and A2.8 of the Woollahra DCP 2015. Submissions were received from:

1. The Paddington Society, PO Box 99 PADDINGTON.
2. Elliot & Katherine Sacks, 256 Glenmore Road PADDINGTON.
The submissions raised the following issues:

- **The height, bulk, scale, alignment and character of the rear addition**
- **Non-compliance with the objectives and controls of the Paddington Heritage Conservation Area DCP 2015**

**Comment:** The proposed alterations and additions at the rear relate to an altered rear wing and will not adversely impact the contribution and relationship of the building to the paired group with No. 250 Glenmore Road. The height, bulk and scale is considered compatible with the adjoining development and streetscape character. The effect of the proposed development on the heritage significance of the Paddington Heritage Conservation Area will not be adverse. The proposal is considered acceptable in terms of the relevant objectives and controls of the Woollahra Development Control Plan 2015.

- **The extent of glazing, window proportions and materials (rear addition)**

**Comment:** The glazing to the lower levels of the rear wing is largely screened by the garage structure at the rear. The proposed glazing at the lower ground floor (basement) and ground floor (void) will clearly read as a sympathetic contemporary design. The glazing to the first and second floor balconies and new second floor window opening will be visible from the public domain. The proportions of the windows to the first and second floor were amended to be vertically proportioned. **Condition C1(c)** is recommended to delete the sidelights to the French doors on the first and second floor levels resulting in a contemporary appearance with an acceptable solid-to-void ratio.

Refer to Section 12.3.

- **Visual privacy**

**Comment:** The proposal will not result in any unreasonable overlooking impacts of the main living areas and private open space areas of adjoining and adjacent properties. Refer to Section 12.10.

- **Excavation**

**Comment:**
- A Geotechnical and Hydrogeological Investigation and Monitoring Plan, prepared by GeoEnviro Consultancy Pty Ltd, dated 23/06/2015 was submitted with the development application.
- A Structural Report, prepared by Romanous & Associates, dated 16/11/2015 was also submitted with the development application.
- The excavation under the principal building form has been setback 495mm from the north-eastern boundary and 300mm to the south-western boundary, setback from existing footings. Detailed section drawings have been provided showing structural details for the new addition and its relationship to the existing adjoining structures.
- Council’s Development Engineer considers the proposed excavation acceptable, subject to **Conditions A2, A3, B3, C2, C3, C5, C6, C7, C8, C9, C10, D2, D3, D4, D5, D9, E3, E7, E8, E9, E10, E11, E12, E13, E18, F2, H3, K12 & K13.**
The majority of the excavation relates to an existing sub-floor area within the existing building footprint. The extent of the proposed excavation is not considered to be excessive and will not result in any significant adverse impacts.

Refer to Section 11.8 & 12.7.

**Shared chimney**

*Comment:* The chimney is located on the adjoining property, 250 Glenmore Road, not within the subject site.

**Fencing & balustrades**

*Comment:* There are no changes to the streetfront zone. The proposed balcony balustrades at the rear are considered acceptable. Refer to Section 12.14.

**Full-width upper level balcony and the size of the upper level window openings**

*Comment:* The existing rear wings of the paired group have been altered. The proposed upper level balcony is considered acceptable. Condition C1(c) is recommended to delete the sidelights either side of the French doors. Refer to Section 12.3 & 12.14.

**Garage door width and no pedestrian gate**

*Comment:* The design of the garage is considered acceptable and compatible with the character of the laneway, subject to **Condition C1(d)** to reduce the height of the garage by 500mm. Refer to Section 12.16.

**Tree impacts**

*Comment:* **Conditions A4 & C1(a)** are recommended to ensure primary branches of the Jacaranda tree is protected.

**Loft structure over garage**

*Comment:* The loft over the garage has been deleted from the application.

**Errors on drawings**

*Comment:* The information submitted with the development application is considered adequate for assessment.

**8.2. Replacement Application**

The replacement application noted in Section 3 was not renotified to surrounding residents and previous objectors under Chapters A2.4 and A2.8 of the Woollahra DCP 2015 because it was considered to have no greater cumulative environmental or amenity impact.
8.3. Statutory Declaration

The applicant has completed the statutory declaration dated 30/07/2015 declaring that the site notice for DA341/2015/1 was erected and maintained during the notification period in accordance with Chapter A2.3.5 of the Woollahra DCP 2015.

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

The development application was accompanied by BASIX Certificate A233756 demonstrating compliance with the SEPP. These requirements are imposed in Conditions C4, H1 and I1.

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

The land is within the Sydney Harbour catchment but is outside the Foreshores and Waterways Area and therefore there are no specific matters for consideration.

11. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

11.1. Part 1.2: Aims of Plan

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

11.2. Land Use Table

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

11.3. Part 4.3: Height of Buildings

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

<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum Building Height</td>
<td>13.5m (roof)</td>
<td>13m</td>
<td>9.5m</td>
<td>NO*</td>
</tr>
<tr>
<td></td>
<td>14.3m (parapet)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*existing non-compliance
The proposal does not comply with Part 4.3 of Woollahra LEP 2014 as detailed and assessed in Part 11.3.

11.4. Part 4.6: Exceptions to Development Standards

Departure

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

Purpose

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

Written Request

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

Applicant’s 4.6 Exceptions to Development Standards assessment is attached to this report – refer to Annexure 5.

Assessment

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

The applicant’s written request has adequately addressed the relevant matters.
The departure from the control is in the public interest in the following manner:

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

An assessment against the objectives prescribed in Clause 4.3 is provided below.

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

**Assessment:** The proposed building works which will exceed the 9.5m development standard are all works at the second floor including the alterations to the roof over the second floor bathroom which will not impact upon the existing building height and achieves consistency with objective (a).

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

**Assessment:** The subject site is within the R2 Low Density Residential zone and does not adjoin any other zone. This objective is not applicable to this assessment.

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

**Assessment:** The proposal will maintain a compliant amount of solar access to existing buildings and open spaces and will achieve consistency with objective (c).

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

**Assessment:** The proposal will not result in any unreasonable adverse amenity impacts to adjoining or nearby properties in terms of views, loss of privacy, overshadowing or visual intrusion and will achieve consistency with objective (d).

(e) *To protect the amenity of the public domain by providing public views of the harbour and surrounding areas*

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

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

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

**Assessment:** The proposal has no impact to the housing need and achieves consistency with this objective.
• **To enable other land uses that provide facilities or services to meet the day to day needs of residents**

  **Assessment:** The proposal has no impact to other land uses that provide facilities or services to meet the day to day needs of residents and achieves consistency with this objective.

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

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

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

  **Assessment:** The proposal is of a height and scale that achieves the desired future character of the neighbourhood and achieves consistency with this objective.

The Clause 4.6 variation requests are considered to be well founded as the proposal demonstrates the following:

• Compliance with the building height development standard would be unreasonable and unnecessary in the circumstances as the existing building already exceeds the development standard and the proposed works will not further exceed the existing building height;

• There are sufficient environmental planning grounds to justify the contravention;

• The development meets the objectives of the development standards and the objectives of the R2 Low Density Residential zone, notwithstanding the variation;

• The proposed development is in the public interest and there is no public benefit in maintaining the standard in this instance;

• The proposed variation will not hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and

**Conclusion**

The proposal is in the public interest and consistent with the objectives of the # development standard. Departure from the control is supported.

**11.5. Part 5.9: Preservation of Trees or Vegetation**

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

Council’s Tree & Landscape Officer considered the proposed pruning of the Jacaranda tree standing in the rear yard of 250 Glenmore Road Paddington to accommodate the loft over the garage unsatisfactory. A replacement application was submitted and the loft over garage was deleted from the application. **Conditions A4 & C1(a)** are recommended to ensure that primary branches of the Jacaranda tree remain unpruned.
The applicant submitted root mapping in relation to the excavation for the swimming pool within close proximity to the Jacaranda tree. Council’s Tree & Landscape Officer considers this excavation acceptable, subject to conditions to protect the tree. This is reflected in Conditions A2, A5, B4 & E27.

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

11.6. Part 5.10: Heritage Conservation

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

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

- The development conserves the environmental heritage of Woollahra and achieves objective (a) of Clause 5.10(1).
- The development conserves the heritage significance of the Paddington Heritage Conservation Area and achieves objective (b) of Clause 5.10(1).
- The effect of the proposed development on the heritage significance of the Paddington Heritage Conservation Area will not be adverse and therefore satisfies Clause 5.10(4).

11.7. Part 6.1: Acid Sulfate Soils

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

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

11.8. Part 6.2: Earthworks

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

The proposal involves excavation under the principal building form for the lower ground floor (basement) level and excavation of the rear yard to accommodate an in-ground rainwater tank and swimming pool.

It will occur to within 495mm of the north-eastern boundary and 300mm to the south-western boundary extending to a maximum depth of 1.5m and average depth of 570mm. Overall, it involves approximately 80m$^3$ of excavation.
A Geotechnical and Hydrogeological Investigation and Monitoring Plan, prepared by GeoEnviro Consultancy Pty Ltd, dated 23/06/2015 was submitted with the development application. A Structural Report, prepared by Romanous & Associates, dated 16/11/2015 was also submitted with the development application.

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

The extent and siting of excavation is discussed having regard to the following:

(a) The likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development

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

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

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

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

Council’s Development Engineer considers the proposed excavation acceptable subject to Conditions A2, A3, B3, C2, C3, C5, C6, C7, C8, C9, C10, D2, D3, D4, D5, D9, E3, E7, E8, E9, E10, E11, E12, E13, E18, F2, H3, K12 & K13. The conditions include requirements for engineering details, structural adequacy and support, geotechnical/ hydrogeological design, dilapidation reports and construction management.

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

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

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

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

The excavation under the principal building form has been setback 495mm from the north-eastern boundary and 300mm to the south-western boundary to setback the excavation from existing footings and reduce potential impacts to adjoining dwellings. Detailed section drawings have been provided showing structural details for the new addition and its relationship to the existing adjoining structures.
The maintenance of the amenity of the adjoining properties terms of minimising noise, vibration and dust is addressed by Conditions A2, A3, B3, C2, C3, C5, C6, C7, C8, C9, C10, D2, D3, D4, D5, D9, E3, E6, E7, E8, E9, E10, E11, E12, E13, E17, E18, F2, H3, K12 & K13 requiring professional engineering details of all geotechnical work, geotechnical and hydrogeological design, certification and monitoring, dilapidation reports for adjoining properties, support for adjoining buildings founded on loose foundations, structural support for adjoining land and buildings, hours of work and maintenance of environmental controls, compliance with geotechnical/hydrogeological monitoring program, vibration monitoring and dust mitigation.

(f) The likelihood of disturbing relics

Condition E4 is recommended requiring any new evidence which is discovered during the works be immediately notified to Council and the Principal Certifying Authority.

The proposal is therefore acceptable with regard to Part 6.2 of the Woollahra LEP 2014.

12. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

Chapter C1: Paddington Heritage Conservation Area

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

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

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

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

O2: To retain significant rear and side forms. –

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

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

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

The proposal will comply with controls C1, C7, C8. The significant external elements of the principal building will be retained and conserved. The significant original internal fabric will be retained and conserved.

The proposal will also achieve objectives O1, O4, O6, O7, O8, O9, O10, O11, O12 in the following ways:
O1: To retain and conserve the principal building forms and street front zones. –

- The proposal does not involve any alterations to the street front zone.
- The proposed alterations to the principal building form are minor and conserve significant building fabric.

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

- The alterations to the rear second floor bedroom and balcony relate to an altered elevation and will not adversely impact the character of the area.

O6: To retain the distinctive shared characteristics of groups of buildings. –
O7: To retain, restore and promote the significance, contribution and relationship of a building within the context of a group of buildings. –

- The alterations to the rear second floor bedroom and balcony relate to an altered elevation and will not adversely impact the contribution and relationship of the building to the paired group with No. 250 Glenmore Road.

O8: To conserve the significant original fabric of terrace houses, terrace groups and free standing buildings of similar age and character. –
O10: To retain and conserve external original fabric and features characteristic to a traditional terrace semi-detached dwellings or dwelling house. –
O11: To retain and conserve internal significant original fabric and features characteristic to a traditional terrace house. –
O12: To retain the historic framework of the building both as essential structure and as evidence of original patterns of construction and use. –

- The proposal will retain and conserve the significant original internal and external fabric of the principal building form of the terrace house.

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

- The proposed excavation below the principal building form is setback 300-705mm from the side boundaries and is up to an average depth of 570mm. Council’s Development Engineer considers the proposed excavation satisfactory subject to conditions which include the recommendations of the geotechnical and structural reports that were submitted with the application.

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

<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>C2 Height of an alteration and addition to the rear of a double storey or higher building</td>
<td>Above the gutter line of the main roof</td>
<td>Above the gutter line of the main roof</td>
<td>Below the gutter line of the main roof</td>
<td>NO*</td>
</tr>
<tr>
<td>C3 and C6 Rear setback</td>
<td>Extend beyond the predominant rear building setbacks</td>
<td>Extend beyond the predominant rear building setbacks</td>
<td>Not extend beyond the predominant rear building setbacks</td>
<td>NO*</td>
</tr>
<tr>
<td>C6 Original chimneys</td>
<td>Retain all original chimneys</td>
<td>Retain all original chimneys</td>
<td>Retain all original chimneys</td>
<td>YES</td>
</tr>
</tbody>
</table>

*existing non-compliance
The proposal is considered acceptable in terms of control C2. The partial infill of the second floor roof terrace is above the gutterline of the main roof of the existing building but is considered acceptable as the addition relates to an altered part of the building and the new roof will match the pitch of the existing principal roof. All other alterations and additions are below the gutterline of the main roof.

The proposal is considered acceptable in terms of control C3. The height, alignment, form, scale, breezeway pattern and architectural character and detail of the rear addition is considered acceptable as both dwellings in the paired group have altered rear wings that extend beyond the original rear wings.

The proposal will comply with control C4. The new roof is of traditional form appropriate to the building type.

The proposal is considered acceptable in terms of control C6. The glazing to the north-eastern wall and north-western wall of the ground floor rear wing is largely screened by the garage structure at the rear. The proposed glazing at the lower ground floor (basement) and ground floor (void) will clearly read as a sympathetic contemporary design. The glazing to the first and second floor balconies and new second floor window opening will be visible from the public domain. The proportions of the windows to the first and second floor were amended to be vertically proportioned. Condition C1(c) is recommended to delete the sidelights to the French doors on the first and second floor levels resulting in a contemporary appearance with an acceptable solid-to-void ratio.

The proposal is considered acceptable in terms of control C7. The boundary to boundary addition at the lower ground floor level will not impact the pattern of the paired group and will not adversely affect the privacy, ventilation, light and the amenity of the adjoining properties (refer to Sections 12.5 & 12.10).

The proposal is considered acceptable in terms of control C11. The existing rear elevation of the subject terrace neither forms part of a consistent group, nor is it unaltered. The rear elevation has been considerably modified. It is therefore considered that contemporary design is an appropriate and sympathetic outcome in this location.

Opportunities for new alterations in a contemporary manner are afforded by the fact that the rear elevation has a low degree of original integrity, it is not part of a consistent group, and it is not prominent from the public domain. In such “appropriate circumstances” the conservation area is best served through ensuring a high quality of new design, thus contributing a significant new layer to the conservation area.

As such the proposed contemporary approach to the rear addition of the terrace is considered to be acceptable given the altered nature of the subject terrace. The proposed works will not detract from the character of the streetscape and the precinct.

The proposal will also achieve objectives O1, O2, O3, O4 in the following ways:

*O1: To retain the forms and character of traditional rear elevations of contributory buildings, particularly where they exist in unaltered groups.*
• The form and character of the rear elevation (upper floor) will be retained.

O2: To ensure that rear alterations and additions are of sympathetic design and construction. –

• The rear alterations and additions are of sympathetic design and construction.

O3: To ensure that the distinctive shared characteristics of groups of contributory buildings are retained and enhanced. –

• The distinctive shared characteristics of the paired group are retained at the upper levels. The proposed alterations and additions to the rear wing are considered acceptable as both dwellings in the paired group have altered rear wings.

O4: To enable sympathetic contemporary design and use of contemporary materials in appropriate circumstances. –

• The existing rear wing incorporates contemporary design. The proposed alterations and additions to the rear wing are considered acceptable as the contemporary detailing is largely screened from the public domain.

12.4. Section C1.4.4: Roofs and Roof Forms

<table>
<thead>
<tr>
<th>Control</th>
<th>Existing</th>
<th>Proposed</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>C10 Transparent material to rear roof planes</td>
<td>&lt;25%</td>
<td>&lt;25%</td>
<td>YES</td>
</tr>
</tbody>
</table>

The proposal will comply with controls C6, C8, C10. The proposed roof forms are consistent with traditional roof forms. The roof forms reflect the diminishing scale of roofscapes towards the rear of buildings. The colorbond roofing is an acceptable material. The rear roof planes incorporate less than 25% transparent material.

The proposal will also achieve objectives O1, O3 in the following ways:

O1: To retain and conserve the character of the original roofscape of Paddington. –

• The principal roof will be retained and conserved.

O3: To ensure that contemporary roof forms are consistent with the historic roofscape character of Paddington. –

• The proposed roof forms are consistent with the historic roofscape character of Paddington.

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

<table>
<thead>
<tr>
<th>Control</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>C1 Height of existing buildings on street frontages</td>
<td>Not increased</td>
<td>Not increased</td>
<td>Not increased</td>
<td>YES</td>
</tr>
<tr>
<td>C3 The height, bulk, form and scale of infill and new development</td>
<td>Consistent with the predominant height, bulk, form and scale of adjoining buildings</td>
<td>Consistent with the predominant height, bulk, form and scale of adjoining buildings</td>
<td>Consistent with the predominant height, bulk, form and scale of adjoining buildings</td>
<td>YES</td>
</tr>
</tbody>
</table>
The proposal will comply with control C1. The height of the existing building at the street frontage will not be increased.

The proposal is considered acceptable in terms of control C3. The height, bulk, form and scale of the proposal is consistent with appropriate adjoining buildings.

The proposal will comply with control C4. The proposal will result in additional overshadowing to 250 Glenmore Road but will maintain sunlight to at least 50% of the main ground level private open space of adjoining properties for a minimum of two hours between 9am and 3pm on 21 June.

The proposal does not comply with control C7:

*C7 which specifies that storey heights must conform to those of appropriate adjacent buildings.*

However, the proposal will achieve objectives O1, O3, O4, O5, O6 in the following ways:

**O1: To retain the distinctive height, bulk, form and scale of particular building types.** –

- The proposed rear wing includes changes to the levels for the rear wing. These changes are to the lower portion of the existing altered rear wing and will not alter the distinctive height, bulk, form and scale of the terrace house.

**O3: To maintain the visual consistency of established heights in historically significant streetscapes.**

- The proposed rear wing includes changes to the levels for the rear wing. These changes are to the lower portion of the existing altered rear wing and are largely screened by the garage at the rear. The established height of the terrace house and levels of the principal building form will be retained.

**O4: To ensure that the height of new development conforms to the appropriate heights in the street or lane and the historic character of the street or lane.** –

- The height of the new development responds to the topography of the site, the altered nature of the existing rear wing and is considered to be compatible with height and historic character of development in the street.

**O5: To minimise the impact of new development on the access to sunlight for private properties and public places such as neighbourhood parks.** –

- The proposal will maintain a compliant amount of sunlight to adjoining properties.

**O6: To protect the amenity of adjoining or adjacent residential uses.** –

- The proposal will maintain a compliant amount of solar access to adjoining properties and will not result in any unreasonable visual privacy impacts (refer to Section 12.10).
12.6. Section C1.4.6: Site Coverage, Setbacks and Levels

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

The proposal will comply with control C1. The building footprint is consistent with similar properties in the immediate vicinity.

The proposal is considered acceptable in terms of control C3. The rear alignment of the second and first floor level will be retained. The alignment of the ground and lower ground floor will extend past the existing rear wing but is considered acceptable as the alignment of the existing rear wing, and that of its pair, have been altered. The lower levels of the rear wings in the immediate vicinity are largely screened by garage structures.

The proposal does not comply with control C7:

*C7 which specifies that new development is to be consistent with ground and first floor levels established by existing buildings and topography in the context of a sloping site.*

However, the proposal will achieve objectives O1, O2, O3, O4, O6 in the following ways:

**O1: To maintain setbacks along the street frontage.** –

- There will be no change to the Glenmore Road frontage.

**O2: To retain established building alignments, setbacks and levels.** –

- The rear alignment and levels of the first and second floors will be retained.
- The rear alignment and levels of the lower ground and ground floors of the existing rear wing have been altered and are not required to be retained.

**O3: To ensure that new development continues the established alignments and setbacks of the established historic development in the streetscape.** –

- The lower levels of the rear wings in the immediate vicinity are largely screened by garage structures and these are no established alignment pattern.

**O4: To ensure that the siting of new development responds appropriately to levels established by relevant historic development in the streetscape.** –

- The existing rear wing and that of its pair have been modified. The levels of the upper levels which are visible from the public domain will be retained. The changes to the levels of the lower levels will not adversely impact historic development in the streetscape.

**O6: To encourage the retention or creation of useable open space at the rear of sites.** –

- The proposal includes a useable open space and deep soil landscaped area at the rear of the site.
12.7. Section C1.4.7: Excavation

<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>C1 General setback of excavation</td>
<td>N/A</td>
<td>300mm</td>
<td>1.5m</td>
<td>NO</td>
</tr>
<tr>
<td>C7 Excavation for other structures beyond the principal building form or secondary wing</td>
<td>N/A</td>
<td>300mm</td>
<td>900mm</td>
<td>NO</td>
</tr>
</tbody>
</table>

The proposal does not comply with controls C1, C4, C7:

C1 which specifies that excavation will not be permitted if:

a) it will occur under common walls and footings to common walls, or freestanding boundary walls, or under any other part of adjoining land; and
b) it will occur under or forward of the front façade; and
c) the outer edge of the excavation is within 0.2m of the footings of the front wall, party walls, or freestanding boundary walls, where the existing footing has bearing directly on rock foundation; or
d) the outer edge of the excavation is within 1m of the footing of the front walls, party walls, or freestanding boundary walls, where the existing footing has bearing on sand foundation or sandy soils up to 1m deep over a rock substratum; or
e) the outer edge of the excavation is within 1.5m of the footing of the front wall, party walls, or freestanding boundary walls, where the existing footing has bearing on sand foundation or sandy soils of a depth greater than 1m but not more than 1.5m over a rock substratum; or
f) the rock substratum is greater than 1.5m below original footings; and
g) habitable rooms formed from the excavation:
i) do not have at least one external wall fully above existing ground level; and
ii) will not receive adequate natural light and ventilation; and
h) a geotechnical and structural report cannot ensure that the works will not have any adverse effect on the neighbouring structures. The report must be prepared in accordance with the Council’s publication ‘Guide for preparing Geotechnical and Hydrogeological Reports’; and
i) the removal of the existing floor structure above the excavation is required in order to carry out the excavation other than the temporary, partial removal of floor boards to allow exploratory investigation of subsurface conditions.

C4 which specifies that the ground and first floor levels of alterations and additions and infill development are to be consistent with the levels established by existing buildings and topography on adjoining sites.

C7 which specifies that excavation may be permitted for structures such as pools, spas, or other permissible development if:

a) for properties less than 6m in width, the outer edge of excavation is setback from side boundaries by at least 900mm;
b) for properties 6m or more in width, the outer edge of excavation is setback from side boundaries by at least 1.5m;
c) the lowest habitable room, if any, of the proposed development has at least one external wall fully above the existing ground level;
d) no original footings on an adjoining property will be disturbed; and
e) a geotechnical report ensures that works will not have any adverse effect on the neighbouring structures. The report must be prepared in accordance with Council’s guidelines.
However, the proposal will achieve objectives O1, O2, O3, O4, O5, O6, O7, O9, O10 in the following ways:

**O1:** To ensure the structural integrity and stability of individual buildings and the terrace of buildings of which they are a part, and neighbouring properties. –

**O2:** To protect the original fabric of the buildings significant to the area both during and after excavation. –

**O3:** To ensure that objectives O1: and O2: are achieved by limiting the circumstances where excavation may occur. –

**O6:** To avoid potential damage to all buildings and structures during and after excavation. –

**O7:** To ensure that any new floor levels resulting from excavation and development do not compromise external heritage features of the building or those of its neighbours. –

- A Geotechnical and Hydrogeological Investigation and Monitoring Plan, prepared by GeoEnviro Consultancy Pty Ltd, dated 23/06/2015 was submitted with the development application. A Structural Report, prepared by Romanous & Associates, dated 16/11/2015 was also submitted with the development application.

- The excavation under the principal building form has been setback 495mm from the north-eastern boundary and 300mm to the south-western boundary to reduce potential impacts to adjoining dwellings. Detailed section drawings have been provided showing structural details for the new addition and its relationship to the existing adjoining structures.

- Council’s Development Engineer considers the proposed excavation acceptable, subject to **Conditions A2, A3, B3, C2, C3, C5, C6, C7, C8, C9, C10, D2, D3, D4, D5, D9, E3, E7, E8, E9, E10, E11, E12, E13, E18, F2, H3, K12 & K13**.

**O4:** To limit the impact of excavation on the natural landform and vegetation. –

**O5:** To relate development to the existing topography and existing ground levels. –

**O9:** To maintain natural subsurface ground water flows. –

- The majority of the excavation relates to an existing sub-floor area within the existing building footprint. The extent of the proposed excavation is not considered to be excessive and will not adversely impact the natural landform, vegetation and ground water flows. The ground levels for the rear yard and garage will largely remain unchanged.

**O10:** To recognise the protection necessary for potential archaeological objects. –

- **Condition E4** is recommended to require notification of new evidence during demolition and construction.

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

<table>
<thead>
<tr>
<th>Site Area: 256m²</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>C4 Minimum private open space for allotments up to 100m²</td>
<td>39% (99.6m²)</td>
<td>19% (49.9m²)</td>
<td>18% (46.1m²)</td>
<td>YES</td>
</tr>
<tr>
<td>C4 Principal rear area of private open space on allotments greater than 180m² – Principal Area Minimum Area</td>
<td>&gt;35m² &gt;3m</td>
<td>&gt;35m² &gt;3m</td>
<td>35m² 3m</td>
<td>YES YES</td>
</tr>
<tr>
<td>C4 Minimum deep soil landscape area for dwelling-house</td>
<td>12% (30m²)</td>
<td>14% (36.6m²)</td>
<td>12% (30.7m²)</td>
<td>YES</td>
</tr>
<tr>
<td>Site Area: 256m²</td>
<td>Existing</td>
<td>Proposed</td>
<td>Control</td>
<td>Complies</td>
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<td>-----------------</td>
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<td>---------</td>
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</tr>
<tr>
<td>C13 Location of swimming pools</td>
<td>N/A</td>
<td>Rear of properties</td>
<td>Rear of properties</td>
<td>YES</td>
</tr>
</tbody>
</table>

The proposal will comply with controls C1, C2, C4, C7, C9. The front garden will remain unchanged. The proposal incorporates a compliant amount of unbuilt upon area, principal open space area located at the rear and deep soil landscaped area.

The proposal will comply with controls C13, C15, C16, C17. The proposed swimming pool is located at the rear of the property. The proposed swimming pool will not have unreasonable adverse impacts on the amenity of the occupiers of adjoining properties, subject to Conditions I2 & I3 to minimise noise impacts from the pool and associated equipment (refer to Section 12.10). The pool will not have adverse impact on the Jacaranda tree standing in the rear yard of 250 Glenmore Road, subject to Conditions A2, A4, A5, C1(a), B4 & E28 to protect the existing tree.

The proposal is considered acceptable in terms of control 18, subject to Condition C10 relating to stormwater drainage.

The proposal is considered acceptable in terms of controls C19, C20. The proposed landscaping is considered acceptable.

The proposal will also achieve objectives O1, O3, O4, O5, O6, O7, O8, O9 in the following ways:

**O1: To maintain open areas at the front of buildings and their visibility from the street.** –

- There will be no change to the front garden.

**O3: To maintain an area at the rear of each site which enables planting at natural ground level and assists on-site drainage.** –

- The proposal includes a compliant amount of deep soil landscaped area which is capable of supporting planting at the rear of the site.

**O4: To ensure that provision is made for accessible and useable private open space at the rear of properties.** –

- The proposal includes a compliant amount of private open space at the rear of the property.

**O5: To ensure the provision of semi-permeable and permeable areas of open space in rear gardens to assist with on-site drainage.** –

- The proposal includes a compliant amount of deep soil landscaped area which is capable of supporting planting at the rear of the site.

**O6: To ensure that the design and use of private open space areas has regard to environmental impact, impact on the fabric of adjoining properties, infrastructure, and on the amenity of the occupiers of adjoining properties.** –

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

- The private open space at the rear will not adversely impact adjoining properties.

O8: To ensure adequate and reasonable acoustic and visual privacy for neighbours. –

- The private open space at the rear will not adversely impact adjoining properties.

O9: To ensure provision of adequate deep soil landscaped area capable of sustaining medium to large vegetation. –

- The proposal includes a compliant amount of deep soil landscaped area which is capable of supporting planting at the rear of the site.

12.9 Section C1.4.9: Views

The proposal will comply with control C1 and will achieve objectives O1, O2 which seek to minimise the impact of new development on views from existing developments.

12.10 Section C1.4.10: Acoustic and Visual Privacy

The proposal is considered acceptable in terms of control C4, C5. The proposal will not result in any unreasonable overlooking impacts of the main living areas and private open space areas of adjoining and adjacent properties.

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

O1: To ensure an adequate degree of acoustic and visual privacy in building design. –

O2: To minimise the impact of new development on the acoustic and visual privacy of existing development on neighbouring lands. –

- The proposed changes to the second floor balcony and window openings will not result in additional overlooking impacts.
- The proposed replacement of the corner balcony with a rear-facing balcony on the first floor level and the new full-width glazing will reduce overlooking of the rear yards of adjoining properties given the orientation of the new balcony towards the rear yard of the subject site. The new balcony is not excessive in size and is to a bedroom area. The new balcony will be 1.3m wide, with the primary outdoor living areas for the dwelling located at ground level. There is an inherent and unavoidable mutual overlooking from the rear of the properties along this section of Glenmore Road due to the topography. The extent of the overlooking impact is considered to be reasonable.
- The proposed ground and lower ground floor levels include large glazed areas. There will be no overlooking impacts from the main living area located on the ground floor area. There will be some overlooking from the ground floor level, but this is limited by the inclusion of a large void area. The overlooking impacts are considered to be reasonable.
- There will be no overlooking impacts from the upper deck (i.e. lightwell courtyard), rear courtyard and pool areas. The pool is located at the rear part of the site, setback from adjoining bedroom and living areas. Conditions I2 & I3 are recommended to minimise any potential noise impacts from the pool and the associated equipment.
12.11. Section C1.5.1: Dormers and skylights

The proposal complies with control C30. The rear roof planes incorporate less than 25% transparent material.

12.12. Section C1.5.2: Chimneys

The proposal will comply with control C1 and will achieve objective O1. The proposal will retain and conserve original chimneys.

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

The proposal will comply with control C5. The rear ground floor and lower ground floor addition reads as a contemporary detail and includes vertically proportioned doors and windows and aluminium framing.

The proposal does not comply with controls C4, C6:

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

- C6 which specifies new doors replacing a rear window opening at the upper level of a rear wing are to be limited to the size of a set of traditional French doors.

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

- The proposed aluminium framed windows and doors on the first and second floor levels relate to parts of the building which have been altered.
- The proposed doors and windows in the rear elevation of the first floor level are not a set of traditional French doors. However, the rear wing has been altered and will clearly read as a contemporary detail.

12.14. Section C1.5.4: Verandahs and Balconies

The proposal will comply with control C7. The proposed first and second floor balconies, as modified, will unreasonably impact the amenity of the adjoining properties (refer to Section 12.10).

The proposal does not comply with controls C6:

- C6 which specifies if the building is part of an altered group of buildings, a rear balcony is permitted where:
  a) the original rear window opening is widened to a maximum of 1.2m to accommodate a pair of traditionally scaled French doors;
  b) the balcony width does not exceed the width of the door opening by more than 300mm and must not have a depth greater than 600mm;
  c) the balcony is a similar form to a traditional balcony, but is detailed in a contemporary manner; and
  d) a glass balustrade is not used.
However, the proposal will achieve objective O3 in the following ways:

O3: To promote sympathetic contemporary design of new rear balconies and verandahs that responds to the historic character of the area.

- The existing rear wing and its corner balcony (first floor level) are not original. The full-width rear-facing balcony is considered acceptable as it will read as a contemporary element that references traditional building forms.

12.15. Section C1.5.5 Fences, Walls and Gates

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

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

<table>
<thead>
<tr>
<th>Control</th>
<th>Existing</th>
<th>Proposed</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>C1 Net Loss/Gain of Parking</td>
<td>One</td>
<td>One</td>
<td>Minimum Nil</td>
</tr>
<tr>
<td>Min. Dimensions – single parking space</td>
<td>&gt;3.0m x 5.4m</td>
<td>&gt;3.0m x 5.4m</td>
<td>3.0m x 5.4m</td>
</tr>
<tr>
<td>C9 Rear Vehicular Access – Minimum Distance to Building</td>
<td>&gt;10m</td>
<td>&gt;10m</td>
<td>10.0m</td>
</tr>
<tr>
<td>C9 Rear Vehicular Access – Minimum Lot Width</td>
<td>&gt;3.4m</td>
<td>&gt;3.4m</td>
<td>3.4m</td>
</tr>
<tr>
<td>C9 Rear Vehicular Access – Minimum Laneway Width</td>
<td>&lt;4.8m</td>
<td>&lt;4.8m</td>
<td>4.8m</td>
</tr>
<tr>
<td>C10 Rear Vehicular Access – Properties &gt; 4.7m Wide</td>
<td>No pedestrian gate</td>
<td>No pedestrian gate</td>
<td>1.2m Gate Provided</td>
</tr>
<tr>
<td>C6 Garages With Parapet Roofs – Maximum Width (Single Space)</td>
<td>5m</td>
<td>5m</td>
<td>4.34m</td>
</tr>
<tr>
<td>Maximum Height</td>
<td>3.0m</td>
<td>4.3m</td>
<td>2.8m</td>
</tr>
<tr>
<td>Maximum Door Height</td>
<td>Unknown</td>
<td>3.0m</td>
<td>2.2m</td>
</tr>
<tr>
<td>Door Width (Single Space)</td>
<td>Unknown</td>
<td>4.6m</td>
<td>2.4m – 3.4m</td>
</tr>
<tr>
<td>Side Pillar Width (Single Space)</td>
<td>0.3m</td>
<td>0.3m</td>
<td>0.35m – 0.47m</td>
</tr>
</tbody>
</table>

*existing non-compliance

The proposal will comply with control C5. Council’s Development Engineer considers the proposed on-site parking acceptable on technical grounds.

The proposal does not comply with controls C1, C6, C9, C10:

C1 which specifies onsite parking areas, parking structures and servicing areas such as loading facilities are not a mandatory requirement. In addition, and subject to circumstances listed in the following controls, on-site parking will only be permitted or may only be required where:

a) the parking area, servicing area or structure will not have a detrimental impact on:
   i) the amenity of adjoining properties;
   ii) the architectural character or significance of a building, including original coach houses, stables or rear lane toilets (where the toilets occur on adjoining properties);
   iii) the character of a streetscape or laneway; or
   iv) the health of a significant tree;
b) vehicle entries and exits will not have a detrimental impact on pedestrian movements, traffic movements, Council infrastructure or service authority infrastructure;

c) the parking area, servicing area or structure will comply with the current Australian Standard 2890.1-2004;

d) a driveway will comply with AS 2890.1 - 2004;

e) extensive excavation is not required and the excavation controls in Section 1.4.7 are met;

f) private open space and deep soil landscaped area controls are met;

g) there are adequate sight distances to allow safe vehicle movement into and from the site;

h) there is no net loss of vehicle parking spaces in the immediate area; and

i) the use and quantity of on-street parking spaces is not adversely affected.

C6 which specifies garages and carports must comply with the dimensions, settings, forms and materials shown in Tables 5 and 6.

C9 which specifies rear lane or rear street vehicle access and associated on-site parking are permitted if:

a) the distance from the rear of the building, whether existing or proposed, to the rear boundary is 10m or more;

b) the block width is 3.4m or more;

c) the lane or street width between kerbs is 4.8m or more, but if less the applicant can demonstrate to Council that access can be achieved by compliance with C6 and C1(d); and

d) the general controls of C1-C6 can be met.

C10 which specifies where rear lane or street parking is permitted under C9, and the property is 4.7m or more in width, proposals must provide an acceptable interface between the private and public domain by incorporating elements such as pedestrian gates or fencing a minimum of 1200mm wide along rear boundaries. Where possible, gateways on adjoining properties should be grouped.

However, the proposal will achieve objectives O2, O3, O4, O5, O6, O7, O8, O9, O10, O11, O13, O14 in the following ways:

O2: To ensure that contributory buildings rather than vehicular access and parking structures remain the dominant element in the streetscape. –

O3: To improve the character of laneways where unsympathetic earlier development such as high brick walls and full width garages has eroded the quality of these urban spaces. –

O4: To ensure that the designs of garages, carports, fences and gates are sympathetic in their massing, form and scale to the relevant aspects of the historic context and setting of the building and allow visual connectivity to the principal building form of a significant group. –

O5: To encourage development that is scaled for the pedestrian in terms of height, articulation and modulation. –

- **Condition C1(d)** is recommended to reduce the height of the parapet garage by 500mm. Subject to this condition, the height and proportions of the proposed garage is considered acceptable given the existing garage structure and the pattern of garages along the laneway.
O6: To provide off street car parking and servicing facilities where feasible. –

- The existing site includes off street car parking.

O7: To retain sandstone kerbing on streets and laneways where feasible. –

- There is an existing driveway crossing and no sandstone kerbs will be impacted.

O8: To ensure that the amount and quality of deep soil landscaped area and private open space are not compromised by providing on-site parking and servicing areas. –

- A compliant amount of deep soil landscaped area and private open space will be provided.

O9: To minimise vehicle and pedestrian conflicts. –

- The proposed garage replaces an existing garage and will not result in any vehicle and pedestrian conflicts.

O10: To ensure there is no net loss of vehicle parking spaces in the area. –

- There will be no net loss of vehicle parking spaces in the area.

O11: To ensure that use and quantity of on street parking spaces is not adversely affected. –

- The proposal will not impact on street parking.

O13: To minimise overshadowing, loss of privacy and the impact of building bulk on adjoining properties. –

- The size, bulk and scale of the proposed garage is relative to the existing and will not further impact adjoining properties in terms of overshadowing. There will be no privacy impacts.

O14: To minimise excavation. –

- No significant excavation is required to accommodate the new garage.

12.17. Section C1.5.7: Lofts over Garages and Studios

Not applicable. The loft over the garage was deleted from the application.

12.18. Section C1.5.8: Materials, Finishes and Details

The proposal does not comply with control C4:

C4 which specifies new materials, finishes, textures and details on the principal building form and elevations visible from a public space, must be traditional and appropriate to the architectural style of the building. Intrusive materials are not permitted.

However, the proposal will achieve objective O2 in the following ways:
O2: To promote high quality design, materials, finishes and detailing which is appropriate to the architectural style, building type, and historic context. –

- The proposed aluminium framed windows and doors on the first and second floor levels relate to parts of the building which have been altered.

12.19. Section C1.5.9: Exterior Colours

The proposal will comply with controls C1, C3, C4 and will achieve objective O1. The proposed colour scheme shown on the architectural drawings is appropriate to the character of existing building, group and the historic context.

12.20. Section C1.5.10: Gardens and Trees

The proposal will comply with controls C2, C6. Council’s Tree and Landscape officer has advised that the proposed excavation for the swimming pool will not have an adverse impact on the Jacaranda tree located on the adjoining site, subject to Conditions A2, A4, A5, C1(a), B4 & E28.

12.21. Section C1.5.11: Satellite Dishes, Aerials, Air Conditioning Units and Other Site Facilities

The proposal is considered acceptable in terms of control C8 and objectives O1, O3. The proposal includes a solar unit on the roof over the first floor rear wing. Condition C1(b) is recommended to limit the height of the solar unit. There are limited views towards the roofscape from Goodhope Lane and therefore, the solar unit will not have an adverse impact on the character and significance of the building or streetscape.

Condition C1(e) is recommended to require any new pool equipment to be located within the existing garage.

Chapter E1: Parking and Access

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

Chapter E2: Stormwater and Flood Risk Management

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

Chapter E3: Tree Management

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

Chapter E5: Waste Management

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

The proposal is acceptable with regard to Part E5 of the Woollahra DCP 2015.
13. SECTION 94 CONTRIBUTION PLANS

13.1. Section 94A Contributions Plan 2011

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

<table>
<thead>
<tr>
<th>Cost of Works</th>
<th>Rate</th>
<th>Contribution Payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>$700,000</td>
<td>1%</td>
<td>$7,000</td>
</tr>
</tbody>
</table>

14. APPLICABLE ACTS/REGULATIONS

14.1. Environmental Planning and Assessment Regulation 2000

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

Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires Council to consider Australian Standard AS 2601-2004: The demolition of structures. The proposal is considered to be acceptable, subject to Condition E2.


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

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

These form Conditions C11, C12 and E19.

15. THE LIKELY IMPACTS OF THE PROPOSAL

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

16. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

17. THE PUBLIC INTEREST

The proposal is considered to be in the public interest.
18. CONCLUSION

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

19. DISCLOSURE STATEMENTS

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

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

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

AND

THAT Council, as the consent authority, grant development consent to Development Application No. 341/2015/1 for extensive alterations and additions to the rear of the existing terrace dwelling including demolition of existing garage and proposed new garage; new swimming pool and associated landscaping on land at 252 Glenmore Road Paddington, subject to the following conditions:

A. General Conditions

A.1 Conditions

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

Standard Condition: A1 (Autotext AA1)

A.2 Approved Plans and supporting documents

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

<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
<th>Author/Drawn</th>
<th>Date(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>01 Rev B</td>
<td>Site Roof Plan + Site Analysis + Construction Management Plan</td>
<td>Invision Design</td>
<td>Oct 15</td>
</tr>
<tr>
<td>02 Rev B</td>
<td>Proposed Floor Plans</td>
<td>Invision Design</td>
<td>Oct 15</td>
</tr>
<tr>
<td>03 Rev B</td>
<td>Proposed Elevation</td>
<td>Invision Design</td>
<td>Oct 15</td>
</tr>
<tr>
<td>04 Rev B</td>
<td>Section AA &amp; BB + Side Elevation (South/ West)</td>
<td>Invision Design</td>
<td>Oct 15</td>
</tr>
<tr>
<td>07 Rev B</td>
<td>Demolition Plan</td>
<td>Invision Design</td>
<td>Oct 15</td>
</tr>
<tr>
<td>A/1</td>
<td>Landscape Principles Plan</td>
<td>N/A</td>
<td>26/06/2015</td>
</tr>
<tr>
<td>N/A</td>
<td>Arboricultural Root Mapping Assessment</td>
<td>Jacksons Nature Works</td>
<td>July 2015</td>
</tr>
<tr>
<td>GJ15909A-r1</td>
<td>Geotechnical and hydrogeological investigation and monitoring plan</td>
<td>GeoEnviro Consultancy Pty Ltd</td>
<td>13/06/2015</td>
</tr>
<tr>
<td>6201</td>
<td>Structural engineering letter</td>
<td>John Romanous &amp; Associates Consulting Civil &amp; Structural Engineers</td>
<td>16/11/2015</td>
</tr>
<tr>
<td>A233756</td>
<td>BASIX Certificate</td>
<td>NSW Department of Planning and Infrastructure</td>
<td>8/11/2015</td>
</tr>
<tr>
<td>1240</td>
<td>Waste Management Plan</td>
<td>Invision Design</td>
<td>N/A</td>
</tr>
</tbody>
</table>

**Note:** Warning to Accredited Certifiers – You should always insist on sighting the original Council stamped approved plans. You should not rely solely upon the plan reference numbers in this condition. Should the applicant not be able to provide you with the original copy Council will provide you with access to its files so you may review our original copy of the approved plan.

**Note:** These plans and supporting documentation may be subject to conditions imposed under section 80A(1)(g) of the Act modifying or amending the development (refer to conditions which must be satisfied prior to the issue of any Construction Certificate.)

**Standard Condition:** A5 (Autotext AA5)

### A.3 Ancillary Aspect of the Development (s80A(2) of the Act)

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

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

**Standard Condition:** A8 (Autotext AA8)

### A.4 Development Consent is not granted in relation to these matters

This approval does not give consent to any pruning of a primary branch of the Jacaranda tree standing in the adjacent rear yard of 250 Glenmore Road Paddington.

**Standard Condition:** A9 (Autotext AA9)

### A.5 Tree Preservation & Approved Landscaping Works

All landscape works shall be undertaken in accordance with the approved landscape plan, arborist report, tree management plan and transplant method statement as applicable.
a) The following trees shall be pruned in accordance with *Australian Standard Pruning of Amenity Trees* (AS 4373) and *Workcover NSW Code of Practice Amenity Tree Industry*, to the minimum extent necessary to provide clearance to the new development:

<table>
<thead>
<tr>
<th>Council Ref No.</th>
<th>Species</th>
<th>Location</th>
<th>Approved pruning (extent of pruning)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><em>Jacaranda mimosifolia</em> (Jacaranda)</td>
<td>Standing on 250 Glenmore Rd.</td>
<td>Prune all roots identified in root mapping trench adjacent to west alignment of pool</td>
</tr>
</tbody>
</table>

*Note:* The tree/s required to be pruned should appear coloured blue on the construction certificate plans.

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

B.1 **Construction Certificate required prior to any demolition**

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

*Note:* See *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.

Standard Condition: B1 (Autotext BB1)

B.2 **Identification of Hazardous Material**

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

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

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

Standard Condition: B6

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

To clarify the condition of the existing public infrastructure prior to the commencement of any development (including prior to any demolition), the *Applicant* or *Owner* must submit to Council a full record of the condition of the Public Road infrastructure adjacent to the development site.
The report must be submitted to Council prior to the commencement of any work and include photographs showing current condition and any existing damage fronting and adjoining the site to the:

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

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

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

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

**Standard Condition:** B7

### B.4 Arborists inspection of excavations

As a minimum the following intervals of site inspections must be made:

<table>
<thead>
<tr>
<th>Stage of arboricultural inspection</th>
<th>Compliance documentation and photos shall be included</th>
</tr>
</thead>
<tbody>
<tr>
<td>Excavation of western face of swimming pool</td>
<td>Arborist to be present on site as swimming pool excavations adjacent to Jacaranda tree are undertaken</td>
</tr>
</tbody>
</table>

Inspections and compliance documentation shall be made by an arborist with AQF Level 5 qualifications.

Additional site visits shall be made when required by site arborist and/or site foreman for ongoing monitoring/supervisory work.

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

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

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

a) **Jacaranda tree**

   The primary branches of the Jacaranda tree standing in the adjacent rear yard of 250 Glenmore Road Paddington shall remain intact.

b) **Solar unit**

   The solar unit located on the roof over the rear wing shall not exceed 200mm above the roof level and shall be the same profile as the roof.
This condition has been imposed to ensure that the solar unit does not detrimentally impact on the character and significance of the buildings and the streetscape and to accord with Objective O3 of Section C1.5.11 of the Woollahra Development Control Plan 2015.

c) **Windows**
The sidelight windows located either side of the French doors to the ensuite (second floor) and Bed 3 (first floor) shall be deleted and replaced with a solid wall.

This condition has been imposed to not employ large areas of glass on upper levels and to ensure an appropriate solid-to-void ratio in accordance with Objectives O2, O4 and Control C6 of Section C1.4.3 of the Woollahra Development Control Plan 2015.

d) **Garage**
The height of the roof over the garage shall be lowered and the top of the rear (north-western) parapet wall shall be of a maximum RL of 31.63 to AHD.

This condition has been imposed to ensure that the design of the garage is sympathetic to the historic context in accordance with Objectives O2, O4, O5 and Control C1 of Section C1.5.6 of the Woollahra Development Control Plan 2015.

e) **Pool equipment**
The pool equipment shall be located fully within the proposed garage.

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

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

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

Standard Condition: C4 (Autotext CC4)

### C.2 Payment of Long Service Levy, Security, Contributions and Fees

The certifying authority must not issue any Part 4A Certificate until provided with the original receipt(s) for the payment of all of the following levy, security, contributions, and fees prior to the issue of a construction certificate, subdivision certificate or occupation certificate, as will apply.
<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Indexed</th>
<th>Council Fee Code</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>LONG SERVICE LEVY</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>under Building and Construction Industry Long Service Payments Act 1986</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Long Service Levy</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><a href="http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm">http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm</a></td>
<td>Contact LSL Corporation or use online calculator</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Property Damage Security Deposit - making good any damage caused to any property of the Council</td>
<td>$18,161</td>
<td>No</td>
<td>T113</td>
</tr>
<tr>
<td><strong>SECURITY</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>under section 80A(6) of the Environmental Planning and Assessment Act 1979</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Development Levy (Section 94A)</td>
<td>$7,000</td>
<td>Yes, quarterly</td>
<td>T96</td>
</tr>
<tr>
<td>+ Index Amount</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>DEVELOPMENT LEVY</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>under Woollahra Section 94A Development Contributions Plan 2011</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>This plan may be inspected at Woollahra Council or downloaded at <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Road/Footpath Infrastructure Inspection Fee</td>
<td>$430</td>
<td>No</td>
<td>T45</td>
</tr>
<tr>
<td>Security Administration Fee</td>
<td>$180</td>
<td>No</td>
<td>T16</td>
</tr>
<tr>
<td><strong>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</strong></td>
<td>$25,771</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Building and Construction Industry Long Service Payment**

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

**How must the payments be made?**

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

The payment of a security may be made by a bank guarantee where:
- The guarantee is by an Australian bank for the amount of the total outstanding contribution;
- The bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable];
- The bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent;
- The bank guarantee is lodged with the Council prior to the issue of the construction certificate; and
- The bank’s obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.
How will the section 94A levy be indexed?

To ensure that the value the development levy is not eroded over time by increases in costs, the proposed cost of carrying out development (from which the development levy is calculated) will be indexed either annually or quarterly (see table above). Clause 3.13 of the Woollahra Section 94A Development Contributions Plan 2011 sets out the formula and index to be used in adjusting the s.94A levy.

Do you need HELP indexing the levy?

Please contact our customer service officers. Failure to correctly calculate the adjusted development levy will delay the issue of any Part 4A Certificate and could void any Part 4A Certificate (construction certificate, subdivision certificate, or occupation certificate).

Deferred or periodic payment of section 94A levy under the Woollahra Section 94A Development Contributions Plan 2011

Where the applicant makes a written request supported by reasons for payment of the section 94A levy other than as required by clause 3.9, the Council may accept deferred or periodic payment. The decision to accept a deferred or periodic payment is at the sole discretion of the Council, which will consider:

- The reasons given;
- Whether any prejudice will be caused to the community deriving benefit from the public facilities;
- Whether any prejudice will be caused to the efficacy and operation of the plan; and
- Whether the provision of public facilities in accordance with the adopted works schedule will be adversely affected.

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

- The guarantee is by an Australian bank for the amount of the total outstanding contribution;
- The bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable];
- The bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent;
- The bank guarantee is lodged with the Council prior to the issue of the construction certificate; and
- The bank’s obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

Any deferred or periodic payment of the section 94A levy will be adjusted in accordance with clause 3.13 of the plan. The applicant will be required to pay any charges associated with establishing or operating the bank guarantee. Council will not cancel the bank guarantee until the outstanding contribution as indexed and any accrued charges are paid.

Standard Condition: C5

C.3 Road and Public Domain Works – Council approval required

A separate application under Section 138 of the Roads Act 1993 is to be made to, and approved by Council prior to the issuing of a Construction Certificate for the following infrastructure works, which must be carried out at the applicant’s expense:

a) Full width vehicular crossings having a width of 3.5m in accordance with Council’s standard driveway drawing RF2 (Latest Amendment).

b) A design longitudinal surface profile for the proposed driveway must be submitted for assessment.

c) Removal and replacement of the existing footpath for the full width of the property in accordance with Council’s standard drawing RF3.
d) The existing sandstone block Kerbs/Gutters are to be removed and recovered.
e) Removal of all driveway crossings and kerb laybacks which will be no longer required.
f) Reinstatement of footpath, kerb and gutter to match existing.

Note: To ensure that this work is completed to Council’s satisfaction, this consent by separate condition, may impose one or more Infrastructure Works Bonds.

Note: *Road* has the same meaning as in the *Roads Act 1993*.

Note: The intent of this condition is that the design of the road, footpaths, driveway crossings and public stormwater drainage works must be detailed and approved prior to the issue of any *Construction Certificate*. Changes in levels may arise from the detailed design of buildings, road, footpath, driveway crossing grades and stormwater. Changes required under *Roads Act 1993* approvals may necessitate design and levels changes under this consent. This may in turn require the applicant to seek to amend this consent.

Note: See condition K24 in Section K. Advisings of this Consent titled *Roads Act Application*.

C.4 **BASIX commitments**

The *applicant* must submit to the *Certifying Authority* BASIX Certificate No.A233756 with any application for a *Construction Certificate*.

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

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

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

Standard Condition: C13

C.5 **Soil and Water Management Plan – Submission & Approval**

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

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

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

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

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

Note: The International Erosion Control Association – Australasia [http://www.austieca.com.au/](http://www.austieca.com.au/) lists consultant experts who can assist in ensuring compliance with this condition. Where erosion and sedimentation plans are required for larger projects it is recommended that expert consultants produce these plans.
C.6 Structural Adequacy of Existing Supporting Structures

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

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

Standard Condition: C25

C.7 Professional Engineering Details

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

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

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

Standard Condition: C36

C.8 Geotechnical and Hydrogeological Design, Certification & Monitoring

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

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

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

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

d) Provide tanking of all below ground structures to prevent the entry of all ground water such that they are fully tanked and no on-going dewatering of the site is required.
e) Provide a Geotechnical and Hydrogeological Monitoring Program that:
   - Will detect any settlement associated with temporary and permanent works and structures;
   - Will detect deflection or movement of temporary and permanent retaining structures (foundation walls, shoring bracing or the like);
   - Will detect vibration in accordance with AS 2187.2-1993 Appendix J including acceptable velocity of vibration (peak particle velocity);
   - Will detect groundwater changes calibrated against natural groundwater variations;
   - Details the location and type of monitoring systems to be utilised;
   - Details the pre-set acceptable limits for peak particle velocity and ground water fluctuations;
   - Details recommended hold points to allow for the inspection and certification of geotechnical and hydro-geological measures by the professional engineer; and;
   - Details a contingency plan.

Standard Condition: C40 (Autotext: CC40)

C.9 Car and Commercial Parking Details


Access levels and grades must comply with access levels and grade required by Council under the Roads Act 1993.

The Certifying Authority has no discretion to reduce or increase the number or area of car parking or commercial parking spaces required to be provided and maintained by this consent.

Standard Condition: C45 (Autotext: CC45)

C.10 Stormwater discharge to existing Stormwater Drainage System

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

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

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

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

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

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

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

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

h) General compliance with the Council’s Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management
Where any new *Stormwater Drainage System* crosses the footpath area within any road, separate approval under section 138 of the *Roads Act 1993* must be obtained from Council for those works prior to the issue of any *Construction Certificate*.

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

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

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

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


**Standard Condition:** C49

### C.11 Swimming and Spa Pools – Child Resistant Barriers

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

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

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

**Standard Condition:** C55 (Autotext CC55)

### C.12 Swimming and Spa Pools – Backwash

The *Construction Certificate* plans and specification required to be submitted pursuant to clause 139 of the *Regulation* must detail the connection of backwash to Sydney Waters sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

**Note:** The plans must show the location of Sydney Waters sewer, the yard gully or any new connection to the sewer system including a detailed cross section of the connection complying with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

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

**Standard Condition:** C56 (Autotext CC56)
C.13 Acoustic Certification of Mechanical Plant & Equipment

The Construction Certificate plans and specification required to be submitted pursuant to clause 139 of the Regulation must be accompanied by a certificate from a professional engineer (acoustic engineer) certifying that the noise level measured at any boundary of the site at any time while the proposed mechanical plant and equipment is operating will not exceed the background noise level. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed background noise level, at any time.

The background noise level is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the L_{A90, 15\text{ minute}} level measured by a sound level meter.

Where sound attenuation is required this must be detailed.

Note: Further information including lists of Acoustic Engineers can be obtained from:

Standard Condition: C62 (Autotext CC62)

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

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

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

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

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

This condition does not apply:

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

b) to the erection of a temporary building.

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

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

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

Standard Condition: D1 (Autotext DD1)
D.2 Dilapidation Reports for existing buildings

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

These properties must include (but is not limited to):

- 250 Glenmore Road
- 254 Glenmore Road

The dilapidation reports must be completed and submitted to Council with the Notice of Commencement prior to the commencement of any development work.

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

Note: The reasons for this condition are:
To provide a record of the condition of buildings prior to development being carried out
To encourage developers and its contractors to use construction techniques that will minimise the risk of damage to buildings on neighbouring land
Also refer to the Dilapidation Report Advising for more information regarding this condition

Standard Condition: D4

D.3 Adjoining buildings founded on loose foundation materials

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

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

Standard Condition: D6 (Autotext DD6)

D.4 Construction Management Plan

As a result of the site constraints, limited space and access a Construction Management Plan (CMP) is to be submitted to Council. Also, due to lack of on-street parking a Work Zone may be required during construction.

The principal contractor or owner must submit an application for approval of the Construction Management Plan by Council’s Traffic Engineer and pay all fees associated with the application. The plan must be submitted as a self-contained document that outlines the nature of the construction project and as applicable, include the following information:-
a) Detail the scope of the works to be completed including details of the various stages, e.g. Demolition, Excavation, Construction etc. and the duration of each stage.
b) Identify local traffic routes to be used by construction vehicles.
c) Identify ways to manage construction works to address impacts on local traffic routes.
d) Detail how construction workers will travel to and from the site and parking arrangements for those that drive.
e) Identify any proposed road closures, temporary traffic routes, loss of pedestrian or cyclist access or reversing manoeuvres onto a public road and provide Traffic Control Plans (TCPs) prepared by an accredited RMS Red or Orange card holder to manage these temporary changes.
f) Detail the size (including dimensions), numbers and frequency of arrival of the construction vehicles that will service the site for each stage of works.
g) Provide for the standing of vehicles during construction.
h) If construction vehicles are to be accommodated on the site, provide a scaled drawing showing where these vehicles will stand and the vehicle swept path to show that these vehicles can access and egress the site in a forward direction (including dimensions and all adjacent traffic control devices, such as parking restrictions, pedestrian facilities, kerb extensions, etc.).
i) If trucks are to be accommodated on Council property, provide a scaled drawing showing the location of any proposed Works Zone (including dimensions and all adjacent traffic control devices, such as parking restrictions, pedestrian facilities, kerb extensions, etc.).
j) Show the location of any site sheds and any anticipated use of cranes and concrete pumps and identify the relevant permits that will be required.
k) If a crane/s are to be accommodated on site, detail how the crane/s will be erected and removed, including the location, number and size of vehicles involved in the erection/removal of the crane/s, the duration of the operation and the proposed day and times, any full or partial road closures required to erect or remove the crane/s and appropriate Traffic Control Plans (TCPs) prepared by an approved RMS Red or Orange Card holder.
l) Make provision for all materials, plant, etc. to be stored within the development site at all times during construction.
m) State that any oversized vehicles proposed to operate on Council property (including Council approved Works Zones) will attain a Permit to Stand Plant on each occasion? (Note: Oversized vehicles are vehicles longer than 7.5m or heavier than 4.5T.

n) Show the location of any proposed excavation and estimated volumes.
o) When excavation works are to be undertaken on school days, all vehicular movements associated with this work shall only be undertaken between the hours of 9.30am and 2.30pm, in order to minimise disruption to the traffic network during school pick up and drop off times.
p) Show the location of all Tree Protection (Exclusion) zones (Note: storage of building materials or access through Reserve will not be permitted without prior approval by Council).

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.

Standard Condition: D9 (Autotext: DD9)
D.5 Works (Construction) Zone – Approval & Implementation

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

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

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

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

Standard Condition: D10 (Autotext DD10)

D.6 Security Fencing, Hoarding and Overhead Protection

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

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

Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure and the facing facade protected by heavy-duty scaffolding, unless either:
a) The vertical height above footpath level of the structure being demolished is less than 4.0 m; or  
b) The least horizontal distance between footpath and the nearest part of the structure is greater than half the height of the structure.

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

a) Extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary;

b) Have a clear height above the footpath of not less than 2.1 m;

c) Terminate 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than 0.5 m above the platform surface; and

d) Together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa.

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

Note: The principal contractor or owner builder must allow not less than two (2) weeks from the date of making a hoarding application for determination. Any approval for a hoarding or overhead protection under the Roads Act 1993 will be subject to its own conditions and fees.  
Standard Condition: D11 (Autotext DD11)

D.7 Site Signs

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

Clause 98A of the Regulation provides:
Erection of signs

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

Clause 227A of the Regulation provides:

Signs on development sites

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

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

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

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

Standard Condition: D12 (Autotext DD12)

D.8 Toilet Facilities

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

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

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

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

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

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

**sewage management facility** has the same meaning as it has in the *Local Government (Approvals) Regulation* 1993.

**Note:** This condition does not set aside the requirement to comply with Workcover NSW requirements.

**D.9 Erosion and Sediment Controls – Installation**

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

a) The *Soil and Water Management Plan* if required under this consent;

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

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

Where there is any conflict The Blue Book takes precedence.


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

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

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

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

**D.10 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)**

The erection of the building in accordance with this development consent must not be commenced until:
a) A construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited Certifier, and

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

c) The principal certifying authority has, no later than 2 days before the building work commences:
   • Notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
   • Notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and

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

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

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

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

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

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

D.11 Notification of Home Building Act 1989 requirements

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

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

In the case of work to be done by an owner-builder:
- the name of the owner-builder, and
- if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

Standard Condition: D17 (Autotext DD17)

E. Conditions which must be satisfied during any development work

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

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

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

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

This condition does not apply:

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

b) To the erection of a temporary building.

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

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

Standard Condition: E1 (Autotext EE1)
E.2 **Compliance with Australian Standard for Demolition**


Standard Condition: E2 (Autotext EE2)

E.3 **Compliance with Construction Management Plan**

All development activities 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.

**Note:** Irrespective of the provisions of the Construction Management Plan the provisions of traffic and parking legislation prevails.

Standard Condition: E3 (Autotext EE3)

E.4 **Requirement to notify about new evidence**

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

Standard Condition: E4 (Autotext EE4)

E.5 **Critical Stage Inspections**

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

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

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

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

Standard Condition: E5 (Autotext EE5)

E.6 **Hours of Work –Amenity of the neighbourhood**

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

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

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

d) The following work **must not** take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday;
i) Piling;
ii) Piering;
iii) Rock or concrete cutting, boring or drilling;
iv) Rock breaking;
v) Rock sawing;
vi) Jack hammering; or
vii) Machine excavation,

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

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

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

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

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

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

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

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


Standard Condition: E6 (Autotext EE6)

E.7 Public Footpaths – Safety, Access and Maintenance (Apply to all development)

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

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

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

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

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

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

**E.8 Maintenance of Environmental Controls**

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

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

E.9 Compliance with Geotechnical / Hydrogeological Monitoring Program

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

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

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

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

Standard Condition: E12 (Autotext EE12)

E10 Support of adjoining land and buildings

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

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

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

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

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

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

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

Standard Condition: E13 (Autotext EE13)
E.11 Vibration Monitoring

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

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

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

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

The principal contractor and any sub-contractor must comply with all work directions, verbal or written, given by the professional engineer.

A copy of any written direction required by this condition must be provided to the Principal Certifying Authority within 24 hours of any event.

Where there is any movement in foundations such that damaged is occasioned to any adjoining building or such that there is any removal of support to supported land the professional engineer, principal contractor and any sub-contractor responsible for such work must immediately cease all work, inform the owner of that supported land and take immediate action under the direction of the professional engineer to prevent any further damage and restore support to the supported land.

Note: Professional engineer has the same meaning as in Clause A1.1 of the BCA.
Note: Building has the same meaning as in section 4 of the Act i.e. “building includes part of a building and any structure or part of a structure”.
Note: Supported land has the same meaning as in section 88K of the Conveyancing Act 1919.

Standard Condition: E14 (Autotext EE14)

E.12 Erosion and Sediment Controls – Maintenance

The principal contractor or owner builder must maintain water pollution, erosion and sedimentation controls in accordance with:
a) The Soil and Water Management Plan required under this consent;
b) “*Do it Right On Site, Soil and Water Management for the Construction Industry*” published by the Southern Sydney Regional Organisation of Councils, 2001; and
c) “*Managing Urban Stormwater - Soils and Construction*” published by the NSW Department of Housing 4th Edition (“*The Blue Book*”).

Where there is any conflict *The Blue Book* takes precedence.

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

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

**Warning:** Irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of the occupation of the land being developed whether or not they actually cause the pollution.

Standard Condition: E15 (Autotext EE15)

**E.12 Disposal of site water during construction**

The principal contractor or owner builder must ensure:

a) Prior to pumping any water into the road or public stormwater system that approval is obtained from Council under section 138(1)(d) of the *Roads Act* 1993;
b) That water pollution, as defined by the *Protection of the Environment Operations Act* 1997, does not occur as the result of the discharge to the road, public stormwater system or other place or any site water;
c) That stormwater from any roof or other impervious areas is linked, via temporary downpipes and stormwater pipes, to a Council approved stormwater disposal system immediately upon completion of the roof installation or work creating other impervious areas.

**Note:** This condition has been imposed to ensure that adjoining and neighbouring land is not adversely affected by unreasonable overland flows of stormwater and that site water does not concentrate water such that they cause erosion and water pollution.

Standard Condition: E17 (Autotext EE17)
E.13 Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum

The Principal Contractor or Owner Builder must ensure that a surveyor registered under the Surveying Act 2002 carries out check surveys and provides survey certificates confirming the location of the building(s), ancillary works, flood protection works and the stormwater drainage system relative toting the boundaries of the site and that the height of buildings, ancillary works, flood protection works and the stormwater drainage system relative to Australian Height Datum complies with this consent at the following critical stages.

The Principal Contractor or Owner Builder must ensure that work must not proceed beyond each of the following critical stages until compliance has been demonstrated to the PCA’s satisfaction:

a) Upon the completion of foundation walls prior to the laying of any floor or the pouring of any floor slab and generally at damp proof course level;
b) Upon the completion of formwork for floor slabs prior to the laying of any floor or the pouring of any concrete and generally at each storey;
c) Upon the completion of formwork or framework for the roof(s) prior to the laying of any roofing or the pouring of any concrete roof;
d) Upon the completion of formwork and steel fixing prior to pouring of any concrete for any ancillary structure, flood protection work, swimming pool or spa pool or the like;
e) Upon the completion of formwork and steel fixing prior to pouring of any concrete for driveways showing transitions and crest thresholds confirming that driveway levels match Council approved driveway crossing levels and minimum flood levels;
f) Stormwater Drainage Systems prior to back filling over pipes confirming location, height and capacity of works.
g) Flood protection measures are in place confirming location, height and capacity.

Note: This condition has been imposed to ensure that development occurs in the location and at the height approved under this consent. This is critical to ensure that building are constructed to minimum heights for flood protection and maximum heights to protect views and the amenity of neighbours.

Standard Condition: E20 (Autotext EE20)

E.15 Placement and use of Skip Bins

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

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

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

Standard Condition: E21 (Autotext EE21)
E.16 Prohibition of burning

There must be no burning of any waste or other materials. The burning of CCA (copper chrome arsenate) or PCP (pentachlorophenol) treated timber is prohibited in all parts of NSW.

All burning is prohibited in the Woollahra local government area.

Note: Pursuant to the Protection of the Environment Operations (Control of Burning) Regulation 2000 all burning (including burning of vegetation and domestic waste) is prohibited except with approval. No approval is granted under this consent for any burning.

Standard Condition: E22 (Autotext EE22)

E.17 Dust Mitigation

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

This generally requires:

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

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

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

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

Standard Condition: E23 (Autotext EE23)

E.18 Replacement of Sandstone Kerb or Gutter

Where existing sandstone kerb or gutter is to be replaced in concrete, the sandstone remains the property of Council. The stones are to be removed and handled in such a manner so as not to cause any damage to the sandstone.

The stones must be delivered on pallets between 7am to 4pm, Monday to Friday, by the Principal Contractor or Owner to Woollahra Council’s Works Depot. Prior to delivery contact Civil Operations on 9391 7973

Standard Condition: E25 (Autotext EE25)

E.19 Swimming and Spa Pools – Temporary Child Resistant Barriers and other matters

Temporary child-resistant barriers must be installed in compliance with the Swimming Pools Act 1992 and Building Code of Australia where any swimming pool or spa pool, as defined by the Swimming Pools Act 1992, contains more than 300mm in depth of water at any time.
Permanent child-resistant barriers must be installed in compliance with the *Swimming Pools Act* 1992 and the Building Code of Australia as soon as practical.

Backwash and any temporary dewatering from any swimming pool or spa pool as defined by the *Swimming Pools Act* 1992 must be discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

**Note:** This condition does not prevent Council from issuing an order pursuant to section 23 of the *Swimming Pool Act* 1992 or taking such further action as necessary for a breach of this condition or the *Swimming Pools Act* 1992.

**Standard Condition: E26**

**E.20 Site waste minimisation and management – Demolition**

In order to maximise resource recovery and minimise residual waste from demolition activities:

a) The provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work
b) An area is to be allocated for the storage of materials for use, recycling and disposal (giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation and access and handling requirements)
c) Provide separate collection bins and/or areas for the storage of residual waste
d) Clearly ‘signpost’ the purpose and content of the bins and/or storage areas
e) Implement measures to prevent damage by the elements, odour, health risks and windborne litter
f) Minimise site disturbance, limiting unnecessary excavation

When implementing the SWMMP the applicant must ensure:

a) Footpaths, public reserves and street gutters are not used as places to store demolition waste or materials of any kind without Council approval
b) Any material moved offsite is transported in accordance with the requirements of the *Protection of the Environment Operations Act* (1997)
c) Waste is only transported to a place that can lawfully be used as a waste facility
d) Generation, storage, treatment and disposal of hazardous waste and special waste (including asbestos) is conducted in accordance with relevant waste legislation administered by the EPA and relevant Occupational Health and Safety legislation administered by Workcover NSW
e) Evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained

**Note:** Materials that have an existing reuse or recycling market should not be disposed of in a land fill. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.

**Standard Condition: E31 (Autotext EE31)**

**E.21 Site waste minimisation and management – Construction**

In order to maximise resource recovery and minimise residual waste from construction activities:
a) The provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work
b) Arrange for the delivery of materials so that materials are delivered ‘as needed’ to prevent the degradation of materials through weathering and moisture damage
c) Consider organising to return excess materials to the supplier or manufacturer
d) Allocate an area for the storage of materials for use, recycling and disposal (considering slope, drainage, location of waterways, stormwater outlets and vegetation)
e) Clearly ‘signpost’ the purpose and content of the storage areas
f) Arrange contractors for the transport, processing and disposal of waste and recycling. Ensure that all contractors are aware of the legal requirements for disposing of waste.
g) Promote separate collection bins or areas for the storage of residual waste
h) implement measures to prevent damage by the elements, odour and health risks, and windborne litter
i) Minimise site disturbance and limit unnecessary excavation
j) Ensure that all waste is transported to a place that can lawfully be used as a waste facility
k) Retain all records demonstrating lawful disposal of waste and keep them readily accessible for inspection by regulatory authorities such as council, Department of Environment and Climate Change (DECC) or WorkCover NSW

Standard Condition: E32 (Autotext EE32)

E.22 Asbestos Removal

Where hazardous material, including bonded or friable asbestos has been identified in accordance with Condition B.2 above, and such material must be demolished, disturbed and subsequently removed, all such works must comply with the following criteria:

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

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

Standard Condition: E39

E.23 Classification of Hazardous Waste

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

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

Standard Condition: E40
E.24 Disposal of Asbestos and Hazardous Waste

Asbestos and hazardous waste, once classified in accordance with Condition E.23 above must only be transported to waste facilities licensed to accept asbestos and appropriate classifications of hazardous waste.

Note: This condition is imposed to ensure that asbestos and other Hazardous waste is disposed of lawfully under the Protection of the Environment Operations Act 1997 and relevant EPA requirements.
Standard Condition: E41

E.25 Asbestos Removal Signage

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

Note: This condition is imposed to ensure awareness of any hazard to the health and safety of persons working on the site and public.
Standard Condition: E42

E.26 Notification of Asbestos Removal

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

Note: This condition has been imposed to ensure that local residents are informed and have adequate communication facilitated for incidents of asbestos removal.
Standard Condition: E43

E.27 Tree Preservation

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

General Protection Requirements

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

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

Note: Trees must be pruned in accordance with Australian Standard AS 4373 “Pruning of Amenity Trees” and WorkCover NSW Code of Practice Amenity Tree Industry.
F. Conditions which must be satisfied prior to any occupation or use of the building (Part 4A of the Act and Part 8 Division 3 of the Regulation)

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

A person must not commence occupation or use of the whole or any part of a new building (within the meaning of section 109H (4) of the Act) unless an occupation certificate has been issued in relation to the building or part.

Note: new building includes an altered portion of, or an extension to, an existing building.

Standard Condition: F1 (Autotext FF1)

F.2 Commissioning and Certification of Systems and Works

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

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

a) Certification from the supervising professional engineer that the requirement of the Geotechnical/Hydrogeological conditions and report recommendations were implemented and satisfied during development work.
b) All flood protection measures.
c) All garage/car park/basement car park, driveways and access ramps comply with Australian Standard AS 2890.1 – “Off-Street car parking.”
d) All stormwater drainage and storage systems.
e) All mechanical ventilation systems.
f) All hydraulic systems.
g) All structural work.
h) All acoustic attenuation work.
i) All waterproofing.
j) Such further matters as the Principal Certifying Authority may require.

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

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

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

Standard Condition: F7 (Autotext FF7)

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

No conditions.
H. **Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (s109C(1)(c))**

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

All BASIX commitments must be effected in accordance with the BASIX Certificate No. A233756.

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

(*Standard Condition: H7 (Autotext HH7)*)

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

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

a) The site sign;
b) Ablutions;
c) Hoarding;
d) Scaffolding; and
e) Waste materials, matter, article or thing.

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

(*Standard Condition: H12 (Autotext HH12)*)

H.3 **Road Works (including footpaths)**

The following works must be completed to the satisfaction of Council, in compliance with Council’s “Specification for Roadworks, Drainage and Miscellaneous Works” dated February 2012 unless expressly provided otherwise by these conditions at the **principal contractor’s** or **owner’s** expense:

a) Stormwater pipes, pits and connections to public stormwater systems within the *road*;
b) Driveways and vehicular crossings within the *road*;
c) Removal of redundant driveways and vehicular crossings;
d) New footpaths within the *road*;
e) Relocation of existing power/light pole
f) relocation/provision of street signs
g) New or replacement street trees;
h) New footway verges, where a grass verge exists, the balance of the area between the footpath and the kerb or site boundary over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of turf predominant within the street.
i) New or reinstated kerb and guttering within the *road*; and
j) New or reinstated road surface pavement within the *road*. 
I. Conditions which must be satisfied during the ongoing use of the development

1.1 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No.A233756.

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

I.2 Swimming and Spa Pools – Maintenance

Swimming and Spa Pools must be maintained:

a) In compliance with the Swimming Pools Act 1992 and the Building Code of Australia with regard to the provision of child-resistant barriers and resuscitation signs;

b) In compliance with the NSW Health “Public Swimming Pool and Spa Pool Guidelines” in force at that time. Private pools are encouraged to comply with the same standards as applicable;

c) In compliance with AS 1926.3-2003:Swimming pool safety - Water recirculation and filtration systems ;

d) With backwash being discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996, and

e) With a timer that limits the recirculation and filtration systems operation such that it does not emit noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
   - Before 8 am or after 8 pm on any Sunday or public holiday, or
   - Before 7 am or after 8 pm on any other day.

Note: Child-resistant barriers, resuscitation signs, recirculation and filtration systems and controls systems require regular maintenance to ensure that life safety, health and amenity standards are maintained.


I.3 Noise from mechanical plant and equipment

The noise level measured at any boundary of the site at any time while the mechanical plant and equipment is operating must not exceed the background noise level. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed background noise level at any time.

The background noise level is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the $L_{A90}$, 15 minute level measured by a sound level meter.
This condition has been imposed to protect the amenity of the neighbourhood.

**Note:** Words in this condition have the same meaning as in the:


J. **Miscellaneous Conditions**

No conditions.

K. **Advisings**

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

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

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

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

**Warnings as to potential maximum penalties**

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

**Warning as to enforcement and legal costs**

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

**Note:** The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of the Crimes (Sentencing Procedure) Act 1999, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious. You can obtain further information from the following web sites:


Standard Advising: K1 (Autotext KK1)
K.2 Dial before you dig

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

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

Standard Advising: K2 (Autotext KK2)

K.3 Builder’s Licences and Owner Builders Permits

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

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

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

Standard Condition: K5 (Autotext KK5)

K.4 Building Standards - Guide to Standards and Tolerances

The PCA does not undertake detailed quality control inspections and the role of the PCA is primarily to ensure that the development proceeds in accordance with this consent, Construction Certificates and that the development is fit for occupation in accordance with its classification under the Building Code of Australia. Critical Stage Inspections do not provide the level of supervision required to ensure that the minimum standards and tolerances specified by the “Guide to Standards and Tolerances©” ISBN 0 7347 6010 8 are achieved.

The quality of any development is a function of the quality of the principal contractor’s or owner builder’s supervision of individual contractors and trades on a daily basis during the development. The PCA does not undertake this role.

The NSW Office of Fair Trading have published a “Guide to Standards and Tolerances©” ISBN 0 7347 6010 8. The guide can be obtained from the Office of Fair Trading by calling 13 32 20 or by Fax: 9619 8618 or by post to: Marketing Branch, PO Box 972, Parramatta NSW 2124.

Council, as the PCA or otherwise, does not adjudicate building contract disputes between the principal contractor, contractors and the owner.

Standard Condition: K6 (Autotext KK6)

K.5 Workcover requirements

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

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

Standard Condition: K7 (Autotext KK7)

K.6 Dividing Fences

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

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

Standard Advising: K10 (Autotext KK10)

K.7 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Ms R Coull, Assessment Officer, on (02) 9391 7098.

However, if you wish to pursue your rights of appeal in the Land & Environment Court you are advised that Council generally seeks resolution of such appeals through a Section 34 Conference, site hearings and the use of Court Appointed Experts, instead of a full Court hearing.

This approach is less adversarial, it achieves a quicker decision than would be the case through a full Court hearing and it can give rise to considerable cost and time savings for all parties involved. The use of the Section 34 Conference approach requires the appellant to agree, in writing, to the Court appointed commissioner having the full authority to completely determine the matter at the conference.

Standard Condition: K14 (Autotext KK14)

K.8 Release of Security

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

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

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

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


Standard Condition: K15 (Autotext KK15)

K.9 Recycling of Demolition and Building Material

It is estimated that building waste, including disposable materials, resulting from demolition, excavation, construction and renovation, accounts for almost 70% of landfill. Such waste is also a problem in the generation of dust and the pollution of stormwater. Council encourages the recycling of demolition and building materials.

Standard Condition: K17 (Autotext KK17)

K.10 Owner Builders

Under the Home Building Act 1989 any property owner who intends undertaking construction work to a dwelling house or dual occupancy to the value of $12,000 or over must complete an approved education course and obtain an owner-builder permit from the Office of Fair Trading. See www.fairtrading.nsw.gov.au.

Standard Condition: K18 (Autotext KK18)

K.11 Pruning or Removing a Tree Growing on Private Property

Woollahra Municipal Council's Tree Preservation Order 2006 (TPO) may require that an application be made to Council prior to pruning or removing any tree. The aim is to secure the amenity of trees and preserve the existing landscape within our urban environment.

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

Standard Condition: K19 (Autotext KK19)

K.12 Dilapidation Report

Please note the following in relation to the condition for a dilapidation report:
a) The dilapidation report will be made available to affected property owners on requested and may be used by them in the event of a dispute relating to damage allegedly due to the carrying out of the development.

b) This condition cannot prevent neighbouring buildings being damaged by the carrying out of the development.

c) Council will not be held responsible for any damage which may be caused to adjoining buildings as a consequence of the development being carried out.

d) Council will not become directly involved in disputes between the Developer, its contractors and the owners of neighbouring buildings.

e) In the event that access for undertaking the dilapidation survey is denied the applicant is to demonstrate in writing to the satisfaction of the PCA that all reasonable steps were taken to obtain access to the adjoining property. The dilapidation report will need to be based on a survey of what can be observed externally.

K.13 Roads Act Application

Works or structures over, on or under public roads or footpaths are subject to Sections 138, 139 and 218 of the Roads Act 1993 and specifically:

- Construction of driveways and/or new or alterations to footpath paving
- Alteration and/or extension to Council drainage infrastructure
- Alteration and/or addition of retaining walls
- Pumping of water to Council’s roadway
- Installation of soil/rock anchors under the roadway

An “Application to carry out works in a Public Road” form must be completed and lodged, with the Application fee, at Council’s Customer Services counter. Detailed plans and specifications of all works (including but not limited to structures, road works, driveway crossings, footpaths and stormwater drainage etc) within existing roads, must be attached, submitted to and approved by Council under Section 138 of the Roads Act 1993, before the issue of any Construction Certificate.

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, driveways, kerb & gutter, new gully pit showing clearly the connection point of site outlet pipe(s). Note, the connection drainage lines must be as direct as possible and generally run perpendicular to the kerb alignment.
- Engineering drawings of the new drainage line to be constructed joining the new and existing drainage pits including services.

All driveways must include a design longitudinal surface profile for the proposed driveway for assessment. The driveway profile is to start from the road centreline and be along the worst case edge of the proposed driveway. Gradients and transitions must be in accordance with Clause 2.5.3, 2.6 of AS 2890.1 – 2004, Part 1 – Off-street car parking. The driveway profile submitted to Council must be to (1:25) scale (for template checking purposes) and contain all relevant details: reduced levels, proposed grades and distances.
The existing footpath level and grade at the street alignment of the property must be maintained unless otherwise specified by Council. Your driveway levels are to comply with AS2890.1 and Council’s Standard Drawings. There may be occasions where these requirements conflict with your development and you are required to carefully check the driveway/garage slab and footpath levels for any variations.

Note: Any adjustments required from the garage slab and the street levels are to be carried out internally on private property.

Drainage design works must comply with the Council’s Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management, and

Temporary ground anchors may be permitted, in accordance with Council’s “Rock Anchor Policy”.

Services: Prior to any excavation works, the location and depth of all public utility services (telephone, cable TV, electricity, gas, water, sewer, drainage, etc.) must be ascertained. The applicant shall be responsible for all public utility adjustment/relocation works, necessitated by the development work and as required by the various public utility authorities and/or their agents.

All public domain works must comply with the latest version of Council’s “Specification for Roadworks, Drainage and Miscellaneous Works” unless expressly provided otherwise by these conditions. This specification and the application form can be downloaded from www.woollahra.nsw.gov.au.

Note: To ensure that this work is completed to Council’s satisfaction, this consent by separate condition, may impose one or more Infrastructure Works Bonds.

Note: When a large Roads Act is required, then four (4) weeks is to be allowed for assessment.

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

Note: The intent of this condition is that the design of the road, footpaths, driveway crossings and public stormwater drainage works must be detailed and approved prior to the issue of any Construction Certificate. Changes in levels may arise from the detailed design of buildings, road, footpath, driveway crossing grades and stormwater. Changes required under Road Act 1993 approvals may necessitate design and levels changes under this consent. This may in turn require the applicant to seek to amend this consent. Standard Advising: K24 (Autotext KK24)

Annexures

1. Plans and elevations
2. Referral response - Technical services
3. Referral response - Trees and Landscaping
4. Referral response - Heritage
5. Clause 4.6 Variation - Height of Building
Annexure 1  Plans and elevations
Completion Date: 08/12/2015

REFERRAL RESPONSE – TECHNICAL SERVICES

FILE NO: Development Applications/341/2015/1
ADDRESS: 252 Glenmore Road PADDINGTON 2021
PROPOSAL: Extensive alterations & additions to the rear of the existing terrace
dwelling including demolition of existing garage & proposed new
garage with loft; new swimming pool and associated landscaping
FROM: Manjula Pushpapatham-Development Engineer
TO: Ms R Coulff

1. ISSUES

- Vehicle crossing is available
- Sight distance may be required if possible
- No loss of parking
- Localised adjustment of longitudinal grades to suit building entries is not permitted in
  the public domain

2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environmental Effects, prepared by Lockrey Planning & Development
  Solutions Pty Ltd, dated 17/11/2015.
- Survey Plan No.56667001A, prepared by Hill & Blume Consulting Surveyors, dated
  22/12/2014.
- Architectural Drawing No. 1240/Sheet 01:Sheet 7/Rev B , prepared by Invision Design,
  dated Oct 2015.
- Geotechnical Report by Geo-environmental Engineering Ref: JG15909-r1 dated 23rd
  June, 2014
- Structural and Construction details report, prepared by John Romanous & Associates
  Consulting and Structural Engineers, Ref No.6201, dated 16/11/2015.

3. ASSESSMENT

Stormwater drainage concept plans have not been submitted for the proposed development.
However, since the increase of impervious area due to the construction of the pool is less than
40 sqm, there are no objections to connecting the drainage from the proposed impervious
areas of the development to the existing stormwater system

Council’s Technical Services Division is satisfied that adequate provision has been made for
the disposal of stormwater from the land it is proposed to develop and complies with Chapter
E2 “Stormwater and Flood Risk Management” DCP
a. Impacts on Council Infrastructure comments

Glenmore Road - There are no proposed or approved works on Council’s infrastructure. - There are no impacts on Council’s assets. Footpath and K&G are in good condition.

Goodhope Lane – Access to the site is difficult but as the garage access already exists there are no specific conditions required. There are no proposed or approved works on Council’s infrastructure. The narrow footpath is in bad condition.

The kerb and gutter which is to be replaced in concrete is comprised of sandstone and is to be recovered.

Access to the site is achievable as there are garages opposite which preclude parking – No objections, conditions applied.

b. Construction Management comments

As a result of the site constraints, limited space and access a Construction Management Plan is to be submitted to Council. Due to the lack of on-street parking availability a Work Zone will be required from Council during construction and is conditioned accordingly.

c. Traffic comments

The expected traffic generation from the proposed development is typical for the zoning of the site.

d. Vehicle Access & Accommodation comments

Footpath levels

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

Note: any adjustments required between the garage slab and the street levels are to be carried out internally on private property.

The driveway levels are to comply with AS2890.1 and Council’s Standard Drawing RF2.

Revised plans are to be submitted and approved by Council with driveway application

Access – Access to the garage is via existing vehicular crossing. It complies with rear lane access and vehicle parking complies with C9 of WDCP 2015, Part C, Paddington HCA

Parking Layout - Parking space length =5.4 and width = 3.00m complies with Table 5 of WDCP 2015, Part C, Paddington HCA and AS 2890.1
e. Geotechnical, Hydrogeological and/or Structural comments

Geotechnical Report – A Geotechnical report by Geo-environmental Engineering Ref: JG15909-rl dated 8 April 2014 has been submitted in support of the application. Excavation is proposed to a depth (Sealed) for two storey studio/garage and a swimming pool of 1m deep and construction of a lower floor.

Structural Report – Submitted structural report has been reviewed in support of the application. It demonstrates that it complies with the excavation requirements of C1, Paddington HCA, and C1.4.7 and the details of the report cross references the Geotechnical Report recommendations and limitations.

Ground Conditions
The report identified that the property had the following ground conditions were observed in the Bore Holes 1 and 2:

- Fine grained, silty sand with very loose to loose densities to a depth at least 1.50m below ground surface;
- Borehole terminated at 1.50m @ BH1 and 0.25m @ BH2;
- Fill consists of brick pavers to 0.10 to 0.15m deep;
- Sandstone bedrock appeared to be below 2.4m
- No groundwater was encountered as boreholes were found to be dry.

Excavation

Lower Ground Floor

The excavation for the proposed development will be carried out mainly in sand. If excavation is required within the bedrock/sandstone, it is recommended that portable jack hammer may be used.

Care should be taken during excavation near adjacent building and structures and the proposed excavation is to be monitored by a qualified person to avoid any impacts.

Care also will be required during excavation under the party walls to ensure there is no damage to the existing party wall.

Pool

The proposed excavation locations are at the Rear to a maximum depth of 1.50m and in sandy soil. Since, the excavation will be carried out in sandy soil; it is not expected to generate any significant damage to the adjacent buildings and structures.

The report made comments and recommendations on the following:
- Excavation and retention
- Batters and shoring
- Underpinning of the footings
- Vibration monitoring
• Dilapidation reports/surveys
• Piers/Slab footings design
• Retaining walls and Batter Slopes
• Hydrogeology
• Further Geotechnical input

Conditions covering these matters as well as others identified by Council have been added to the Referral.

Council’s Technical Services has no objection to the proposed excavation on technical grounds. Notwithstanding this, Council’s Planning Officer is also to undertake an assessment of the proposed excavation against the relevant excavation objectives and controls prescribed under the LEP and applicable DCP in particular the setbacks from boundaries.

4. RECOMMENDATION

Council’s Development Engineer has determined that the proposal is satisfactory, subject to the following conditions:

Conditions of Consent

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

A. General Conditions

A.5 Approved Plans & Supporting documents

<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
<th>Author/Drawn</th>
<th>Date(s)</th>
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<td>Geotechnical Report</td>
<td>Geo-environmental Engineering</td>
<td>23/06/2015</td>
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A8 Ancillary Aspect of the Development (Repair Damaged Infrastructure)

B. Conditions which must be satisfied PRIOR TO THE DEMOLITION of any building or construction
B.7 Public Road Assets prior to any work/demolition

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

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

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

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

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

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

Standard Condition: B7

C. Conditions which must be satisfied PRIOR TO THE ISSUE OF ANY CONSTRUCTION CERTIFICATE

C.5 Security Deposits/Fees

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Paid</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Property Damage Security Deposit ($138)</td>
<td>$18,161.00</td>
<td>No</td>
<td>T113</td>
</tr>
<tr>
<td>g) Public Road and Footpath Infrastructure Inspection Fee ($138 Fee)</td>
<td>$430</td>
<td>No</td>
<td>T45</td>
</tr>
</tbody>
</table>

C.13 Road and Public Domain Works – Council approval required

A separate application under Section 138 of the Roads Act 1993 is to be made to, and approved by Council prior to the issuing of a Construction Certificate for the following infrastructure works, which must be carried out at the applicant’s expense:
a) Full width vehicular crossings having a width of 3.5m in accordance with Council’s standard driveway drawing RF2 (Latest Amendment).

b) A design longitudinal surface profile for the proposed driveway must be submitted for assessment.

c) Removal and replacement of the existing footpath for the full width of the property in accordance with Council’s standard drawing RF3.

d) The existing sandstone block Kerbs/Gutters are to be removed and recovered.

e) Removal of all driveway crossings and kerb laybacks which will be no longer required.

f) Reinstatement of footpath, kerb and gutter to match existing.

Note: To ensure that this work is completed to Council’s satisfaction, this consent by separate condition, may impose one or more Infrastructure Works Bonds.

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

Note: The intent of this condition is that the design of the road, footpaths, driveway crossings and public stormwater drainage works must be detailed and approved prior to the issue of any Construction Certificate. Changes in levels may arise from the detailed design of buildings, road, footpath, driveway crossing grades and stormwater. Changes required under Roads Act 1993 approvals may necessitate design and levels changes under this consent. This may in turn require the applicant to seek to amend this consent.

Note: See condition K24 in Section K. Advisings of this Consent titled Roads Act Application.

Standard Condition: C13

C25 Soil and Water Management Plan – Submissions & Approval

C35 Structural Adequacy of Existing Supporting Structures

C.36 Engineers Details

C40 Geotechnical and Hydrogeological Design, Certification & Monitoring

C.45 Parking Facilities

C.49 Stormwater discharge to existing Stormwater Drainage System (Clause 25(2) WLEP 1995)

D. Conditions which must be satisfied PRIOR TO THE COMMENCEMENT OF ANY DEVELOPMENT WORK

D.4 Dilapidation Reports for existing buildings

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

These properties must include (but is not limited to):

(A) 250 Glenmore Road

(B) 254 Glenmore Road
The dilapidation reports must be completed and submitted to Council with the Notice of Commencement prior to the commencement of any development work.

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

Note: The reasons for this condition are:
- To provide a record of the condition of buildings prior to development being carried out
- To encourage developers and its contractors to use construction techniques that will minimise the risk of damage to buildings on neighbouring land
- Also refer to the Dilapidation Report Advising for more information regarding this condition (Standard Condition D4)

D.6 Adjoining Structures – Loose Foundations

D.9 Construction Management Plan

D.10 Work (Construction) Zone – Approval & Implementation

D.14 Erosion & Sediment Control Installation

E. Conditions which must be SATISFIED DURING ANY DEVELOPMENT WORK

E.3 Compliance with Construction Management Plan
E.7 Public Footpaths – safety, access and maintenance
E.11 Maintenance of Environmental Controls
E.12 Compliance with Geotechnical / Hydrogeological Monitoring Program
E.13 Support of adjoining land and buildings
E.14 Vibration Monitoring
E.15 Erosion and Sediment Controls – Maintenance
E.17 Disposal of Site Water during Construction
E.25 Replacement of Sandstone Kerb or Gutter

F. Conditions which must be satisfied PRIOR TO ANY OCCUPATION or use of the building (Part 4A of the Act and Part 8 Division 3 of the Regulation)

F.7 Commissioning and Certification of Systems and Works
G. Conditions which must be satisfied PRIOR TO THE ISSUE OF ANY
SUBDIVISION CERTIFICATE

Nil

H. Conditions which must be satisfied prior to the issue of a FINAL OCCUPATION
CERTIFICATE (s109C(1)(c))

H.13 Completion of Roadworks

I. Conditions which must be satisfied during the ONGOING USE OF THE
DEVELOPMENT

Nil

J. Miscellaneous Conditions

Nil

K. Advisings

K.23 Dilapidation Report Condition

K24 Roads Act Application

Manjula Pushpapathan
Development Engineer

08/12/2015.
Completion Date: 4 August 2015

REFERRAL RESPONSE – TECHNICAL SERVICES

FILE NO: DA 341/2015/1
ADDRESS: 252 Glenmore Road PADDINGTON 2021
PROPOSAL: Extensive alterations & additions to the rear of the existing terrace dwelling including demolition of existing garage & proposed new garage with loft; new swimming pool and associated landscaping
FROM: N Tomkins
TO: Mr A Gilderdale

1. ISSUES

- The proposed development does not satisfy the requirements of the Paddington HCA DCP with regard to section C1.4.7 Excavation in the following
  1. no Structural Report and Construction Details has been submitted
  2. rock is at a greater depth than 1.5m
  3. required setbacks have not been provided

2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environmental Effects, prepared by Anna Vaughan Architects,
- Survey Plan No.13-102P1 (2 sheets), drafted by JRK Surveys, dated 21 October 2013
- Architectural Drawing No.A00 to A05, drawn by Anna Vaughan Architects, dated 22 April 2014

3. ASSESSMENT

a. Site Drainage comments

There are no objections to connecting the drainage from the proposed works to the existing stormwater system.

Council’s Technical Services Division is satisfied that adequate provision has been made for the disposal of stormwater from the land it is proposed to develop and complies with the provisions of Clause 25 (2) of WLEP 1995

b. Impacts on Council Infrastructure comments

Glenmore Road - There are no proposed or approved works on Council’s infrastructure.

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2a - Referral Response - Technical Services

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Annexure 2 Referral response - Technical services
Goodhope Lane – Access to the site is difficult but as the garage access already exists there are no specific conditions required. There are no proposed or approved works on Council’s infrastructure.

c. Traffic comments

The expected traffic generation from the proposed development is typical for the zoning of the site.

d. Geotechnical, Hydrogeological and/or Structural comments

Geotechnical Report – A Geotechnical report by Geo-environmental Engineering Ref: JG15909–R dated 8 April 2014 has been submitted in support of the application. Excavation is proposed to a depth (Scaled) for Dining/Living of 1m in the existing secondary building, for the cinema 1.5m and laundry up to 2m under the primary building.

Structural Report – no structural report has been submitted in support of the application

Ground Conditions
The report identified that the property had the following ground conditions:
1. Fine grained sand to a depth at least 2.4m below ground surface
2. No groundwater was encountered

Excavation
The proposed excavation locations are at the Rear, the Secondary Wing area and Primary Building zones. Depth to rock is not known but in excess of 2.4m.

Garage – C6 permits excavation boundary to boundary subject to conditions. In this case the excavation is minor and there are no objections.

Pool – C7 of PHCA permit pools outside the Principal/Secondary building. However there is no setback on the southern boundary and it is required to be setback a min of 0.9m.

Dining/Cinema/Laundry – Clause C1, f) states that “Excavation will not be permitted if the rock substratum is greater than 1.5 below the original footings” Clause C1, d) and e) requires setback and in this case there are only minimal setbacks on the northern side of about 400mm for Dining about 150mm for Cinema and nil for the Laundry. There are no required setbacks on the southern side.

Summary - The proposed development does not satisfy the requirements of the Paddington HCA DCP with regard to section C1.4.7 Excavation in the following areas:

- no Structural Report and Construction Details has been submitted
- rock is at a greater depth than 1.5m
- required setbacks have not been provided

4. RECOMMENDATION

Council’s Development Engineer has determined that the proposal is unsatisfactory as it does not comply with the excavation requirements in Paddington Heritage Conservation Area DCP 2015 section C1.4.7 Excavation
REFERRAL RESPONSE – TREES & LANDSCAPING

FILE NO: DA 341/2015/1

ADDRESS: 252 Glenmore Road PADDINGTON 2021

PROPOSAL: Extensive alterations & additions to the rear of the existing terrace dwelling including demolition of existing garage & proposed new garage with loft; new swimming pool and associated landscaping

FROM: David Grey - Tree & Landscape Section

TO: Ms R Coull

I refer to the following documents received for this report:

- Statement of Environmental Effects, prepared by Lockery Planning, dated 30 June 2015
- Survey Plan No.56667001A, drafted by Hill & Blume, dated 22 December 2014
- Architectural Drawing No. 1 to 8, drawn by Invision Design, dated March 2015
- Landscape Plan No. 2 sheets, dated 26 June 2015

A site inspection was carried out on: 8 October 2015.

Relevant Control:

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

SUMMARY

- Proposed pruning to Jacaranda tree not acceptable.
- Root mapping shows little root activity in area proposed for swimming pool

COMMENTS

Pruning of Jacaranda
Part of this proposal is for the demolition of the existing garage at the rear of the site and the construction of a new garage with loft. The proposed loft would be in conflict with a primary branch of a Jacaranda tree standing adjacent in the rear yard of 250 Glenmore Rd. This tree is a veteran and an outstanding specimen.
The reporting arborist has advised that the primary branch can be pruned to provide clearance for the proposed loft. No detail has been provided for this proposed pruning other than the branch is proposed to be cut at a point where it is 350mm in diameter. There is no obvious pruning point on this branch that would comply with the Australian Standard AS 4373-Pruning of amenity trees. The arborist appears to be proposing arbitrary lopping of the branch. This does not comply with AS4373 and such pruning is highly undesirable, especially in Jacarandas. Normally dormant buds are initiated in uncontrolled growth by this heavy pruning.

Such a large wound is also highly vulnerable to the entry of decay. To prune this branch in compliance with the Australian Standard it would have to be removed at the base, at a point where it is 600mm in diameter. Both options represent poor arboricultural practices and are unacceptable to Tree & Landscape section.

I have recommended that modified architectural drawings are supplied before the issue of a Construction Certificate. These modified drawing should indicate the deletion of the garage loft. The primary branch of the Jacaranda should remain unpruned.

**Root mapping adjacent to proposed pool**

A Root Mapping report has been supplied in support of this proposal. This report investigates the presence of roots from the Jacaranda tree standing on 250 Glenmore Rd along the alignment of proposed excavations for the swimming pool on 252 Glenmore Rd. Only one root larger than 50mm in diameter was exposed in the excavation. This root being 70mm in diameter. Roots less than 50mm in diameter are exempt from the Tree Preservation Order and could be severed at any time. This element of the proposal is acceptable to Tree & Landscape section.

**RECOMMENDATIONS**

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

**CONDITIONS OF CONSENT**

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

**A. General Conditions**

**A.1 Tree Preservation & Approved Landscaping Works**

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

a) The following trees shall be pruned in accordance with *Australian Standard Pruning of Amenity Trees* (AS 4373) and *Workcover NSW Code of Practice Amenity Tree Industry*, to the minimum extent necessary to provide clearance to the new development:

<table>
<thead>
<tr>
<th>Council Ref No.</th>
<th>Species</th>
<th>Location</th>
<th>Approved pruning (extent of pruning)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Jacaranda mimosifolia</td>
<td>Standing on 250 Glenmore Rd.</td>
<td>Prune all roots identified in root mapping trench adjacent to west alignment of pool</td>
</tr>
</tbody>
</table>

Annexure 3  Referral response - Trees and Landscaping  Page 133
Note: The tree/s required to be pruned should appear coloured blue on the construction certificate plans.

A.2 Approved Plans and supporting documents

<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
<th>Author/Drawn</th>
<th>Date(s)</th>
</tr>
</thead>
</table>

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

B.1 Arborists inspection of excavations

As a minimum the following intervals of site inspections must be made:

<table>
<thead>
<tr>
<th>Stage of arboricultural inspection</th>
<th>Compliance documentation and photos shall be included</th>
</tr>
</thead>
<tbody>
<tr>
<td>Excavation of western face of swimming pool</td>
<td>Arborist to be present on site as swimming pool excavations adjacent to Jacaranda tree are undertaken</td>
</tr>
</tbody>
</table>

Inspections and compliance documentation shall be made by an arborist with AQF Level 5 qualifications.

Additional site visits shall be made when required by site arborist and/or site foreman for ongoing monitoring/supervisory work.

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

C.1 Amended Architectural Drawings

Amended Architectural Drawings shall be prepared in accordance with Council’s DA Guide and conforming to the conditions of this Development Consent. These plans must be submitted to Council prior to the issue of the Construction Certificate. The amended drawings must include the following:

- Indicate the deletion of the proposed garage loft. The primary branch of the Jacaranda tree standing on 250 Glenmore Road that extends over the existing garage roof is to remain intact.

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

NIL

E. Conditions which must be satisfied during any development work

E.1 Tree Preservation

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

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

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

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

David Grey  
Tree Officer
REFERRAL RESPONSE - HERITAGE

FILE NO: DA 341/2015/1

ADDRESS: 252 Glenmore Road PADDINGTON 2021

PROPOSAL: Extensive alterations & additions to the rear of the existing terrace dwelling including demolition of existing garage & proposed new garage with loft; new swimming pool and associated landscaping.

FROM: Paul Fletcher - Heritage Officer

TO: Ms R Coull

ISSUES

- The proposal would alter the proportion, scale and the cohesion in the pair of terrace houses; is most unlikely to blend with the existing building fabric; and does not respond positively to the historical context.
- The proposal does not respect the distinctive patterns or the significance of the semi-detached pair of terrace houses.
- The full length of the north-eastern wall and the full length of the north-western wall of the rear wing at the level of the ground-floor are floor to ceiling glass.
- The proposed use of large areas of glass to the ground-floor is most unlikely to achieve a united whole with the mid-Victorian terrace house and is not consistent with the character of the site, the streetscape or the Heritage Conservation Area.
- The proposed excavation under the principal building form may have the potential to compromise external heritage features of the building or those of its neighbours.
- None of the proposed habitable rooms under the principal building form and under the rear wing have at least one external wall fully above existing ground level, and with the exception of the kitchen/dining/living space that opens onto the rear yard, none will receive adequate natural light and ventilation.
- The proposal shows the loft extending from side boundary to side boundary.
- The proposal is for a loft with a transverse gable, which is gable-ended to the side boundaries.
- On the roof plane facing the dwelling, the proposed loft has a 1.8 metre-square window.
- The proposal has wide dormer-style forms with a shallow-pitched roof on the rear accessway-facing roof plane and on the roof plane facing the dwelling.

DOCUMENTATION

The following documentation provided by the applicant has been examined for this referral response:

- Drawing set by Invision Design, dated March 2015 and numbered 02A – 06A.
• Statement of Environmental Effects by Lockrey Planning & Development Solutions, dated 30 June 2015.
• Survey plan by Hill & Blume, reference 56667001A, dated 22 December 2014.

SITE INSPECTION / RESEARCH

The following research was undertaken in the preparation of this assessment:
• The site was inspected on 7 September 2015, including the interior and the general locality.

Review of the following documents and photographic evidence:
• Council’s property system, to establish dates of earlier building and development applications for the subject and surrounding properties.
• Council’s photography files relevant to the immediate area.
• Council’s aerial photography and mapping database.

STATUTORY AND POLICY DOCUMENTS

The following statutory and policy documents are relevant to the application:
• Woollahra Local Environmental Plan 2014, the LEP; and
• Woollahra Development Control Plan 2015, the DCP.

HERITAGE FRAMEWORK

• The subject building is within the Paddington Heritage Conservation Area, and is considered a contributory item and a significant item.
• The subject building is not in the vicinity of any heritage item.
• The subject building is not a heritage item in the LEP and is not listed on the State Heritage Register.

SIGNIFICANCE OF SUBJECT PROPERTY TO THE CONSERVATION AREA

Sheet 28 of the Paddington maps of the Sydney Metropolitan Details Series was printed in 1885. It clearly shows the original footprint of the pair of houses now Nos. 250 and 252 Glenmore Road, Paddington. The first listing of the houses in Sands’ Sydney & Suburban Directory is in the 1879 edition, which is accepted as indicating that the pair was constructed in the previous year, 1878. The 1879 listing did not have street numbers, but referred to the pair of houses by the names Hobartville and Clifton. The 1890 edition had names and street numbers; Hobartville was assigned No. 188 and Clifton was assigned No. 190. In the 1907 edition, the present street numbers were shown, Nos. 250 and 252 Glenmore Road.

Council records indicate that the building has not been the subject of a previous Development Application, but was the subject of one previous Building Application, in 1983.

The significance of the subject mid-Victorian semi-detached house derives individually from its three-storey principal building form and its two-storey rear wing. The collective contribution to the streetscape of the pair of mid-Victorian semi-detached terrace houses was diminished when a single-storey shop was constructed in the front yard of No. 250 Glenmore Road.
DESCRIPTION OF PROPOSAL

The following works are proposed:

- **To the existing sub-floor:** Demolish the central portion of the rear wall of the sub-floor of the principal building form, together with other internal walls. Excavate part of the sub-floor of the principal building form and excavate under the existing lower-ground-floor rear wing to a distance of 12.9 metres from the rear wall of the principal building form to create a new lower-ground-floor. Construct new external and internal walls and configure the spaces to provide a laundry, separate lavatory, hallway and cellar under the principal building form, and a new rear wing extending from side boundary to side boundary that contains a cinema, hallway, straight-flight staircase leading up to the ground-floor, and a kitchen/dining/living space that opens onto the rear yard.

- **To the existing ground-floor:** Increase the width of the opening in the wall between the hallway and rear room of the principal building form and insert a separate lavatory below the stair leading up to the first-floor. With the exception of the side boundary walls, demolish the rear wing. Extend the south-western side boundary wall and construct a new rear wing. Configure the spaces to provide an external deck which is accessible from the rear room of the principal building form and from the rear wing, a study nook/library/gallery that overlooks a void over the kitchen/dining/living space below.

- **To the rear wing of the existing first-floor:** Demolish the external wrap-around balcony and the splayed section of wall, doors and windows in the northern corner of the bedroom and the north-western and north-eastern rear walls. Reconstruct the right-angled section of walls, floor and ceiling in the northern corner of the bedroom and insert a pair of glazed doors with sidelights into the rear wall.

- **To the second-floor of the principal building form:** Construct a new section of internal wall within the bedroom to create a vestibule to the bedroom and convert the walk-through-wardrobe to a walk-in-wardrobe. Brick up the doorway from the bedroom into the bathroom and relocate the doorway from the bedroom to the present terrace. Demolish the external wall between the bathroom and the roof terrace, extend the bathroom to the north-eastern side boundary and construct new external walls between the enlarged bathroom and the smaller roof terrace, with glazed double doors opening onto the roof terrace.

- **Externally:** Construct a rear-facing timber-framed and clad balcony accessed from the north-western wall of the first-floor bedroom in the rear wing, with an ogee-shaped corrugated metal roof. Set a glass balustrade against the inside face of the parapet wall to the roof terrace on the second-floor. Landscape the rear courtyard and construct an in-ground swimming pool. Construct a loft space over the existing garage on the rear boundary of the property.

ASSESSMENT OF HERITAGE IMPACT

Compliance with the relevant planning controls

The assessment is made using the following statutory and policy heritage conservation provisions:

*Woollahra Local Environmental Plan 2014*

- Clause 5.10 (1)(a): The development does not conserve the environmental heritage of Woollahra.
- Clause 5.10 (1)(b): The development does not conserve the heritage significance of the Paddington Heritage Conservation Area, including associated fabric, settings and views.
Clause 5.10 (4): This referral constitutes an assessment under this Clause. The effect of the proposed development on the heritage significance of the heritage conservation area will be adverse.

**Woollahra Development Control Plan 2015, the DCP**

**Consideration**

The proposal has been assessed against the Objectives and Controls of each relevant heritage-related clause of Chapter C1, Paddington Heritage Conservation Area, of the DCP.

**C1.2.3 Character elements**

- Before the Introduction, this Clause advises that:
  
  “character elements represent the distinguishing features of the area that are to be retained. Applications to change the character elements will be assessed against the desired future character controls.”

- The Introduction states, in part:
  
  “Alterations to the rear of properties require detailed consideration so as not to alter the proportion, scale and the cohesion in groups of buildings. Due to the topography and the subdivision patterns, rear elevations are often highly visible from the public domain.

In Paddington, the aim should always be to establish a cohesive relationship between new work and the existing building fabric. Contemporary design must respond appropriately to relevant aspects of the historical context.”

- As set out below, the proposal would alter the proportion, scale and the cohesion in the pair of terrace houses; is most unlikely to blend with the existing building fabric; and does not respond positively to the historical context.

**C1.2.4 Desired future character**

- This chapter seeks to achieve a desired future character for the Paddington HCA which:
  
  “e) retains distinctive features such as parapets, chimneys, mixture of roofs, complex of roads, laneways and alleyways, consistency of colours, subdivision patterns and buildings which follow the landform and the distinctive patterns of terrace house groups; and

  g) retains the diversity of building types including multi-storey and single-storey terrace house rows …”

- This chapter continues:
  
  “As Paddington is a living place and will be subject to change over time, Council seeks to encourage new development of a high design standard which respects the significance of the area.”

- As set out below, the proposal does not respect the distinctive patterns or the significance of the semi-detached pair of terrace houses.
C1.3.4 Multi-storey terrace style housing

- The terrace of two semi-detached three-storey dwellings is not an unaltered pair; the dwelling at No. 250 Glenmore Road has had a single-storey shop constructed between the dwelling and the street boundary. In addition, both dwellings have undergone alterations to the rear wing. The proposal involves minor internal works to the principal building form and significant excavation under the principal building form and rear wing.

C1.4.3 Rear elevations, rear additions, significant outbuildings and yards

Objectives: O2 and O3.
Controls: C3, C6 and C11.

- Objective O2 seeks to ensure that rear alterations and additions are of sympathetic design and construction. Objective O3 seeks to ensure that the distinctive shared characteristics of groups of contributory buildings are retained and enhanced. Control C3 requires alterations and additions to a building which comprises one of a group to be designed with regard to the overall balance of the group in terms of height, alignment, form, scale, breezeway pattern and architectural character and detail. Point f) of Control C6 requires alterations and additions at the rear of buildings to not extend beyond the predominant rear building setbacks at any level of a group or row of buildings.

- Historically, the rear wing of the adjoining property at No. 250 Glenmore Road was longer than that of the subject dwelling. Sheet 28 of the Paddington maps of the Sydney Metropolitan Details Series shows this in 1885 and it remains the same on Sheet 11 of the City of Sydney City Building Surveyor’s Detail Sheets that was compiled circa 1956. Both dwellings have been extended beyond the original rear wings. The proposal includes extending the ground-floor rear wing of the subject dwelling by 2.9 metres; this would make the rear wing of the subject dwelling longer than the adjoining rear wing. In view of the historical misalignment, the proposal is supported.

- Point d) of Control C6 requires alterations and additions at the rear of buildings not to employ large areas of glass on upper levels.

- The proposal seeks to construct a three-storey rear wing set behind a four-storey principal building form by excavating for and constructing a lower-ground-floor under the existing ground-floor. The proposed extended rear wing includes a contemporary two-storey-high space at the north-western end of the extended rear wing by effectively restricting the (internal) length of the ground-floor to the position of the existing north-western wall of the present kitchen, with a 7.5 metre-long void space between the end of the present kitchen and the proposed north-western wall of the rear wing. The full length of the north-eastern wall at the level of the lower-ground-floor is a solid brick wall, while the full length of the north-eastern wall at the level of the ground-floor is floor to ceiling glass. The full length of the north-western wall at the level of the lower-ground-floor and at the level of the ground-floor is floor to ceiling glass. The extent of the proposed glazing at the ground-floor level does not comply with point d) of Control C6, and is not supported.

- Control C11 may permit sympathetic contemporary design at the rear where:
  a) intrusive fabric or fabric of low significance exists;
  b) the proposal will achieve an aesthetically cohesive relationship between new and existing fabric; and
  c) the proposal is consistent with the character of the site, the streetscape and the precinct in which it is contained.
• The proposed use of large areas of glass to the ground-floor could be viewed as the application of contemporary design to the rear wing. However, the proposal is most unlikely to achieve a united whole with the mid-Victorian terrace house and is not consistent with the character of the site, the streetscape or the Heritage Conservation Area. While the use of a five-leaf glazed set of stacking doors is accepted at the lower-ground-floor level, the large areas of glass to the ground-floor do not comply with the Objective and does not comply with point c) of Control C11, and are not supported.

C1.4.7 Excavation
Text prior to Objectives.
Objectives: O1, O2 and O7.
Controls: C1 and C4.

The text prior to the Objectives states, in part:

“The geology of the Paddington area varies from sandstone, loose sandy soils or a combination of sandy soils overlaying a sandstone stratum. Other foundation materials are very rare and less problematic than the worst case of sand over rock.

There are some site typologies where excavation for the purposes of establishing a basement may be considered reasonable. However, it should be recognised that the majority of the site typologies in Paddington do not lend themselves to excavation. The objectives and controls in this section are informed by an understanding of the methods involved, and potential impact, of excavating certain foundation types.”

“The objectives and controls below apply to any excavation proposed under the principal building form, secondary wing, or any other location on a property. The controls require an understanding of the subsurface conditions, and seek to protect the structural integrity of the individual building, the row of houses of which it is a part, adjoining properties, and their heritage significance.

Excavation is controlled in order to preserve the heritage fabric and structural integrity of buildings that collectively contribute to the significance of Paddington.”

• Objective O1 seeks to ensure the structural integrity and stability of individual buildings and the terrace of buildings of which they are a part, and neighbouring properties. Objective O2 seeks to protect the original fabric of the buildings significant to the area both during and after excavation. Objective O7 seeks to ensure that any new floor levels resulting from excavation and development do not compromise external heritage features of the building or those of its neighbours.

• The proposed excavation under the principal building form brings into question the structural integrity and stability of individual buildings and the terrace of buildings of which they are a part, and neighbouring properties. In addition, the proposed excavation under the principal building form may have the potential to compromise external heritage features of the building or those of its neighbours.

• Point g) of Control C1 stipulates that excavation will not be permitted if habitable rooms formed from the excavation:
  • do not have at least one external wall fully above existing ground level; and
  • will not receive adequate natural light and ventilation.
None of the proposed habitable rooms under the principal building form and under the rear wing have at least one external wall fully above existing ground level. Only the kitchen/dining/living space that opens onto the rear yard will receive adequate natural light and ventilation. This does not comply with Control C1 and is not supported.

Control C4 requires the ground and first floor levels of alterations and additions and infill development to be consistent with the levels established by existing buildings and topography on adjoining sites.

It is not known if the buildings on the adjoining sites have a lower-ground-floor set under the existing ground-floors. Unless the existence of lower-ground-floors under the buildings on the adjoining sites can be demonstrated, the proposal will not be supported.

C1.5.7 Lofts over garages and studios
Objectives: O1, O3 and O6.
Control: C1 and C2.

Objective O1 seeks to ensure that loft structures over garages or studios are sympathetic in their location, massing, form and scale to the traditional rear elevations, yards and laneways. Objective O3 seeks to ensure that loft structures over garages or studios do not impact on the privacy of adjoining properties. Objective O6 seeks to minimise the visual impact of loft structures when viewed from public areas and private land.

Control C1 g) requires, in part, that a loft structure may be permitted where the loft and garage is a maximum of 4.34 metres wide. The proposal shows the loft extending from side boundary to side boundary, a distance of approximately 5.15 metres wide. This does not comply with the Control and the proposed loft structure is not supported. In order to comply with the Control, the loft needs to be reduced in width by 0.81 metres.

Control C1 h) requires, in part, that a loft structure may be permitted where the roof structure is gable-ended to the laneway, with a maximum ridge height of 5.5 metres and maximum wall height of 3.9 metres (on or adjacent to a side boundary). The proposal is for a loft with a transverse gable, which is gable-ended to the side boundaries. This does not comply with the Control and the proposed loft structure is not supported. In order to comply with the Control, the loft needs to be rotated in plan by 90°.

Control C1 i) requires, in part, that a loft structure may be permitted where windows are located only in the centre of gable ends and must be either: a single double-hung sash window, or inward opening window of traditional proportions. Control C2 d) does not permit a loft structure with a dormer. The proposal has a single double-hung sash window set within a wide dormer-style form with a shallow-pitched roof on the rear accessway-facing roof plane. While the window complies with Control C1 i), the wide dormer form does not comply with Control C2 d). In order to comply with the Control, the dormer must be removed. On the roof plane facing the dwelling, the proposed loft has a 1.8 metre-square window, set within a wide dormer-style form with a shallow-pitched roof. The large multi-pane window and the dormer do not comply with the Controls.

CONCLUSION

The application is generally unacceptable as it does not comply with the relevant statutory and policy documents and would have an unsatisfactory impact.

RECOMMENDATION

Refusal for the following reasons:
1. The proposal would alter the proportion, scale and the cohesion in the pair of terrace houses; is most unlikely to blend with the existing building fabric; and does not respond positively to the historical context. This does not comply with the Introduction to C1.2.3 of the DCP.

2. The proposal does not respect the distinctive patterns or the significance of the semi-detached pair of terrace houses. This does not comply with C1.2.4 of the DCP.

3. The full length of the north-eastern wall and the full length of the north-western wall of the rear wing at the level of the ground-floor are floor to ceiling glass. This does not comply with point d) of Control C6 of C1.4.3 of the DCP.

4. The proposed use of large areas of glass to the ground-floor is most unlikely to achieve a united whole with the mid-Victorian terrace house and is not consistent with the character of the site, the streetscape or the Heritage Conservation Area. This does not comply with point c) of Control C11 of C1.4.3 of the DCP.

5. The proposed excavation under the principal building form may have the potential to compromise external heritage features of the building or those of its neighbours. This does not comply with Objectives O1, O2 and O7 of C1.4.7 of the DCP.

6. None of the proposed habitable rooms under the principal building form and under the rear wing have at least one external wall fully above existing ground level, and with the exception of the kitchen/dining/living space that opens onto the rear yard, none will receive adequate natural light and ventilation. This does not comply with point g) of Control C1 of C1.4.7 of the DCP.

7. The proposal shows the loft extending from side boundary to side boundary. This does not comply with Control C1 g) of C1.4.7 of the DCP.

8. The proposal is for a loft with a transverse gable, which is gable-ended to the side boundaries. This does not comply with Control C1 h) of C1.4.7 of the DCP.

9. The proposed loft has a 1.8 metre-square window on the roof plane facing the dwelling. This does not comply with Control C1 i) of C1.4.7 of the DCP.

10. The proposal has wide dormer-style forms with a shallow-pitched roof on the rear accessway-facing roof plane and on the roof plane facing the dwelling. This does not comply with Control C2 d) of C1.4.7 of the DCP.

Paul Fletcher
Heritage Officer
4.1.3 Exception to Development Standards Submission

As noted in Table 2 the proposed development departs from the maximum height of buildings development standard at Clauses 4.3(2) of LEP 2014. Therefore the provisions of Clause 4.6 of LEP 2012 are entirely relevant to the proposal.

As required pursuant to Clause 4.6(3) of LEP 2012, this SEE provides a written request to Council that seeks to justify the departure from the height of buildings development standard is acceptable from an environmental planning point of view and that compliance with the standard is both unreasonable and unnecessary given the circumstances of the case. In addition it is noted/assumed that Council will forward/refer the DA to the Director General of the Department of Planning and Environment (DoPE) for their review and ultimate concurrence (should Council not have the delegation to make such a determination).

4.1.3.1 Height of buildings

Pursuant to Clause 4.3(2) of LEP 2014, the maximum building height for the site is 9.5 metres.

The terrace’s existing maximum building height of 13 metres (top of parapet to Glenmore Road) is not altered. The height of the proposed garage and loft built form is 5.6 metres.

The majority of the terrace is located below the site’s 9.5 metre height limit. However, and as demonstrated by Figure 11, the proposed internal works to the master bedroom at the second floor level are located above the site’s 9.5 metre height limit. Therefore and technically the terrace departs from the standard.

Notwithstanding the above departure (relative only to the second floor level works), compliance with the height of buildings standard is unreasonable or unnecessary in the circumstances of the case and furthermore it can be demonstrated that there are sufficient environmental planning grounds to justify the proposal’s departure from the standard as the proposal:
• is entirely consistent with the stated objectives of the R2 Low Density Residential zone (see discussion and assessment above within Table 2);
• is entirely consistent with the stated objectives of the height of buildings standard (see below);
• demonstrates that compliance with the standard is unreasonable and unnecessary (see below);
• demonstrates that compliance with the standard inconsistent with the objects of the Act (see below);
• demonstrates that there are no state or regional planning matters arising from the departure (see below); and
• is in the public interest (see below).

Is the planning control in question a development standard?

The height of buildings control is not framed as prohibition and is therefore a ‘development standard’ as defined at clause 4 of the Act. Part (c) refers to the term height.

Objectives of the zone

As previously demonstrated at Clause 2.3 at Table 2, the proposed development (relative only to the second floor level works) despite its departure from the maximum height of buildings development standard is consistent with the stated objectives of the R2 Low Density Residential zone and is therefore considered to be a suitable and appropriate redevelopment of the site.

Objectives of the height of buildings standard

The objectives of the height of buildings standard are expressly stated at Clause 4.3(1) of LEP 2014 and are:
(a) to establish building heights that are consistent with the desired future character of the
   neighbourhood,
(b) to establish a transition in scale between zones to protect local amenity,

---

Pursuant to clause 4 of the EP&A Act, 1979, development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

(a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
(b) the proportion or percentage of the area of a site which a building or work may occupy,
(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,
(d) the cubic content or floor space of a building,
(e) the intensity or density of the use of any land, building or work,
(f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,
(g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
(h) the volume, nature and type of traffic generated by the development,
(i) road patterns,
(j) drainage,
(k) the carrying out of earthworks,
(l) the effects of development on patterns of wind, sunlight, daylight or shadows,
(m) the provision of services, facilities and amenities demanded by development,
(n) the emission of pollution and means for its prevention or control or mitigation, and
(o) such other matters as may be prescribed.
(c) to minimise the loss of solar access to existing buildings and open space,

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

(e) to protect the amenity of the public domain by providing public views of the harbour and surrounding areas.

As each height of buildings objective is considered to be similar, a complete combined analysis of the proposal's compliance (relative only to the second floor level works) with all of the objectives follows below.

The proposal despite the departure from the height of building standard is nonetheless consistent with the height of buildings objectives for the following reasons:

- the majority of the building works (and terrace) generally are contained below the 9.5 metre height standard;
- works proposed above the 9.5 metre height standard are an internal reconfiguration of the existing second floor level including the enclosing of an existing west facing terrace;
- new openings are not proposed above the 9.5 metre height standard;
- overlooking of adjacent properties from areas above the 9.5 metre height standard has been reduced;
- topography plays an important role in the character of the area immediately surrounding the site. Built form on the western side of Glenmore Road fall towards the rear of each property and are presented as two to three storeys. Elevated and terraced backyards are provided above garaging presented to Goodhope Lane. This is the prevailing characteristic. The site is located within an established and typical residential area particularly in relation to its street pattern, landscape, topography and architecture. The integrity of the building stock varies (despite being within a conservation area) and a relatively consistent form and detail (Victorian era) is provided. The significance of dwellings varies from their front to their rear elevations;
- the objective of the building height standard (in conjunction with other key density / envelope guidelines) is essentially to ensure that the intensity of development respects and reflects the overall built form of a locality and does not detrimentally affect the amenity of the area. The maximum height of a dwelling is determined by its environmental constraints, in particular overshadowing, privacy, streetscape, landscaping, visual impact and views and the capacity of the community infrastructure. As detailed throughout this SEE, the proposal clearly meets or surpasses the aforementioned criteria. The proposal has been designed to minimise impacts and has had particular regard to site users and neighbours in terms of visual appearance, overshadowing, traffic generation, parking and streetscape and which does not in any capacity restrict the residential amenity of the adjoining properties, nor their use and enjoyment;
- the works are concentrated in the rear, altered section and will have no impact on the street presentation. Works are not proposed to the site's Glenmore Road elevation. Most terraces have had redevelopment works to their rear and the proposal is in line with the general level of development;
- the maximum (unaltered) height of the dwelling is comparable to that existing adjacent the site. The height, bulk and scale of the dwelling therefore sits comfortably within its established and likely future context;
• the built form works above the height standard (generally part of the existing and reconfigured second floor level) do not materially add to the height, bulk and scale of the dwelling, nor its environmental impacts;

• the proposed rear building alignment is not inconsistent with that adjacent;

• increased landscaped areas are provided which assist in reducing visual built form dominance;

• approval of a building height on the site that relates to the desired future character for the locality as expressed in LEP 2015, but exceeds the LEP 2015 development standard, will not set a precedent for other non conforming applications;

• the proposal retains a use on the site which is consistent with the low scale/density residential character of the area;

• the expression of built form is adjusted to respond to the site topographical features/challenges and the design and character of adjacent dwellings;

• the proposal will positively contribute to the built form context and character of the immediate locality as the design is of a high quality and is complementary to the adjoining and nearby development and furthermore, the dwelling is considered to be an appropriate design response and which is consistent with other redeveloped dwellings within the surrounding locality that provide the same or similar accommodation;

• the expression of built form is adjusted to respond to:
  – solar access and the site’s orientation;
  – internal and external amenity for the future occupants;
  – the site’s topography; and
  – the design and character of adjacent development;

• the site is proportioned to allow the efficient realisation and internalisation of the impacts of the building height without any impact on those adjoining and adjacent properties;

• the proposal supports the principles of ecological sustainable development and is BASIX compliant;

• the proposal has no material impacts on the quality of life of existing and future residents in the locality and in particular the amenity afforded to the occupants of the dwelling will be superior with respect to solar access, access to natural daylight and ventilation and aural and visual privacy (see below).

• the proposed land uses (same as existing) are compatible with the existing and future land uses surrounding the site. The new built form is provided with a high quality architectural, urban and landscape design solution for the site which will positively contribute to the streetscape characteristics and built form context of the surrounding locality; and

• as the site is not visible from Sydney Harbour, there are no views and vistas lost of the harbour from the surrounding public domain. Rather views of the site and its built form have been increased as a result of the site’s reduced built form from that previously approved.
Compliance is unreasonable and unnecessary

In this instance compliance with the height of buildings development standard is unreasonable and unnecessary as:

- the existing terrace departs from the standard;
- the maximum height of the terrace is not altered. The dwelling’s predominant building envelope is retained and which complies;
- works to the front portion of the terrace are not proposed;
- it has been demonstrated that the proposal will not result in any material environmental impacts to the adjoining and adjacent properties, particularly in terms of overshadowing, aural and visual privacy, solar access and natural ventilation, and views and vistas;
- the height, bulk and scale of the terrace is consistent with that existing adjoining the site to the north and south respectively;
- the height of the terrace and its departure from the standard does not preclude redevelopment of the adjoining properties for a similar purpose/land use; and
- the proposal exhibits design excellence.

Objects of the Act

The objects of the Act as specified in Section 5(a) (i) and (ii), are in our opinion, achieved by the proposed development in that:

- it constitutes "proper management, development and conservation of natural and man-made resources";
- it promotes "the social and economic welfare of the community and a better environment" by better utilising the existing resources and infrastructure of the community; and
- it would result in "the promotion and co-ordination of the orderly and economic use and development of land".

Compliance with the height of buildings development standard would hinder the attainment of the objects of the Act as:

- the existing built form already departs from the standard;
- the dwelling’s existing maximum height is not altered by the proposal;
- the predominant building envelope of the dwelling complies with the standard;
- the proposed height of the dwelling supports high quality dwelling house development that responds to demand for high quality residential accommodation;
- the built form elements of the terrace where works are proposed and which depart from the standard do not materially add to its bulk and scale. The built form sits comfortably within its established built form context;
- it would preclude redevelopment of the site in the manner proposed and which would not offer the level of amenity currently expected;
- it doesn’t constitute the orderly, economic and sympathetic redevelopment of land; and
• the departure from the standard does not result in any adverse impacts to the adjoining and adjacent properties and the surrounding public domain.

Matters of State or Regional planning significance

The proposed development and variation from the height of buildings development standard does not raise any matters of significance for State or regional environmental planning, nor does it conflict with any State planning policies or Ministerial directives.

Public benefit in maintaining the planning controls adopted by the planning instrument

For the reasons set out above, the proposed departure from the height of buildings development standard is well founded. Council (or the NSW Land and Environment Court) in the past has consistently considered applications favourably throughout the Woollahra LGA which depart from the height of buildings standard subject to a satisfactory environmental performance. The proposed development is entirely consistent with this principle as it exhibits an appropriate architectural, urban and landscape design solution for the site without compromising or resulting in adverse environmental impacts to the adjoining and adjacent properties and the surrounding public domain. There are no other reasons as to why the proposal is not in the public interest and refusal of the proposal based on the departure from the height of building standard is not warranted. Therefore it is argued that there is no public benefit in maintaining the adopted planning control, specifically relating to height of buildings.

Is the submission well founded?

For the reasons set out in the preceding sections of this report, the proposed (unaltered) departure from the height of buildings standard at Clauses 4.3(2) of LEP 2014 is well founded.

4.1.4 DCP 2015

DCP 2015 is the prevailing Council prepared development control plan applying to the site.

Section 79C(3A) of the Act states:

If a development control plan contains provisions that relate to the development that is subject of a development application, the consent authority:

(a) if those provision set standards with respect to an aspect of the development and the development application complies with those standards – is not to require more onerous standards with respect to that aspect of the development, and

(b) if those provisions set standards with respect to an aspect of the development and the development does not strictly comply with those standards – is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and

(c) may consider those provisions only in connection with the assessment of that development application. (our emphasis)

A detailed assessment of the proposal against the relevant Paddington Heritage Conservation Area guidelines/controls (Chapter C1) in DCP 2015 has been undertaken by Ruth Daniell (HIS submitted under separate cover and Section 4.2 for further information). The proposal relies on some minor variations to DCP 2015. The proposal is consistent with development already permitted on adjacent land and under the circumstances, dispensation from strict adherence to the controls will enable a better outcome for the site.
DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No. D4
FILE No. DA478/2015/1
ADDRESS 26/4 Mitchell Road DARLING POINT
ZONING R3
PROPOSAL New air conditioning with condenser located on the balcony
TYPE OF CONSENT Local development
COST OF WORKS $40,000.00
DATE LODGED 22/09/2015
APPLICANT Mr N J Eddy
OWNER Mr C R & Mrs S M Allan
AUTHOR Mr T Wong
TEAM LEADER George Fotis
SUBMISSIONS Nil
RECOMMENDATION Conditional Approval

SUMMARY

1. LOCALITY PLAN

![Locality Plan Image]
2. LEVEL OF DELEGATION

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

Note: The existing overall height of the building already exceeds the building height development standard and will remain unchanged (pre-existing height).

3. PROPOSAL

The proposal involves the following works:

- Installation of an external air conditioning condenser unit within the existing balcony of Unit 26 on Level 5.
- Internal ducting associated with the air conditioning system.

4. ISSUES

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

<table>
<thead>
<tr>
<th>Clause</th>
<th>Development Standard</th>
<th>Departure from Control</th>
<th>Conclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part 4.3</td>
<td>Height of Buildings</td>
<td>16.328m or 21% departure from the 13.5m control</td>
<td>Acceptable</td>
</tr>
</tbody>
</table>

4.2. Primary Issues

<table>
<thead>
<tr>
<th>Issue</th>
<th>Conclusion</th>
<th>Section</th>
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</thead>
<tbody>
<tr>
<td>Departure from the height control</td>
<td>Acceptable</td>
<td>10.4</td>
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</table>

4.3. Summary of Submissions

Nil

PROPERTY DETAILS AND REFERRALS

5. SITE AND LOCALITY

<table>
<thead>
<tr>
<th>Physical features</th>
<th>The site is located on the southern side of Mitchell Road, Darling Point. The subject site has an irregular shape with a frontage of approximately 62m along Mitchell Road.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Topography</td>
<td>The site falls from the south (rear) to the north (front).</td>
</tr>
<tr>
<td>Existing buildings and structures</td>
<td>The subject site contains a 9 storey high residential flat building with on-site parking.</td>
</tr>
<tr>
<td>Surrounding Environment</td>
<td>Development in the locality is typified by a combination of high rise residential flat buildings, medium density buildings and heritage items.</td>
</tr>
</tbody>
</table>
6. RELEVANT PROPERTY HISTORY

<table>
<thead>
<tr>
<th>Current use</th>
<th>Residential flat building</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relevant Application History</td>
<td></td>
</tr>
<tr>
<td>DA259/2011/1 – Installation of 2 split reverse cycle air conditioning systems with compressors to be installed on balcony to Unit 5 was approved on the 2 August 2011;</td>
<td></td>
</tr>
<tr>
<td>DA 693/2008/1 – Installation of reverse cycle air conditioning unit to Unit 7, Refused on 21 November 2008, but allowed retention of the unauthorised air conditioning unit subject to application of a BC;</td>
<td></td>
</tr>
<tr>
<td>DA 646/2007/1 – Installation of air conditioning system including external unit to Unit 24 was approved on the 16 November 2007;</td>
<td></td>
</tr>
<tr>
<td>DA 400/2007 – A split level air conditioning system to Unit 18 was approved on the 30 August 2007;</td>
<td></td>
</tr>
<tr>
<td>DA 062/2007 – An air conditioning system and kitchen alterations to Unit 20 was approved on the 06 March 2007;</td>
<td></td>
</tr>
<tr>
<td>CDC 35/2005 – A Complying Development Certificate was approved for an air conditioning system to Unit 48 on the 29 November 2005;</td>
<td></td>
</tr>
<tr>
<td>DA821/2004 – Install air conditioning to Unit 31 was approved on the 16 December 2004;</td>
<td></td>
</tr>
<tr>
<td>DA122/2003 – Reverse cycle air conditioning to Unit 6 was approved on the 26 February 2003;</td>
<td></td>
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<tr>
<td>DA33/2002 – Two split level air conditioning units - Units 35 &amp; 36 was approved on the 18 January 2002;</td>
<td></td>
</tr>
<tr>
<td>DA423/1999 – Supply &amp; install five unitary fna coils &amp; one only air cooled condensing unit to Unit 39 was approved on the 10 December 1999.</td>
<td></td>
</tr>
</tbody>
</table>

Relevant Compliance History

| Nil |
| Pre-DA |
<br>Nil
Requests for Additional Information and Replacement Applications

- Elevation of building (received on 19/11/2015)
- Assessment under Cl 4.6 of the WLEP 2014 for the departure of the building height development standard (received on 26/11/2015)

Land and Environment Court Appeal(s)

Nil

7. REFERRALS

<table>
<thead>
<tr>
<th>Referral</th>
<th>Summary of Referral Response</th>
<th>Annexure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental Health</td>
<td>Satisfactory</td>
<td>2</td>
</tr>
</tbody>
</table>

ENVIRONMENTAL ASSESSMENT UNDER SECTION 79C

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

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

8. ADVERTISING AND NOTIFICATION

8.1. Submissions

The application was advertised and notified from 9/12/2015 to 23/12/2015 in accordance with Chapters A2.2.1, A2.3.1 and A2.8 of the Woollahra DCP 2015. No submission was received.

8.2. Statutory Declaration

The applicant has completed the statutory declaration dated 13/1/2016 declaring that the site notice for DA478/2015/1 was erected and maintained during the notification period in accordance with Chapter A2.3.5 of the Woollahra DCP 2015.

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

The land is within the Sydney Harbour catchment but is outside the Foreshores and Waterways Area and therefore there are no specific matters for consideration.
10. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

10.1. Part 1.2: Aims of Plan

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

10.2. Land Use Table

The proposal is defined as air conditioning system and is permitted and is consistent with the objectives of the R3 zone.

10.3. Part 4.3: Height of Buildings

Part 4.3 limits development to a maximum height of 13.5m.

<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum Building Height</td>
<td>Approx. 27m</td>
<td>16.328m</td>
<td>13.5m</td>
<td>NO#</td>
</tr>
</tbody>
</table>

# Clause 4.6 written request submitted

The proposal does not comply with Part 4.3 of Woollahra LEP 2014 as detailed and assessed in Section 10.4 below.

10.4. Part 4.6: Exceptions to Development Standards

10.4.1 Departure

The proposal involves a non-compliance with the Height of Buildings statutory control under Part 4.3 of the Woollahra LEP 2014, as detailed in Section 10.3.

10.4.2 Purpose

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

10.4.3 Written Request

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

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

The subject building was built in 1968 and was clearly built with your Council approval. The building is higher than the 13.5 metre height limit established in the Woollahra Municipality however this building and numerous high rise buildings in Woollahra Municipality were all erected with Council approval.
Our client wishes to install internal air conditioning in the subject unit which is on the 5th Floor and is 15.28 metres above Ground Level. There are 3 floors above our client's unit and those units above our client all have air conditioning installed.

The installation of the air conditioning unit will not require any change in the height limit of the building nor will it impact on anyone's view nor will there be any over shadowing of other properties or the streetscape. It will not in any way breach the objectives set out in clause 4.3(1) (a — e inclusive) of the Woollahra LEP 2014. 4.

The works to be carried out by our client for the air conditioning are consistent with the desired future character of the neighbourhood as set out in clause 4.3A (1) (a) and is consistent with the surrounding buildings and streetscape as set out in clause 4.3A (1) (b) of the LEP. In addition it does not impact on the views and vistas that are in the public domain as referred to in clause 4.3A (1)(d) and (e).

10.4.4 Assessment

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

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

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

- The objectives of the Clause 4.3 Height of buildings development standard have been satisfied.
- The objectives of the R3 Medium Density Residential zone have been satisfied.

An assessment against the objectives prescribed in Clause 4.3 is provided below.

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

Assessment: The existing 9 storey high residential flat building exceeds the building height development standard. The proposed works are on the 5th floor and will not increase the height of the existing building which is consistent with the character of the neighbourhood and achieves consistency with objective (a).

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

Assessment: The subject site is within the R3 Medium Density Residential zone and only adjoins a small piece of land zoned B1 Neighbourhood Centre. There is no impact in terms of transition in scale between zones.

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

Assessment: The proposal will not result in any loss of solar access to existing buildings and open spaces and will achieve consistency with objective (c).
(d) To minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion

Assessment: The proposal will not result in any adverse amenity impacts to adjoining or nearby properties in terms of views, loss of privacy, overshadowing or visual intrusion and will achieve consistency with objective (d).

(e) To protect the amenity of the public domain by providing public views of the harbour and surrounding areas

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

The development is also consistent with the objectives applying to the R3 zone as follows:

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

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

- To provide a variety of housing types within a medium density residential environment

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

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

Assessment: The proposal has no impact to other land uses that provide facilities or services to meet the day to day needs of residents and achieves consistency with this objective.

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

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

The Clause 4.6 variation requests are considered to be well founded as the proposal demonstrates the following:

- Compliance with the building height development standard would be unreasonable and unnecessary in the circumstances as the existing building already exceeds the development standard and the proposed works will not further exceed the existing building height;
- There are sufficient environmental planning grounds to justify the contravention;
- The development meets the objectives of the development standards and the objectives of the R3 Medium Density Residential zone, notwithstanding the variation;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard in this instance;
- The proposed variation will not hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and
The contravention does not raise any matter of State or Regional Significance.

**10.4.5 Conclusion**

The proposal is in the public interest and consistent with the objectives of the development standard. Departure from the control is supported.

**10.5. Part 5.10: Heritage Conservation**

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

The subject site being located in No. 4 Mitchell Road, Darling Point is identified in Schedule 5 of the WLEP 2014 as containing a heritage item consisting of the following:

*Sandstone and brick fencing, formerly part of Babworth House estate.*

It is acceptable with regard to the objectives in Parts 5.10 of the Woollahra LEP 2014 in the following manner:

- The proposal is limited to the installation of an air-conditioning system to an existing residential unit on the 5th floor that has no heritage significance;
- The proposal is acceptable in terms of the likely effect to the heritage significance of the heritage items located on No. 4 Mitchell Road, Darling Point;

**11. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015**

**11.1. Chapter B1: Darling Point Residential Precinct**

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

The proposal meets the streetscape character and key elements of the precinct and desired future character objectives of the Darling Point precinct, as noted in Part B1.2.2 of the Woollahra DCP 2015.

**11.2. Chapter B3: General Development Controls**

**Part B3.2: Building Envelope**

There will be no change to the existing building envelope.

**Conclusion**

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

**Part B3.5: Built Form and Context**
Part 3.5.1: Streetscape Character

The proposed air conditioning unit in the existing balcony of Unit 26 will only have minimal and negligible impact to the streetscape. In addition Condition C.1(a) has been recommended requiring that the associated conduits and fascias are to be treated so as to reflect the same colouring of the façade located behind.

Part 3.5.2: Overshadowing

There will be no additional overshadowing.

Part 3.5.3: Public and Private Views

There will be no loss of public or private view.

Part B3.5.4: Acoustic and Visual Privacy

Condition I.1 and I.2 have been recommended by Council’s Environmental Health Officer to ensure the operation of the air conditioning system will not result in unacceptable noise impacts to other occupants in the building.

Conclusion

The proposal is therefore acceptable with regard to the built form and context controls in Part B3.5 of the Woollahra DCP 2015.

12. SECTION 94 CONTRIBUTION PLANS

12.1. Section 94 Contributions Plan 2002

Not applicable due to the estimated cost of works being less than $100,000.

13. APPLICABLE ACTS/REGULATIONS

None applicable.

14. THE LIKELY IMPACTS OF THE PROPOSAL

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

15. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

16. THE PUBLIC INTEREST

The proposal is considered to be in the public interest.
17. CONCLUSION

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

18. DISCLOSURE STATEMENTS

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

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

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

AND

That Council, as the consent authority, grant development consent to Development Application No. 478/2015/1 for new air conditioning with condenser located on the balcony on land at 26/4 Mitchell Road Darling Point, subject to the following conditions:

A. General Conditions

A.1 Conditions

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

Standard Condition: A1 (Autotext AA1)

A.2 Approved Plans and supporting documents

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

<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
<th>Author/Drawn</th>
<th>Date(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>DA01 (Rev a)</td>
<td>Architectural Plans</td>
<td>Gordon + Valich Prt Ltd</td>
<td>17/11/2015</td>
</tr>
</tbody>
</table>

Note: Warning to Accredited Certifiers – You should always insist on sighting the original Council stamped approved plans. You should not rely solely upon the plan reference numbers in this condition. Should the applicant not be able to provide you with the original copy Council will provide you with access to its files so you may review our original copy of the approved plan.
Note: These plans and supporting documentation may be subject to conditions imposed under section 80A(1)(g) of the Act modifying or amending the development (refer to conditions which must be satisfied prior to the issue of any Construction Certificate.)

Standard Condition: A5

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

No conditions

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

C.1 Modification of details of the development (s80A(1)(g) of the Act)

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

a. The proposed air-conditioning condenser and associated conduits and fascias are to be treated so as to reflect the same colouring of the façade located behind.

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

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

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

Standard Condition: C4

C.2 Payment of Long Service Levy, Security, Contributions and Fees

The certifying authority must not issue any Part 4A Certificate until provided with the original receipt(s) for the payment of all of the following levy, security, contributions, and fees prior to the issue of a construction certificate, subdivision certificate or occupation certificate, as will apply.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Indexed</th>
<th>Council Fee Code</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>LONG SERVICE LEVY</strong> under Building and Construction Industry Long Service Payments Act 1986</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>SECURITY</strong> under section 80A(6) of the Environmental Planning and Assessment Act 1979</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Property Damage Security Deposit -making good any damage caused to any property of the Council</td>
<td>$2,241</td>
<td>No</td>
<td>T115</td>
</tr>
<tr>
<td>Security Administration Fee</td>
<td>$184</td>
<td>No</td>
<td>T16</td>
</tr>
<tr>
<td><strong>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</strong></td>
<td>$2,425 plus any relevant indexed amounts and long service levy</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Building and Construction Industry Long Service Payment

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

How must the payments be made?

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

The payment of a security may be made by a bank guarantee where:
- The guarantee is by an Australian bank for the amount of the total outstanding contribution;
- The bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable];
- The bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent;
- The bank guarantee is lodged with the Council prior to the issue of the construction certificate; and
- The bank’s obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

Standard Condition: C5

C.3 Structural Adequacy of Existing Supporting Structures

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

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

Standard Condition: C35 (Autotext CC35)

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

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

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

a) that the work must be carried out in accordance with the requirements of the Building Code of Australia,
b) in the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
This condition does not apply:

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

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

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

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

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### D.2 Security Fencing, Hoarding and Overhead Protection

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

![Security Fencing Diagram](image)

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

![Hoarding Diagram](image)

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

a) The vertical height above footpath level of the structure being demolished is less than 4.0 m; or
b) The least horizontal distance between footpath and the nearest part of the structure is greater than half the height of the structure.
The overhead structure must consist of a horizontal platform of solid construction and vertical supports, and the platform must:

a) Extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary;

b) Have a clear height above the footpath of not less than 2.1 m;

c) Terminate 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than 0.5 m above the platform surface; and

d) Together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa.

The principal contractor or owner builder must pay all fees associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

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

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

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

Standard Condition: D11

D.3 Site Signs

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

Clause 98A of the Regulation provides:

Erection of signs

- For the purposes of section 80A (11) of the Act, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.

- A sign must be erected in a prominent position on any site on which building work, subdivision "work or demolition work is being carried out:

  a. showing the name, address and telephone number of the principal certifying authority for the work, and
b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
c. stating that unauthorised entry to the work site is prohibited.

- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State’s building laws.”

Clause 227A of the Regulation provides:

**Signs on development sites**

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

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

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

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

Standard Condition: D12

**D.4 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)**

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

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

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

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

- Appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
- Notified the principal certifying authority of any such appointment, and
- Unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- Given at least 2 days’ notice to the council of the person’s intention to commence the erection of the building.

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

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

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

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

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

Standard Condition: D15

D.5 Notification of Home Building Act 1989 requirements

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

b) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

- In the case of work for which a principal contractor is required to be appointed:
  - the name and licence number of the principal contractor, and
  - the name of the insurer by which the work is insured under Part 6 of that Act,

- In the case of work to be done by an owner-builder:
  - the name of the owner-builder, and
  - if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

Standard Condition: D17
E. Conditions which must be satisfied during any development work

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

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

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

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

This condition does not apply:

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

b) To the erection of a temporary building.

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

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

Standard Condition: E1

E.2 Compliance with Australian Standard for Demolition


Standard Condition: E2

E.3 Requirement to notify about new evidence

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

Standard Condition: E4

E.4 Critical Stage Inspections

Critical stage inspections must be called for by the principal contractor or owner builder as required by the PCA, any PCA service agreement, the Act and the Regulation.
Work must not proceed beyond each critical stage until the PCA is satisfied that work is proceeding in accordance with this consent, the Construction Certificate(s) and the Act. 

**Critical stage inspections** means the inspections prescribed by the Regulations for the purposes of section 109E(3)(d) of the Act or as required by the PCA and any PCA Service Agreement.

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

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

**Standard Condition: E5**

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

a) No work must take place on any Sunday or public holiday,
b) No work must take place before 7am or after 5pm any weekday,
c) No work must take place before 7am or after 1pm any Saturday,
d) The following work must not take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday;  
   i) Piling;  
   ii) Piering;  
   iii) Rock or concrete cutting, boring or drilling;  
   iv) Rock breaking;  
   v) Rock sawing;  
   vi) Jack hammering; or  
   vii) Machine excavation,

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

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

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

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

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

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

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

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

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

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


E.7 Placement and use of Skip Bins

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

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

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

E.8 Prohibition of burning

There must be no burning of any waste or other materials. The burning of CCA (copper chrome arsenate) or PCP (pentachlorophenol) treated timber is prohibited in all parts of NSW.

All burning is prohibited in the Woollahra local government area.

Note: Pursuant to the Protection of the Environment Operations (Control of Burning) Regulation 2000 all burning (including burning of vegetation and domestic waste) is prohibited except with approval. No approval is granted under this consent for any burning.

E.9 Dust Mitigation

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

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

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

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

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

Standard Condition: E23

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

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

A person must not commence occupation or use of the whole or any part of a new building (within the meaning of section 109H (4) of the Act) unless an occupation certificate has been issued in relation to the building or part.

Note: New building includes an altered portion of, or an extension to, an existing building.

Standard Condition: F1

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

No conditions

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

H.1 Removal of Ancillary Works and Structures

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

a) The site sign;
b) Ablutions;
c) Hoarding;
d) Scaffolding; and
e) Waste materials, matter, article or thing.

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

Standard Condition: H12 (Autotext HH12)

I. Conditions which must be satisfied during the ongoing use of the development
I.1  **Noise Control - Acoustic Protection of adjoining residential units-Operation of Air Conditioning Plant**

The applicant must ensure that the operation of the proposed Air Conditioning System and associated plant does not create interior noise intrusion and vibration to occur within any adjoining residential unit.

I.2  **Noise from mechanical plant and equipment**

The noise level measured at any boundary of the site at any time while the mechanical plant and equipment is operating must not exceed the *background noise level*. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed *background noise level* at any time.

The *background noise level* is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the $L_{A90, 15\text{ minute}}$ level measured by a sound level meter.

This condition has been imposed to protect the amenity of the neighbourhood.

**Note:** Words in this condition have the same meaning as in:
  ISBN 0 7313 2715 2, dated January 2000, and

Standard Condition: I53

J.  **Miscellaneous Conditions**

No conditions

K.  **Advisings**

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

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

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

a)  Issue Penalty Infringement Notices (On-the-spot fines);

b)  Issue notices and orders;

c) Prosecute any person breaching this consent; and/or

d)  Seek injunctions/orders before the courts to restrain and remedy any breach.

**Warnings as to potential maximum penalties**

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

Should Council have to take any action to enforced compliance with this consent or other environmental laws Council’s policy is to seek from the Court appropriate orders requiring the payments of its costs beyond any penalty or remedy the Court may order.

This consent and this specific advice will be tendered to the Court when seeking costs orders from the Court where Council is successful in any necessary enforcement action.

Note: The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of the Crimes (Sentencing Procedure) Act 1999, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious. You can obtain further information from the following web sites:

Standard Advising: K1

K.2 Builders Licences and Owner Builders Permits

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

Further information can be obtained from the NSW Office of Fair Trading website about how you obtain an owner builders permit or find a principal contractor (builder):

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

Standard Condition: K5

K.3 Building Standards - Guide to Standards and Tolerances

The PCA does not undertake detailed quality control inspections and the role of the PCA is primarily to ensure that the development proceeds in accordance with this consent, Construction Certificates and that the development is fit for occupation in accordance with its classification under the Building Code of Australia. Critical Stage Inspections do not provide the level of supervision required to ensure that the minimum standards and tolerances specified by the “Guide to Standards and Tolerances©” ISBN 0 7347 6010 8 are achieved.

The quality of any development is a function of the quality of the principal contractor’s or owner builder’s supervision of individual contractors and trades on a daily basis during the development. The PCA does not undertake this role.

The NSW Office of Fair Trading have published a “Guide to Standards and Tolerances©” ISBN 0 7347 6010 8. The guide can be obtained from the Office of Fair Trading by calling 13 32 20 or by Fax: 9619 8618 or by post to: Marketing Branch, PO Box 972, Parramatta NSW 2124.
The Guide can be downloaded from:

Council, as the PCA or otherwise, does not adjudicate building contract disputes between the principal contractor, contractors and the owner.

Standard Condition: K6

K.4 Workcover requirements

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

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

Standard Condition: K7

K.5 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Mr T Wong, Senior Assessment Officer, on (02) 9391 7158.

However, if you wish to pursue your rights of appeal in the Land & Environment Court you are advised that Council generally seeks resolution of such appeals through a Section 34 Conference, site hearings and the use of Court Appointed Experts, instead of a full Court hearing.

This approach is less adversarial, it achieves a quicker decision than would be the case through a full Court hearing and it can give rise to considerable cost and time savings for all parties involved. The use of the Section 34 Conference approach requires the appellant to agree, in writing, to the Court appointed commissioner having the full authority to completely determine the matter at the conference.

Standard Condition: K7

K.6 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 80A of the Act.

The securities will not be released until a Final Occupation Certificate has lodged with Council, Council has inspected the site and Council is satisfied that the public works have been carried out to Council’s requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council’s requirements.

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

Council may retain a portion of the security to remedy any defects in any such public work that arise within 6 months after the work is completed.
Upon completion of each section of road, drainage and landscape work to Council's satisfaction, 90% of the Bond monies held by Council for these works will be released upon application. 10% may be retained by Council for a further 6 month period and may be used by Council to repair or rectify any defects or temporary works during the 6 month period.


Standard Condition: K15

### Annexures

1. Plans and Elevation
2. Referral response - Environmental Health
3. Clause 4.6 Variation - Height of Buildings
REFERRAL RESPONSE - ENVIRONMENTAL HEALTH

FILE NO: DA 478/2015/1
ADDRESS: 26/4 Mitchell Road DARLING POINT 2027
PROPOSAL: New air conditioning with condenser located on the balcony
FROM: Graeme Reilly Environmental Health Officer
TO: Mr T Wong

1. ISSUES

• NONE

2. DOCUMENTATION

I refer to the following documents received for this report:

• Statement of Environment Effects, referenced 26/4 Mitchell Road Darling Point, prepared by owner, dated 21/09/15.

3. RESEARCH

The following research was undertaken in the preparation of this assessment:

• A site inspection was carried out on the following date: 25/09/2015

4. SUMMARY OF PROPOSAL

New air conditioning with condenser located on the balcony

5. ASSESSMENT

Comments have been prepared on the following. Where Approval is recommended, Conditions of Consent follow at the end of the comments.

6. RECOMMENDATION

Council’s Environmental Health Officer has determined that the proposal is satisfactory, subject to the following conditions:

A. General Conditions

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

C.1 Noise Control - Acoustic Protection of adjoining residential units-Operation of Air Conditioning Plant

The applicant must ensure that the operation of the proposed Air Conditioning System and associated plant does not create interior noise intrusion and vibration to occur within any adjoining residential unit.

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

E. Conditions which must be satisfied during any development work

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

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

Nil.

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

Nil.

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

I.1 Noise from mechanical plant and equipment

The noise level measured at any boundary of the site at any time while the mechanical plant and equipment is operating must not exceed the background noise level. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed background noise level at any time.

The background noise level is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the $L_{A90, 15 \text{ minute}}$ level measured by a sound level meter.

This condition has been imposed to protect the amenity of the neighbourhood.

Note: Words in this condition have the same meaning as in the:
ISBN 0 7313 2715 2, dated January 2000, and
Standard Condition: IS3
J. Miscellaneous Conditions

Nil.

K. Advisings

Nil

Graeme Reilly
Environmental Health Officer

Date: 01/10/2015
26 November, 2015.

Woollahra Council
c/- George Fottis
Team Leader
Development Control
PO Box 61
DOUBLE BAY NSW 2028

Dear Sir,

RE: APPLICATION NO: DA478/2-15/1
RE: NEW AIR CONDITIONING
RE: 26/4 MITCHELL ROAD, DARLING POINT

I refer to our letter of 19 November, 2015 and make the following comments:

1. The subject building was built in 1968 and was clearly built with your Council approval. The building is higher than the 9.5 metre height limit established in the Woollahra Municipality however this building and numerous high rise buildings in Woollahra Municipality were all erected with Council approval.

2. Our client wishes to install internal air conditioning in the subject unit which is on the 5th Floor and is 15.28 metres above Ground Level. There are 3 floors above our client’s unit and those units above our client all have air conditioning installed.

3. The installation of the air conditioning unit will not require any change in the height limit of the building nor will it impact on anyone’s view nor will there be any over shadowing of other properties or the streetscape. It will not in any way breach the objectives set out in clause 4.3(1) (a – e inclusive) of the Woollahra LEP 2014.

4. The works to be carried out by our client for the air conditioning are consistent with the desired future character of the neighbourhood as set out in clause 4.3A (1) (a) and is consistent with the surrounding buildings and streetscape as set out in clause 4.3A (1) (b) of the LEP. In addition it does not impact on the views and vistas that are in the public domain as referred to in clause 4.3A (1)(d) and (e).
5. All works are internal and cannot be seen from the street.

Our client wishes to have the air conditioning installed prior to the coming summer months and your urgent attention to this would be greatly appreciated.

Yours faithfully,

NICHOLAS EDDY & COMPANY

Nicholas Eddy
Liability limited by a Scheme approved under Professional Standards Legislation.
DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No. D5
FILE No. DA 615/2015/1
ADDRESS 382 Oxford Street PADDDINGTON
SITE AREA 135m²
ZONING B4 Mixed Use
PROPOSAL Alterations to the food & drink premises including upgrade of the Oxford Street facade, the provision of roof plant & grease arrester and minor changes to the external access at the rear lower ground floor level
TYPE OF CONSENT Local development
COST OF WORKS $225,216
DATE LODGED 04/12/2015
APPLICANT Hemmes Property Pty Ltd
OWNER Hemmes Property Pty Ltd
AUTHOR Ms R Coull
TEAM LEADER Mr G Fotis
SUBMISSIONS Two (2)
RECOMMENDATION Approval, subject to conditions

SUMMARY

1. LOCALITY PLAN
2. **LEVEL OF DELEGATION**

The application is referred to the Development Control Committee as it involves a departure of more than 10% with the statutory **building height** and **floor space ratio** planning controls.

3. **PROPOSAL**

The proposal involves alterations to the food & drink premises including:

- Upgrade of the Oxford Street façade:
  - New painted timber windows to first floor shopfront.
  - New signage to awning for ‘Chicken Shop’.
  - New timber windows and doors, timber paneling and decorative mouldings to the ground floor shop front.

- Removal of existing skylights and part of the metal roof to the rear wing to accommodate an access hatch to the new roof plant.

- New roof plant to accommodate air conditioning and extraction from chicken shop.

- Acoustic screen to new roof plant (up to a height of 2.3m above the existing roof level).

- Excavation of concrete slab in the rear yard (up to a depth of 2.0 metres) for grease arrestor.

- Alterations to the external access at the rear lower ground floor level including replacement of doors.

4. **ISSUES**

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

<table>
<thead>
<tr>
<th>Clause</th>
<th>Development Standard</th>
<th>Departure from Control</th>
<th>Conclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part 4.3</td>
<td>Height of Buildings</td>
<td>2.2m or 23% departure from the 9.5m control</td>
<td>Satisfactory, subject to Condition C1</td>
</tr>
<tr>
<td>Part 4.4</td>
<td>Floor Space Ratio</td>
<td>69m² or 51% departure from the 1:1 (135m²) control</td>
<td>Satisfactory</td>
</tr>
</tbody>
</table>

4.2. **Primary Issues**

<table>
<thead>
<tr>
<th>Issue</th>
<th>Conclusion</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Height</td>
<td>There is no change to the existing non-compliant ridge height of the principal building form. The height of the roof plant at the rear will sit below the existing ridgeline and will not be visible from Oxford Street. The proposal achieves the underlying intent of the objectives of Clause 4.3 of the Woollahra LEP 2014. Therefore, strict compliance with the height development standard is considered unreasonable and unnecessary in this instance. The Clause 4.6 objection is well founded and the proposal is considered acceptable.</td>
<td>11.3 &amp; 11.5</td>
</tr>
<tr>
<td>FSR</td>
<td>The existing building is non-compliant in terms of floor space ratio. The proposal involves a minor (3m²) addition to the lower ground floor level. The proposal achieves the underlying intent of the objectives of Clause 4.3 of the Woollahra LEP 2014. Therefore, strict compliance with the height development standard is considered unreasonable and unnecessary in this instance. The proposal is considered acceptable.</td>
<td>11.4 &amp; 11.5</td>
</tr>
</tbody>
</table>
### Item No. D5

#### Issue

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clause 4.6 objection is well founded and the proposal is considered acceptable.</td>
<td>11.6, 12.1.3, 12.1.4, 12.1.12 &amp; 12.1.13</td>
</tr>
</tbody>
</table>

#### Roof plant and acoustic screen

The roof plant and acoustic screen is considered acceptable, subject to **Condition C1(a)** requiring the roof plant and acoustic screen to be modified as follows:

- The setback shall be 4.8m from the existing gutter at RL 69.46 AHD at the north-eastern end of the roof over the first floor level.
- The height of the plant equipment shall not exceed RL 72.68 AHD.
- The proposed acoustic screen shall be painted in a light to mid grey colour.

This condition would reduce sightlines to the roof plant and acoustic screen from Victoria Street and ensure that a portion of the traditional rear roof form remains visible so that the roof plant does not detract from the rear elevation of the building and the historic character of the streetscape, when viewed from street level.

#### Windows

The architectural plans do not accurately detail the existing windows above the awning that form part of the significant street front elevation. It is also noted that these windows comprise of intrusive security screens that detract from the visual presentation of the building to Oxford Street. Therefore, the following condition is recommended to ensure an acceptable street presentation:

- **Condition C1(b)** - to ensure that the windows above the awning on the front facade are retained and not altered in size. The existing security screens to these windows are to be removed.

#### Waste storage

The proposed waste storage areas are not specified. Therefore, the following conditions are recommended to maintain suitable amenity:

- **Condition C10** is recommended to require a waste storage area to be specified prior to the issue of a Construction Certificate.
- **Condition J2** is also recommended in relation to the maintenance of the garbage storage area.

### 4.3. Summary of Submissions

#### Issue

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>The visual impact of the roof plant and acoustic screen is considered acceptable, subject to <strong>Condition C1(a)</strong> requiring the roof plant and acoustic screen to be modified as follows:</td>
<td>11.6, 12.1.3, 12.1.4, 12.1.12 &amp; 12.1.13</td>
</tr>
<tr>
<td>• The setback shall be 4.8m from the existing gutter at RL 69.46 AHD at the north-eastern end of the roof over the first floor level.</td>
<td></td>
</tr>
<tr>
<td>• The height of the plant equipment shall not exceed RL 72.68 AHD.</td>
<td></td>
</tr>
<tr>
<td>• The proposed acoustic screen shall be painted in a light to mid grey colour.</td>
<td></td>
</tr>
<tr>
<td>This condition would reduce sightlines to the roof plant and acoustic screen from Victoria Street and ensure that a portion of the traditional rear roof form remains visible so that the roof plant does not detract from the rear elevation and historic character of the streetscape, when viewed from street level.</td>
<td></td>
</tr>
</tbody>
</table>

#### Noise impacts

Council’s Environmental Health Officer has reviewed the proposal and supporting Acoustic Report and considers the proposal satisfactory subject to **Conditions C7, C8, 12, 13, 14, 15, 16 & J3** which will ensure an acceptable noise level is maintained for the adjoining residential properties.

#### Waste storage

The proposed waste storage areas are not specified. Therefore, the following conditions are recommended to maintain suitable amenity:

- **Condition C10** is recommended to require a waste storage area to be specified prior to the issue of a Construction Certificate.
- **Condition J2** is also recommended in relation to the maintenance of the garbage storage area.

#### Impacts associated with 384 Oxford Street

The impacts associated with development on the adjoining sites are outside the scope of this development application. This proposal has been assessed against the relevant considerations under Section 79C of the Environmental Planning and Assessment Act 1979.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>The impacts associated with development on the adjoining sites are outside the scope of this development application. This proposal has been assessed against the relevant considerations under Section 79C of the Environmental Planning and Assessment Act 1979.</td>
<td>N/A</td>
</tr>
</tbody>
</table>
PROPERTY DETAILS AND REFERRALS

5. SITE AND LOCALITY

**Physical features**
The subject site is located on the north-eastern side of Oxford Street, between Elizabeth Street and William Street. The site is rectangular in shape and has a site area of 135m². It has a frontage of approximately 4.1m to Oxford Street, side boundaries of 31.5m and a rear boundary of 4.1m to Victoria Street.

**Topography**
The subject site slopes from Oxford Street at the front (RL 63.45) to Victoria Street at the rear (RL 60.76).

**Existing buildings and structures**
The site comprises of a three storey terrace-style commercial building, constructed late 19th Century. The existing building has been modified but contributes to the streetscape of Oxford Street and the overall significance of the Paddington Heritage Conservation.

**Surrounding Environment**
Development along the portion of Oxford Street surrounding the subject site is characterised by various retail tenancies at ground level with commercial uses above and interspersed with the more recent introduction of medium density residential buildings. Adjoining the site to the south-east is The Paddington Arm Hotel. Adjoining the site to the north-west The Paddington. Opposite the site to the south-west is a public reserve (Newcombe Reserve) which is utilised on weekends for the Paddington Markets. Adjoining the reserve is the Paddington United Church and Paddington Junior Technical School which are listed as a heritage item (under City of Sydney LEP 2012). To the rear of the site, across Victoria Street to the north exists a row of two storey terrace houses.

6. RELEVANT PROPERTY HISTORY

**Current Use**
Food and drink premises (CDC 218/2015)

**Relevant Application History**
- CDC 218/2015 – Restaurant/ café – change of use from retail shop to food and drink premises. Approved 02/12/2015.
- DA 636/2010 – Replace existing bi-fold doors with steel and glass fixed windows and pivot doors, new
illuminated sign. Approved 10/01/2011.
- DA 764/2002 – Alterations and additions to existing shop, refurbishment of existing take away shop. Approved 06/01/2003.

Relevant Compliance History

Pre-DA
N/A

Requests for Additional Information and Replacement Applications
On 9/12/2015 the following information was requested:
- Clause 4.6 – Building height
- Detailed plant platform drawings
  This information was provided on 22/12/2015.

On 28/01/2016 the following information was requested:
- Clause 4.6 – Floor space ratio
  This information was provided on 3/2/2016.

Land and Environment Court Appeal(s)
N/A

7. REFERRALS

<table>
<thead>
<tr>
<th>Referral</th>
<th>Summary of Referral Response</th>
<th>Annexure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental Health</td>
<td>Satisfactory, subject to <strong>Conditions A2, C7, C8, C9, E5, F4, F5, I2, I3, I4, I5, I6, J1 &amp; J2</strong></td>
<td>2</td>
</tr>
<tr>
<td>Fire Safety</td>
<td>Satisfactory, subject to <strong>Conditions C3, F2, F3 &amp; I1</strong></td>
<td>3</td>
</tr>
<tr>
<td>Compliance &amp; Signage</td>
<td>Satisfactory</td>
<td>4</td>
</tr>
</tbody>
</table>

Council’s Heritage Officer reviewed the proposal at DARC. A letter was issued 9/12/2015 requesting detailed drawings showing how the plant platform will connect to the existing roof. These drawings were provided on 22/12/2015. Council’s Heritage Officer reviewed the plant platform drawings and verbally advised that the proposal is satisfactory.

ENVIRONMENTAL ASSESSMENT UNDER SECTION 79C

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

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

8.1. Submissions

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

1. Wendy Boynton, 40 Victoria Street PADDINGTON.
2. Carolyn Mitchell, 50 Victoria Street PADDINGTON.

The submissions raised the following issues:

- **Visual impacts (roof plant equipment)**
  
  **Comment:** The proposed plant equipment is located at towards the rear of the property and will not be visible from Oxford Street. The proposed plant equipment is located on a floating platform above the existing roof and will not have a detrimental impact on the architectural style or significance of the building to which it is attached. The principal roof will not be impacted.

  The visual impact will be further minimised by the following condition:

  - **Condition C1(a)** requiring the roof plant and acoustic screen to be modified as follows:
    
    - The setback shall be 4.8m from the existing gutter at RL 69.46 AHD at the north-eastern end of the roof over the first floor level.
    
    - The height of the plant equipment shall not exceed RL 72.68 AHD.
    
    - The proposed acoustic screen shall be painted in a light to mid grey colour.

  This condition will ensure an acceptable setback and height when viewed from Victoria Street. It will reduce the visible bulk at the rear of the site, reduce sightlines to the roof plant and acoustic screen from Victoria Street and ensure that a portion of the traditional rear roof form remains visible.

- **Noise impacts (request that noise levels be tested/adjusted post-occupation of the premises, concerns about increased noise disturbance to residences on Victoria Street, inadequate acoustic treatment)**
  
  **Comment:** Council’s Environmental Health Officer has reviewed the proposal and supporting Acoustic Report and considers the proposal satisfactory subject to the following conditions which will ensure an acceptable noise level is maintained for the adjoining residential properties:

  - **Condition C7** - Sound Attenuation of the Mechanical Plant & Equipment
  - **Condition C8** - Acoustic Certification of Mechanical Plant & Equipment
  - **Condition I2** – Noise control – offensive noise
  - **Condition I3** – Maintenance of sound attenuation
  - **Condition I4** – Noise from mechanical plant and equipment
  - **Condition I5** – Maintenance of the kitchen exhaust log
  - **Condition I6** – Waste and delivery hours (Victoria Street) limited to reasonable hours
- **Condition J3** - Requiring testing of acoustic treatment

- **Waste storage (concerns regarding bins/boxes on the footpath & odour impacts from the existing open waste storage at the rear of the site)**

  **Comment:** The proposed waste storage areas are not specified. Therefore, the following conditions are recommended to maintain suitable amenity:

  - **Condition C10** is recommended to require a waste storage area to be specified prior to the issue of a Construction Certificate. The waste storage area shall meet the requirements of the Woollahra DCP 2015.

  - **Condition J2** is also recommended to require the garbage area is maintained at all times to ensure that a breeding ground is not created for pests and that the garbage area is capable of being easily and effectively cleaned. All garbage containers must have tight fitting lids and be large enough or in sufficient numbers to contain all the waste produced by the food business while awaiting the next removal from the premises.

- **Impacts associated with the operation of the adjoining premises at 384 Oxford Street (noise disturbance issues from mechanical plant equipment, waste storage)**

  **Comment:** The impacts associated with development on the adjoining sites are outside the scope of this development application. This proposal has been assessed against the relevant considerations under Section 79C of the Environmental Planning and Assessment Act 1979.

### 8.2. Statutory Declaration

The applicant has completed the statutory declaration dated 28/01/2016 declaring that the site notice for DA615/2015/1 was erected and maintained during the notification period in accordance with Chapter A2.3.5 of the Woollahra DCP 2015.

### 9. STATE ENVIRONMENTAL PLANNING POLICY 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. The existing and previous use of the land is for mixed uses and there is no evidence before Council to suggest that the land has been used for any purpose. Consequently, the possibility of the land being contaminated is substantially reduced.

It is considered that Council can be satisfied that the land is not contaminated such that remediation would be required. It is therefore considered acceptable with regard to SEPP 55.

### 10. SYDNEY REGIONAL ENVIRONMENTAL PLAN (SYDNEY HARBOUR CATCHMENT) 2005

The land is within the Sydney Harbour catchment but is outside the Foreshores and Waterways Area and therefore there are no specific matters for consideration.

### 11. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014
11.1. Part 1.2: Aims of Plan

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

11.2. Land Use Table

The proposal is defined as commercial premises and is permitted and is consistent with the objectives of the B4 Mixed Use zone.

11.3. Part 4.3: Height of Buildings

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

<table>
<thead>
<tr>
<th>Maximum Building Height</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>11.7m</td>
<td>11.7m</td>
<td>9.5m</td>
<td>NO¹ ²</td>
</tr>
</tbody>
</table>

¹ Existing non-compliance
² Clause 4.6 variation request submitted

![9.5m height limit](image)

Figure 1 – diagram showing height non-compliance

The proposal does not comply with Clause 4.3 of Woollahra LEP 2014 as detailed and assessed in Section 11.5 below.

11.4. Part 4.4: Floor Space Ratio

Part 11 limits development to a maximum floor space ratio of 1:1.

<table>
<thead>
<tr>
<th>Site Area: 135m²</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Floor Space Ratio</td>
<td>1.49:1 (201m²)</td>
<td>1.5:1 (204m²)</td>
<td>1:1 (135m²)</td>
<td>NO¹ ²</td>
</tr>
</tbody>
</table>

¹ Existing non-compliance
² Clause 4.6 variation request submitted
The proposal does not comply with Clause 4.4 of Woollahra LEP 2014 as detailed and assessed in Section 11.5 below.

11.5. Part 4.6: Exceptions to Development Standards

11.5.1. Departure

The proposal involves a non-compliance with the following statutory controls of the Woollahra LEP 2014:

- Clause 4.3 height of building; and
- Clause 4.4 floor space ratio.

11.5.2. Purpose

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

11.5.3. Written Request

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

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

Applicant’s 4.6 Exceptions to Development Standards assessments are attached to this report – refer to Annexures 5 & 6.

11.5.4. Assessment

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

The departures from the controls are in the public interest in the following manner:

- The objectives of the Clause 4.3 Height of buildings development standard have been satisfied.
- The objectives of the Clause 4.4 Floor space ratio development standard have been satisfied.
- The objectives of the B4 Mixed use zone have been satisfied.

An assessment against the objectives is provided below.

Clause 4.3 Height of building

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

Assessment: The existing building exceeds the building height development standard. The proposed works are located at the rear of the building and do not exceed the height of the principal ridgeline. The rear additions will not be visible from Oxford Street. **Condition C1(a)** is recommended to limit the height of the roof plant and increase the rear setback of the roof plant which will reduce sightlines towards the new roof plant from Victoria Street. The proposal, as conditioned, is consistent with the desired future character of the neighbourhood and achieves consistency with objective (a).

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

Assessment: The subject site adjoins the R2 Low density residential zone and is in close proximity to the B1 Neighbourhood centre zone. The proposed roof plant, as conditioned, will not be discernible from the public domain. The proposed building height will have no adverse impacts on local amenity. The proposal will maintain an appropriate transition in scale between zones and will achieve consistency with objective (b).

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

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

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

Assessment: The proposal will not result in any adverse amenity impacts to adjoining or nearby properties in terms of views, loss of privacy or overshadowing. **Condition C1** is recommended to limit the height of the roof plant and increase the rear setback of the roof plant which will reduce sightlines towards the new roof plant from Victoria Street. The proposal, as conditioned, will achieve consistency with objective (d).

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

 Clause 4.4 Floor space ratio

i) To ensure the bulk and scale of new development is compatible with the desired future character of the area

Assessment: The existing building exceeds the floor space ratio development standard. The additional gross floor area relates to a minor extension (2.7m²) to the lower ground floor level at the rear of the site. The proposed bulk and scale is consistent with the desired future character of the neighbourhood and achieves consistency with objective (i).

ii) To minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain

Assessment: The proposal will not result in any adverse amenity impacts to adjoining properties and the public domain and achieves consistency with objective (ii).

iii) To ensure that development allows adequate provision on site for deep soil planting and areas of private open space

Assessment: Not applicable. There is no deep soil planting or private open space requirements for commercial premises.

Zone B4 Mixed use

• To provide a mixture of compatible land uses

Assessment: The proposed commercial premises (existing food and drink premises) is permitted with consent in the B4 Mixed use zone. Oxford Street is characterised by retail uses, cafes, restaurants and other active ground floor uses with office and residential uses on upper levels. The proposed use is compatible with the surrounding land uses on Oxford Street. The impacts of the proposed use also take into account the proximity of the uses occurring in the adjacent R2 Low density Residential zone and nearby B1 Neighbourhood centre zone. The proposal achieves consistency with this objective.

• To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling

Assessment: The proposed commercial premises is located in an area with good access to public transport, with Oxford Street benefitting from numerous and frequent bus routes that provide services between Sydney CBD and the Eastern Suburbs. The proposed development is also expected to attract local patrons from the surrounding walking catchment area. The proposal achieves consistency with this objective.

• To provide active ground floor uses to create vibrant centres

Assessment: The proposal includes works to the ground level front façade that will facilitate a better relationship between the approved food and drink premises and Oxford Street. The
proposal will provide a strong visual connection and an active interface to Oxford Street. The proposal achieves consistency with this objective.

- **To provide for development of a scale and type compatible with the amenity of the surrounding residential area**

  Assessment: The proposed roof plant and rear addition are located below the existing principal ridgeline and will not be visible from Oxford Street. **Condition C1(a) is recommended to limit the height of the roof plant and increase the rear setback of the roof plant which will reduce sightlines towards the new roof plant from Victoria Street. The proposal will maintain a scale of development that is compatible with the amenity of the surrounding residential area. The proposal achieves consistency with this objective.**

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

  Assessment: The proposed roof plant and rear addition are located below the existing principal ridgeline and will not be visible from Oxford Street. **Condition C1(a) is recommended to limit the height of the roof plant and increase the rear setback of the roof plant which will reduce sightlines towards the new roof plant from Victoria Street. The proposed external works, as conditioned, will not add to the discernible height and scale of the existing building ensuring that the building remains compatible with the existing and desired future character of the neighbourhood. The proposal achieves consistency with this objective.**

Concurrence with the Director General is outlined as follows:

(6) *In deciding whether to grant concurrence, the Director-General must consider:*

  a) Whether contravention of the development standard raises any matter of significance for State or regional environmental planning
  b) The public benefit of maintaining the development standard
  c) Any other matters required to be taken into consideration by the Director-General before granting concurrence

The Clause 4.6 variation requests are considered to be well founded as the proposal demonstrates the following:

- Compliance with the height of building and floor space ratio development standards would be unreasonable and unnecessary in the circumstances of this development, subject to **Condition C1(a) limiting the height of the roof plant and increase the rear setback of the roof plant;**
- There are sufficient environmental planning grounds to justify the contravention;
- The development meets the objectives of the development standards and the objectives of the B4 Mixed use zone, notwithstanding the variation;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard in this instance;
- The proposed variation will not hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and
- The contravention does not raise any matter of State or Regional Significance.
11.5.5. Conclusion

The proposal is in the public interest and consistent with the objectives of the building height and floor space ratio development standards. The departures from these controls are supported.

11.6. Part 5.10: Heritage Conservation

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

The proposed development is located in the Paddington Heritage Conservation Area and is located opposite two heritage items listed under Sydney LEP 2012 (Paddington Uniting Church & Paddington Junior Technical School).

The proposal is considered satisfactory with regard to the objectives in Clause 5.10 of the Woollahra LEP 2014 subject to the following conditions:

- **Condition C1(a)** requiring the roof plant and acoustic screen to be modified as follows:
  - The setback shall be 4.8m from the existing gutter at RL 69.46 AHD at the north-eastern end of the roof over the first floor level.
  - The height of the plant equipment shall not exceed RL 72.68 AHD.
  - The proposed acoustic screen shall be painted in a light to mid grey colour.

This condition would reduce the visible bulk at the rear of the site, reduce sightlines to the roof plant and acoustic screen from Victoria Street and ensure that a portion of the traditional rear roof form remains visible.

- **Condition C1(b)** - to ensure that the windows above the awning on the front facade are retained and not altered in size. The existing security screens to these windows are to be removed.

This condition would ensure no adverse impacts to the heritage streetscape of Oxford Street.

11.7. Part 6.1: Acid Sulfate Soils

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

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

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

The proposal involves excavation to accommodate a grease arrestor in the rear yard. It will occur to within 1.0m of the boundary and extend to a maximum depth of 2.0m. Overall, it involves a total of 8.7m³ of excavation.

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

The extent and siting of excavation has regard to the following matters:

(a) The likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development
(b) The effect of the development on the likely future use or redevelopment of the land
(c) The quality of the fill or the soil to be excavated, or both
(d) The effect of the development on the existing and likely amenity of adjoining properties
(e) The source of any fill material and the destination of any excavated material
(f) The likelihood of disturbing relics
(g) The proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area
(h) Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development

The extent of proposed excavation is not significant and is located centrally on the site, setback from the site boundaries. The proposed excavation is considered acceptable, subject to the following conditions:

- **Condition C4** - Structural Adequacy of Existing Supporting Structures
- **Condition C5** - Professional Engineering Details
- **Condition C6** - Stormwater discharge to existing Stormwater Drainage System
- **Condition D5** - Erosion and Sediment Controls – Installation
- **Condition E5** - Hours of Work –Amenity of the neighbourhood
- **Condition E6** - Public Footpaths – Safety, Access and Maintenance
- **Condition E7** - Maintenance of Environmental Controls
- **Condition E8** - Support of adjoining land and buildings
- **Condition E9** - Erosion and Sediment Controls – Maintenance
- **Condition E10** - Disposal of site water during construction
- **Condition E11** - Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures
- **Condition E14** - Dust Mitigation
- **Condition E15** - Site waste minimisation and management – Demolition
- **Condition E16** - Site waste minimisation and management – Construction

The proposal is therefore acceptable with regard to Part 6.2 of the Woollahra LEP 2014.

12. **WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015**
12.1. Chapter C1: Paddington Heritage Conservation Area

12.1.1. Section C1.3.8: Commercial and Industrial Buildings including Shops

General

The proposal will comply with controls C1, C2 and C9. There is no evidence of the original shopfront and it does not form part of a group. The contemporary shopfront design appropriately references the historic context in terms of the awning, hamper and decorative timber surround and vertical glazed panels. The symmetrical shopfront design complements the symmetry of the street front elevation above awning level.

The architectural plans do not accurately detail the existing windows above the awning that form part of the significant street front elevation. It is also noted that these windows comprise of intrusive security screens that detract from the visual presentation of the building to Oxford Street.

Therefore, the following condition is recommended:

- **Condition C1(b)** - to ensure that the windows above the awning on the front facade are retained and not altered in size. The existing security screens to these windows are to be removed.

This will ensure compliance with objectives O1, O4 and control C7:

*O1: To retain and conserve forms, significant elevations, details and finishes of commercial, industrial and retail buildings.*

*O4: To ensure that security devices do not detract from the traditional architectural elements and the amenity and visual presentation of the streetscape.*

*C7: Original windows above the awning are to be retained and not altered in size.*

Commercial Development in Oxford Street

The proposal will comply with controls C4, C5, C8, C10, C12 and C23.

As noted above, the existing windows above the awning comprise of intrusive security screens that detract from the visual presentation of the building to Oxford Street.

Therefore, the following condition is recommended:

- **Condition C1(b)** - the existing security screens to the windows above the awning on the front facade are to be removed.

This will ensure compliance with control C9:

*C9 which specifies that uncharacteristic elements or structures should be removed, and missing elements reinstated.*
12.1.2. Section C1.4.1: Principal Building Form and Street Front Zone of Contributory Buildings

The proposal will comply with control C1 and will achieve objectives O1, O4, O8, O12. The proposal will not adversely impact the principal roof or internal fabric of the principal building form. The works to the street front elevation above awning level will retain the distinctive characteristics of the building. The works to the street front elevation below awning level conform to the character of the area.

As noted above, the existing windows above the awning comprise of intrusive security screens that detract from the visual presentation of the building to Oxford Street.

Therefore, the following condition is recommended:

- **Condition C1(b)** - the existing security screens to the windows above the awning on the front facade are to be removed.

This will ensure the proposal achieves objective 03:

**O3: To encourage the removal of uncharacteristic elements or structures.**

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

<table>
<thead>
<tr>
<th>Control</th>
<th>Existing</th>
<th>Proposed</th>
<th>Complies</th>
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<tbody>
<tr>
<td>C2 Height of an alteration and addition to the rear of a double storey or higher building</td>
<td>Above the gutter line of the main roof</td>
<td>Above the gutter line of the main roof</td>
<td>Below the gutter line of the main roof</td>
</tr>
</tbody>
</table>
| C3 and C6 Rear setback | Not extend beyond the predominant rear building setbacks | Not extend beyond the predominant rear building setbacks | Not extend beyond the predominant rear building setbacks | YES *

*existing non-compliance

The proposal does not comply with controls C2, C4, C6, C11:

**C2 which specifies that the height of an alteration and addition to the rear of a double storey or higher building must be below the gutter line of the main roof of the existing building.**

**C4 which specifies that the roof of an extension or the new roof for an existing component must be of traditional form appropriate to the building type.**

**C5 which specifies that roofs must be visible and not screened partly or wholly be features such as parapets. The exception may be corner sites. Parapet roof forms may only be considered appropriate where it can be demonstrated that a parapet form is consistent with the bulk, scale and character of the existing building and group.**

**C6 which specifies that alterations and additions at the rear of buildings must:**

- a) not dominate or otherwise adversely compete with the form, height, proportions and the scale of that part of the building which is to be retained;

**C11 which specifies that sympathetic contemporary design may be permitted at the rear where:**

- a) intrusive fabric or fabric of low significance exists;
b) the proposal will achieve an aesthetically cohesive relationship between new and existing fabric; and

c) the proposal is consistent with the character of the site, the streetscape and the precinct in which it is contained.

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

O1: To retain the forms and character of traditional rear elevations of contributory buildings, particularly where they exist in unaltered groups.

O2: To ensure that rear alterations and additions are of sympathetic design and construction.

O4: To enable sympathetic contemporary design and use of contemporary materials in appropriate circumstances.

- The proposed roof plant located above the roof over the first floor rear wing is not a traditional element. However, the plant equipment is required to facilitate the operation of the commercial premises. It will clearly read as a contemporary element and is an appropriate architectural solution, on balance, with achieving the recommendations of the Acoustic Report which will minimise noise impacts to the neighbouring residential properties.

- The roof plant is designed to sit on a floating platform over the existing roof. The framing would involve only minor alterations to the existing roof form to provide a support to the roof plant. This would ensure that the roof plant retains the roof below and does not impact the principal roof form.

- The roof plant will site below the principal ridgeline and will not be visible from Oxford Street. Due to the configuration of the existing building footprint, the roof plant is substantially setback from the rear boundary (12.5m) and is adjoined on both sides by taller building.

- Condition C1(a) is recommended requiring the roof plant and acoustic screen to be modified as follows:
  - The setback shall be 4.8m from the existing gutter at RL 69.46 AHD at the north-eastern end of the roof over the first floor level.
  - The height of the plant equipment shall not exceed RL 72.68 AHD.
  - The proposed acoustic screen shall be painted in a light to mid grey colour.

This condition would reduce the visible bulk of the rear addition by reducing sightlines to the roof plant and acoustic screen from Victoria Street. It would also ensure that a portion of the traditional rear roof form remains visible. This would ensure that the proposal achieves objective O1 as it will retain the form and character of the rear elevation when viewed from street level. It will also ensure the proposal achieves objectives O2 and O4 which require additions to be of sympathetic design.

12.1.4. Section C1.4.4: Roofs and Roof Forms

The proposal will comply with controls C1, C3, C10.
The proposal does not comply with control C6:

*C6 which specifies that roof forms are to be consistent with appropriate traditional roof forms, which reflect the diminishing scale of rooftops towards the rear of buildings.*

However, the proposal will achieve objective O1 in the following ways:

**O1: To retain and conserve the character of the original rooftops of Paddington.**

- The existing principal roof and the rear wing roof will be retained with the new roof plant located on a floating platform above the existing rear wing roof. **Condition C1(a)** is recommended to setback the roof plant and ensure that part of the existing roof form remains visible and the roof plant does not detract from the historic rooftops of Paddington. This will ensure the proposal achieves objective O1.

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

<table>
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<tr>
<th>Control</th>
<th>Existing</th>
<th>Proposed</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>C1 Height of existing buildings on street frontages</td>
<td>Not increased</td>
<td>Not increased</td>
<td>Yes</td>
</tr>
<tr>
<td>C3 The height, bulk, form and scale of infill and new development</td>
<td>Consistent with the predominant height, bulk, form and scale of adjoining buildings</td>
<td>Consistent with the predominant height, bulk, form and scale of adjoining buildings</td>
<td>Yes</td>
</tr>
</tbody>
</table>

The proposal will comply with controls C1, C3 and achieve objectives O1, O2, O3. The height of the existing building at the Oxford Street frontage will not be increased. The height of the development at the Victoria Street (rear) frontage is compatible with the height, bulk, form and scale of the adjoining buildings. The height of rear addition provides a transition between the two adjoining buildings and is substantially setback from Victoria Street which will ensure the height, bulk and scale appropriately responds to the heights of development and historic character of the street.

The proposal will not result in any overshadowing of any adjoining properties or public places.

### 12.1.6. Section C1.4.6: Site Coverage, Setbacks and Levels

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<th>Control</th>
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<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>C1 Proportion of building footprint</td>
<td>Consistent with similar properties</td>
<td>Consistent with similar properties</td>
<td>Yes</td>
</tr>
<tr>
<td>C6 Building alignment of additions at the rear of buildings in the commercial areas</td>
<td>Not beyond rear setbacks of adjacent buildings</td>
<td>Not beyond rear setbacks of adjacent buildings</td>
<td>Yes</td>
</tr>
</tbody>
</table>

The proposal will comply with controls C1, C2, C3, C5, C6 and will achieve objectives O1, O2, O3. The building footprint will not be increased. The existing front setback will be retained. The rear setback will be retained, with the exception of the addition of the new roof plant and a minor extension to the lower ground floor level. The rear setback will not extend beyond the rear setbacks of adjacent buildings,
12.1.7. Section C1.4.7: Excavation

<table>
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<tr>
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<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>C7 Excavation for other structures beyond the principal building form or secondary wing</td>
<td>N/A</td>
<td>1.0m</td>
<td>900mm</td>
<td>YES</td>
</tr>
</tbody>
</table>

The proposal involves excavation in the rear yard. A geotechnical report was not submitted with the application and therefore the proposal does not comply with control C7:

C7 which specifies that excavation may be permitted for structures such as pools, spas, or other permissible development if:

a) for properties less than 6m in width, the outer edge of excavation is setback from side boundaries by at least 900mm;

b) for properties 6m or more in width, the outer edge of excavation is setback from side boundaries by at least 1.5m;

c) the lowest habitable room, if any, of the proposed development has at least one external wall fully above the existing ground level;

d) no original footings on an adjoining property will be disturbed; and

e) a geotechnical report ensures that works will not have any adverse effect on the neighbouring structures. The report must be prepared in accordance with Council’s guidelines.

However, the proposal will achieve objectives O1, O2, O3, O4, O5, O6, O9, O10 in the following ways:

O1: To ensure the structural integrity and stability of individual buildings and the terrace of buildings of which they are a part, and neighbouring properties. –

O2: To protect the original fabric of the buildings significant to the area both during and after excavation. –

O3: To ensure that objectives O1 and O2 are achieved by limiting the circumstances where excavation may occur. –

O4: To limit the impact of excavation on the natural landform and vegetation. –

O5: To relate development to the existing topography and existing ground levels. –

O6: To avoid potential damage to all buildings and structures during and after excavation. –

O9: To maintain natural subsurface ground water flows. –

O10: To recognise the protection necessary for potential archaeological objects. –

The extent of proposed excavation is not significant and is located centrally on the site, setback from the site boundaries and any structures. The proposed excavation is considered acceptable, subject to the following conditions:

- **Condition C4** - Structural Adequacy of Existing Supporting Structures
- **Condition C5** - Professional Engineering Details
- **Condition C6** - Stormwater discharge to existing Stormwater Drainage System
• **Condition D5** - Erosion and Sediment Controls – Installation
• **Condition E5** - Hours of Work –Amenity of the neighbourhood
• **Condition E6** - Public Footpaths – Safety, Access and Maintenance
• **Condition E7** - Maintenance of Environmental Controls
• **Condition E8** - Support of adjoining land and buildings
• **Condition E9** - Erosion and Sediment Controls – Maintenance
• **Condition E10** - Disposal of site water during construction
• **Condition E11** - Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures
• **Condition E14** - Dust Mitigation
• **Condition E15** - Site waste minimisation and management – Demolition
• **Condition E16** - Site waste minimisation and management – Construction

12.1.8. Section C1.4.9: Views

The proposal will have no adverse impact on public or private views and achieves objectives O1, O2, O3.

12.1.9. Section C1.4.10: Acoustic and Visual Privacy

The proposal will comply with control C2 and will achieve the relevant objective O2 which seeks to minimise the impact of new development on the acoustic and visual privacy of existing development on neighbouring lands.

An Acoustic Report prepared by The Acoustic Group dated 3 December 2015 was submitted with the development application.

The mechanical plant equipment is strategically located, away from the residential dwellings to the rear (north) of the site. Subject to **Condition C1(a)**, the mechanical plant equipment will be setback approximately 15m from the rear boundary and the separation distance to the nearest dwelling house will be approximately 24m. The plant equipment would sit behind an acoustic screen.

Council’s Environmental Health Officer has reviewed the Acoustic Report and considers the report’s recommendations acceptable.

The following conditions are recommended to mitigate amenity impacts upon the neighbourhood:

• **Condition C7** - Sound Attenuation of the Mechanical Plant & Equipment
• **Condition C8** - Acoustic Certification of Mechanical Plant & Equipment
• **Condition I2** – Noise control – offensive noise
• **Condition I3** – Maintenance of sound attenuation
• **Condition I4** – Noise from mechanical plant and equipment
• **Condition I5** – Maintenance of the kitchen exhaust log
• **Condition I6** – Waste and delivery hours (Victoria Street) limited to reasonable hours
• **Condition J3** - Requiring testing of acoustic treatment post-occupation

The proposal does not involve any additional window openings at the upper levels and will not result in any adverse impacts on the visual privacy of neighbouring residential developments.
Accordingly, the proposal is considered to maintain an acceptable level of acoustic privacy to neighbouring properties.

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

The architectural plans do not accurately detail the existing windows above the awning that form part of the significant street front elevation. It is also noted that these windows comprise of intrusive security screens that detract from the visual presentation of the building to Oxford Street.

Therefore, the following condition is recommended:

- **Condition C1(b)** - to ensure that the windows above the awning on the front facade are retained and not altered in size. The existing security screens to these windows are to be removed.

This will ensure compliance with objectives O1, O3 and control C1:

C1 which specifies original windows, doors and shutters on the elevations of the principal building form and side elevations facing the street are to be retained.

O1: To retain and conserve original windows, and doors and their associated detailing and joinery components including original shutters on significant elevations of the principal building form, such as street fronts and side elevations facing streets.

O3: To retain the visual prominence of windows and door openings visible from the public domain.

The proposed contemporary windows to the shopfront elevation (below awning level) are considered acceptable in terms of control C4.

12.1.11. Section C1.5.8: Materials, Finishes and Details

The proposal will comply with controls C1 and C5. The proposal includes use of contemporary materials and does not comply with control C4:

C4: New materials, finishes, textures and details on the principal building form and elevations visible from a public space, must be traditional and appropriate to the architectural style of the building. Intrusive materials are not permitted.

However, the proposal will achieve objectives O1 and O2 in the following ways:

O1: To retain and conserve traditional materials, finishes and details.

- Traditional materials finishes and details on the front elevation (above awning level) will be retained and conserved.

O2: To promote high quality design, materials, finishes and detailing which is appropriate to the architectural style, building type, and historic context.

- The proposal involves new materials, finishes and details on elevations visible from public spaces that are not traditional. These works include the acoustic screen to the roof plant. However, this element is setback from Victoria Street to reduce visibility and it will read as
a contemporary element that will not detract from the character of the building or streetscape. This element relates to providing suitable noise control measures which are considered appropriate given the use of the site as a commercial premise.

12.1.12. **Section C1.5.9: Exterior Colours**

The exterior colours specified on the architectural finishes drawing are considered satisfactory.

The colour of the acoustic screen at the rear has not been specified.

Therefore, the following condition is recommended:

- **Condition C1(a)** – the proposed acoustic screen shall be painted in a light to mid grey colour.

This will ensure compliance with objective O1 and controls C1, C3:

*C1* which specifies colour schemes must be appropriate to the building type and style.

*C3* which specifies new buildings and additions in both the residential and commercial areas are to use colour schemes that have hue and tonal relationships with traditional colour schemes.

**O1**: To promote colour schemes that are appropriate to the character of the individual buildings, groups of buildings, the historic context. –

12.1.13. **Section C1.5.11: Satellite Dishes, Aerials, Air Conditioning Units and Other Site Facilities**

The proposal will comply with control C6.

The proposal does not comply with controls C1, C2, C3:

*C1* which specifies satellite dishes, aerials and other similar devices:

a) are to be designed and scaled to minimise their visual impact and impact on the amenity of adjoining properties;

b) must not be located on any part of a roof or chimney which is visible from the street frontage or the public domain; and

c) must not have a detrimental impact on the architectural style or significance of the building to which they are attached.

*C2* which specifies condensers and units must be located:

a) behind the outer front wall of the building and not be visible from the public domain;

b) a minimum of 3m from all other property boundaries (including party walls) and not less than 5m from a bedroom window in an adjoining residential property; and

c) at existing ground level or at the ground level above a basement level or part underground level (but not on a roof).

*C3* which specifies condensers and units must not be visible from an adjoining property.

However, the proposal will achieve objectives O1, O2, O3 in the following ways:
O1: To retain the character of the original roofscape of Paddington. –

O2: To protect the original fabric and details of roofs and chimneys. –

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

- The proposed plant equipment is located at towards the rear of the property and will not be visible from Oxford Street.

- The site does not immediately adjoin residential properties.

- The proposed plant equipment is located on a platform above the existing roof and will not have a detrimental impact on the architectural style or significance of the building to which it is attached. The principal roof will not be impacted.

- The visual impact will be minimised by Condition C1(a) which will ensure an acceptable setback and height when viewed from Victoria Street.

12.2. Chapter E2: Stormwater and Flood Risk Management

Condition C6 requiring stormwater to drain to the existing stormwater drainage system.

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

12.3. Chapter E5: Waste Management

Chapter E5 is applicable to all development and seeks to establish waste minimisation and sustainable waste management during demolition and construction phases and throughout the ongoing use of the building.

The SWMMP addresses volume and type of waste and recyclables to be generated, storage and treatment of waste and recyclables on site, disposal of residual waste and recyclables and operational procedures for ongoing waste management once the development is complete.

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

The proposed waste storage areas are not specified. Condition C10 is recommended to require the provision of a waste storage area in accordance with the requirements of Part E5.3 of the Woollahra DCP 2015.

The proposal is acceptable with regard to Part E5.2 of the Woollahra DCP 2015.

12.4. Chapter E7: Signage

The proposal is acceptable with regard to Chapter E7 of the Woollahra DCP 2015.

13. DRAFT AMENDMENTS TO POLICIES AND PLANS
13.1. State Environmental Planning Policy (Competition) 2010

Draft SEPP (Competition) 2010 seeks to promote economic growth and competition and remove anti-competitive barriers in environmental planning and assessment. It notes that the loss of trade or commercial viability of other premises is not a matter for consideration in the assessment of a development application for retail or commercial development.

No objection is raised to the proposed change of use on this basis.

14. SECTION 94 CONTRIBUTION PLANS

14.1. Section 94A Contributions Plan 2011

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

<table>
<thead>
<tr>
<th>Cost of Works</th>
<th>Rate</th>
<th>Contribution Payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>$225,216</td>
<td>1%</td>
<td>$2,252</td>
</tr>
</tbody>
</table>

15. APPLICABLE ACTS/REGULATIONS

15.1. Environmental Planning and Assessment Regulation 2000

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

Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires Council to consider Australian Standard AS 2601-2004: The demolition of structures. The proposal is considered to be acceptable, subject to Condition E2.

Clause 94: Consent Authority May Require Buildings to be Upgraded

Clause 94 of the Environmental Planning and Assessment Regulation 2000 requires an assessment of the development application against the Building Code of Australia (BCA), with particular respect to the fire provisions within the development.

Council’s Fire Safety Officer has undertaken an assessment of the application, as detailed in Annexure 3. Building upgrade is required in Condition C3 and an annual fire safety schedule is required to be submitted as detailed in Condition F3.

16. THE LIKELY IMPACTS OF THE PROPOSAL

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

17. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

18. THE PUBLIC INTEREST
The proposal is considered to be in the public interest.

19. CONCLUSION

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

20. DISCLOSURE STATEMENTS

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

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

THAT Council, as the consent authority, is of the opinion that the written request from the applicant under Part 4.6 of the Woollahra Local Environmental Plan 2014 to the building height and floor space ratio development standards under Clause 4.3 and Clause 4.4 of Woollahra LEP 2014 has adequately addressed the relevant matters and the proposed development will be in the public interest because it is consistent with the relevant objectives of the particular standard.

AND That Council, as the consent authority, grant development consent to Development Application No. 615/2015/1 for alterations to the food and drink premises including upgrade of the Oxford Street facade, the provision of roof plant and grease arrester and minor changes to the external access at the rear lower ground floor level on land at 382 Oxford Street Paddington, subject to the following conditions:

A. General Conditions

A.1 Conditions

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

Standard Condition: A1 (Autotext AA1)

A.2 Approved Plans and supporting documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with the plans and supporting documents listed below as submitted by the Applicant and to which is affixed a Council stamp “Approved DA Plans” unless modified by any following condition. Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.
<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
<th>Author/Drawn</th>
<th>Date(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>00.03 - A</td>
<td>Existing lower ground floor plan</td>
<td>ACME &amp; O</td>
<td>30/10/2015</td>
</tr>
<tr>
<td>00.05 – A</td>
<td>Existing roof plan</td>
<td>ACME &amp; O</td>
<td>30/10/2015</td>
</tr>
<tr>
<td>00.06 – A</td>
<td>Existing elevations</td>
<td>ACME &amp; O</td>
<td>30/10/2015</td>
</tr>
<tr>
<td>00.07 – A</td>
<td>Existing sections</td>
<td>ACME &amp; O</td>
<td>30/10/2015</td>
</tr>
<tr>
<td>01.02 – A</td>
<td>Lower ground floor plan</td>
<td>ACME &amp; O</td>
<td>30/10/2015</td>
</tr>
<tr>
<td>01.04 – A</td>
<td>Roof plan</td>
<td>ACME &amp; O</td>
<td>30/10/2015</td>
</tr>
<tr>
<td>01.05 – A</td>
<td>Elevations</td>
<td>ACME &amp; O</td>
<td>30/10/2015</td>
</tr>
<tr>
<td>01.06 – B</td>
<td>Section</td>
<td>ACME &amp; O</td>
<td>30/10/2015</td>
</tr>
<tr>
<td>E01 – A</td>
<td>Oxford Street elevation and section</td>
<td>Akin Creative</td>
<td>17/11/2015</td>
</tr>
<tr>
<td>APP.01 - A</td>
<td>Oxford Street elevation – 3D view</td>
<td>Akin Creative</td>
<td>17/11/2015</td>
</tr>
<tr>
<td>App.02 - A</td>
<td>Schedule A: Architectural finishes</td>
<td>Akin Creative</td>
<td>17/11/2015</td>
</tr>
<tr>
<td>N/A</td>
<td>Structural engineering letter</td>
<td>Chapman Hutchinson Pty Ltd</td>
<td>22/12/2015</td>
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<tr>
<td>8843/1</td>
<td>Specification notes</td>
<td>Chapman Hutchinson Pty Ltd</td>
<td>Dec 2015</td>
</tr>
<tr>
<td>8843/2</td>
<td>Roof platform plan and details</td>
<td>Chapman Hutchinson Pty Ltd</td>
<td>Dec 2015</td>
</tr>
<tr>
<td>45.5157.R3:MSC</td>
<td>Acoustic Report</td>
<td>The Acoustic Group</td>
<td>03/12/2015</td>
</tr>
<tr>
<td>N/A</td>
<td>Site Waste Minimisation and Management Plan</td>
<td>Sarah Obeid</td>
<td>27/11/2015</td>
</tr>
</tbody>
</table>

Note: Warning to Accredited Certifiers – You should always insist on sighting the original Council stamped approved plans. You should not rely solely upon the plan reference numbers in this condition. Should the applicant not be able to provide you with the original copy Council will provide you with access to its files so you may review our original copy of the approved plan.

Note: These plans and supporting documentation may be subject to conditions imposed under section 80A(1)(g) of the Act modifying or amending the development (refer to conditions which must be satisfied prior to the issue of any Construction Certificate.)

Standard Condition: A5 (Autotext A5)

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

B.1 Construction Certificate required prior to any demolition

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

Note: See Over our Dead Body Society Inc v Byron Bay Community Association Inc [2001] NSWLEC 125.

Standard Condition: B1 (Autotext B1)

B.2 Identification of Hazardous Material

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

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

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

Standard Condition: B6

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

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

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

a) The roof plant and acoustic screen

The roof plant and acoustic screen shall be modified as follows:

• The setback shall be 4.8m, measured as a horizontal distance from the existing gutter at RL 69.46 AHD located at the north-eastern end of the roof over the first floor level.
• The height of the plant equipment shall not exceed RL 72.68 AHD.
• The acoustic screen shall be painted in a light to mid grey colour.

This condition will ensure an acceptable outcome in terms of Part 5.10 of Woollahra Local Environmental Plan 2014 and Chapter C1 of Woollahra Development Control Plan 2015 (O1, O2, O4: C1.4.3 and O1: C1.4.4).

b) Windows – front elevation

The windows above the awning on the front facade shall be retained and not altered in size. The existing security screens to these windows shall be removed.

This condition will ensure an acceptable outcome in terms of Part 5.10 of Woollahra Local Environmental Plan 2014 and Chapter C1 of Woollahra Development Control Plan 2015 (O1, O4, C7: C1.3.8; C9: C1.3.8; O3: C1.4.1; O1, O3, C1: C1.5.3; O1, C1, C3: C1.5.9).

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

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

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

Standard Condition: C4 (Autotext CC4)
C.2 Payment of Long Service Levy, Security, Contributions and Fees

The certifying authority must not issue any *Part 4A Certificate* until provided with the original receipt(s) for the payment of all of the following levy, security, contributions, and fees prior to the issue of a *construction certificate, subdivision certificate or occupation certificate*, as will apply.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Indexed</th>
<th>Council Fee Code</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>LONG SERVICE LEVY</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Long Service Levy</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contact LSL Corporation or use online calculator</td>
<td></td>
<td>No</td>
<td></td>
</tr>
<tr>
<td><strong>SECURITY</strong></td>
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<td></td>
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<tr>
<td>Property Damage Security Deposit</td>
<td>$7,336</td>
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<td>T115</td>
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<tr>
<td>- making good any damage caused to any property of the Council</td>
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<td></td>
<td></td>
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<tr>
<td><strong>DEVELOPMENT LEVY</strong></td>
<td></td>
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<td></td>
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<tr>
<td>Development Levy (Section 94A)</td>
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<td>Yes, quarterly</td>
<td>T96</td>
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<tr>
<td>+ Index Amount</td>
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<td></td>
<td></td>
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<tr>
<td><strong>INSPECTION FEES</strong></td>
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<tr>
<td>Security Administration Fee</td>
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<td>No</td>
<td>T16</td>
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<tr>
<td><strong>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</strong></td>
<td>$9,768 plus any relevant indexed amounts and long service levy</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Building and Construction Industry Long Service Payment

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

How must the payments be made?

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

The payment of a security may be made by a bank guarantee where:
- The guarantee is by an Australian bank for the amount of the total outstanding contribution;
- The bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable];
- The bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent;
- The bank guarantee is lodged with the Council prior to the issue of the construction certificate; and
- The bank’s obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.
How will the section 94A levy be indexed?

To ensure that the value the development levy is not eroded over time by increases in costs, the proposed cost of carrying out development (from which the development levy is calculated) will be indexed either annually or quarterly (see table above). Clause 3.13 of the Woollahra Section 94A Development Contributions Plan 2011 sets out the formula and index to be used in adjusting the s.94A levy.

Do you need HELP indexing the levy?

Please contact our customer service officers. Failure to correctly calculate the adjusted development levy will delay the issue of any Part 4A Certificate and could void any Part 4A Certificate (construction certificate, subdivision certificate, or occupation certificate).

Deferred or periodic payment of section 94A levy under the Woollahra Section 94A Development Contributions Plan 2011

Where the applicant makes a written request supported by reasons for payment of the section 94A levy other than as required by clause 3.9, the Council may accept deferred or periodic payment. The decision to accept a deferred or periodic payment is at the sole discretion of the Council, which will consider:

- The reasons given;
- Whether any prejudice will be caused to the community deriving benefit from the public facilities;
- Whether any prejudice will be caused to the efficacy and operation of the plan; and
- Whether the provision of public facilities in accordance with the adopted works schedule will be adversely affected.

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

- The guarantee is by an Australian bank for the amount of the total outstanding contribution;
- The bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable];
- The bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent;
- The bank guarantee is lodged with the Council prior to the issue of the construction certificate; and
- The bank’s obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

Any deferred or periodic payment of the section 94A levy will be adjusted in accordance with clause 3.13 of the plan. The applicant will be required to pay any charges associated with establishing or operating the bank guarantee. Council will not cancel the bank guarantee until the outstanding contribution as indexed and any accrued charges are paid.

Standard Condition: C5

C.3 Building upgrade (Clause 94 of the Regulation)

Council considers pursuant to clause 94 of the Regulation that it is appropriate to require the existing building to be brought into total or partial conformity with the BCA.

The Construction Certificate plans and specification required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation must detail building upgrade works required by this condition.

The Certifying Authority must be satisfied that such work, to be implemented as part of the development, will upgrade the building to bring it into compliance with the following provisions of the BCA as in force at the date of the Construction Certificate application:
a) That the distance to the exits shall comply with the requirements of Clause D1.4 of the BCA or an alternative solution shall be proposed by an accredited C10 fire engineer meeting performance requirements DP2, DP4, DP6 & EP2.2 of the BCA.

b) That the dimensions of the exits shall comply with the requirements of D1.6 of the BCA or an alternative solution shall be proposed meeting performance requirements DP2, DP4 and DP6 of the BCA.

c) That the discharge from the exits shall comply with the requirements of Clause D1.10 of the BCA or an alternative solution shall be proposed by an accredited C10 fire engineer meeting performance requirements DP4 and DP6 of the BCA.

d) That an automatic smoke detection and alarm system shall be installed throughout the building in accordance with Specification E2.2a of the BCA.

e) That a system of emergency lighting shall be installed throughout the building to provide sufficient light in an emergency in accordance with the requirements of Part E4 of the BCA.

f) That exit signs shall be installed above all required exit doors. Signs shall be illuminated at all times and generally be of sufficient number that direction of travel to all exits is clearly visible from any part of the major egress routes. Exit signs shall be installed to the standard expressed in Clauses E4.5, E4.6 and E4.8 of the BCA.

g) That portable fire extinguishers shall be provided throughout the building to the requirements of Clause E1.6 of the BCA and the relevant requirements of AS 2444.

Note: The Certifying Authority issuing the Construction Certificate has no power to remove the requirement to upgrade the existing building as required by this condition. Where this conditions specifies compliance with performance requirements of the BCA the Certifying Authority, subject to their level of accreditation, may be satisfied as to such matters. Where this condition specifies compliance with prescriptive (deemed-to-satisfy) provisions of the BCA these prescriptive requirements must be satisfied and cannot be varied unless this condition is reviewed under section 82A or amended under section 96 of the Act.

Note: This condition does not set aside the Certifying Authorities responsibility to ensure compliance with clause 143 of the Regulation in relation to Fire Protection and Structural Adequacy.

Note: AS 4655 Guidelines for fire safety audits for buildings (or any succeeding AS) should form the basis of any fire upgrade report.

Standard Condition: C10

C.4 Structural Adequacy of Existing Supporting Structures

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

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

Standard Condition: C35 (Autotext CC35)

C.5 Professional Engineering Details

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

Detailed professional engineering plans and/or specifications must be submitted to the Certifying Authority with the application for any Construction Certificate.
Note: This does not affect the right of the developer to seek staged Construction Certificates.

Standard Condition: C36

C.6 Stormwater discharge to existing Stormwater Drainage System

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

a) The location of the existing Stormwater Drainage System including all pipes, inspection openings, surface drains, pits and their discharge location,
b) The state of repair of the existing Stormwater Drainage System,
c) Any remedial works required to upgrade the existing Stormwater Drainage System to comply with the BCA,
d) Any remedial works required to upgrade the existing Stormwater Drainage System crossing the footpath and any new kerb outlets,
e) Any new Stormwater Drainage System complying with the BCA,
f) Interceptor drain(s) at the site boundary to prevent stormwater flows from the site crossing the footpath,
g) Any rainwater tank (See Note Below) required by BASIX commitments including their overflow connection to the Stormwater Drainage System, and
h) General compliance with the Council’s Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management

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

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

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

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

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


Standard Condition: C49

C.7 Sound Attenuation of the Mechanical Plant & Equipment

The Construction Certificate plans and specification required to be submitted pursuant to clause 139 of the Regulation must detail the sound attenuation works required to the mechanical plant equipment to ensure that the noise level measured at any boundary of the site at any time while the proposed mechanical plant equipment is operating will not exceed the background noise level.
The background noise level is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the $L_{A90, 15\text{ minute}}$ level measured by a sound level meter.

**Note:** Further information including lists of Acoustic Engineers can be obtained from:
2. **Association of Australian Acoustical Consultants**—professional society of noise related professionals ([www.aaac.org.au](http://www.aaac.org.au)).

### C.8 Acoustic Certification of Mechanical Plant & Equipment

The Construction Certificate plans and specification required to be submitted pursuant to clause 139 of the Regulation must be accompanied by a certificate from a professional engineer (acoustic engineer) certifying that the noise level measured at any boundary of the site at any time while the proposed mechanical plant and equipment is operating will not exceed the background noise level. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed background noise level, at any time.

The background noise level is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the $L_{A90, 15\text{ minute}}$ level measured by a sound level meter.

Where sound attenuation is required this must be detailed.

**Note:** Further information including lists of Acoustic Engineers can be obtained from:
2. **Association of Australian Acoustical Consultants**—professional society of noise related professionals ([www.aaac.org.au](http://www.aaac.org.au)).

### C.9 Ventilation - Kitchen Exhaust- Smoke & Odour Control

1. The discharge of air from the kitchen exhaust ventilation system(s) is considered an obnoxious discharge under Section 3.7 of Australian Standard 1668.2-1991. The ductwork serving the proposed kitchen exhaust system(s) shall be arranged vertically with a discharge velocity of not less than 5 m/s and be situated at least 1 m above the ridge of a pitched roof or 3 m above the flat of the building.
2. All exhaust air and spill air shall be discharged to atmosphere in such a manner as not to cause a danger or nuisance to occupants in the building, occupants of neighbouring buildings or members of the public.
4. An Smoke & Odour Impact Assessment Report is to be prepared by a suitably qualified engineer detailing the design specification of the proposed kitchen exhaust system, including all smoke and odour inhibiting controls and filtering systems.
5. The *Construction Certificate* plans and specifications, required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation*, must detail all the kitchen exhaust ventilation system(s), including all smoke and odour controls and filtering systems. Upon completion and prior to occupation of the premises, the kitchen exhaust ventilation system(s) shall be certified by a qualified engineer that the system(s) has been installed in accordance with *AS 1668.1* and *AS 1668.2* and the design specification as detailed in the *Smoke & Odour Impact Assessment Report*.

C.10 Waste Storage - Commercial

The *Construction Certificate* plans and specifications required by clause 139 of the *Regulation*, must make provision for:

a) A dedicated and enclosed waste and recycling storage area behind the building line or within non-habitable areas of the building.

The waste storage area shall to meet the requirements of the Woollahra DCP 2015.

Standard Condition: C14

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

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

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

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

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

This condition does not apply:

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

b) to the erection of a temporary building.

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

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

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

Standard Condition: D1 (Autotext DD1)
D.2 Security Fencing, Hoarding and Overhead Protection

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

![Diagram of security fencing and hoarding]

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

![Diagram of hoarding with overhead structure]

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

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

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

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

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

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

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

Standard Condition: D11 (Autotext DD11)

D.3 Site Signs

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

Clause 98A of the Regulation provides:

Erection of signs

- For the purposes of section 80A (11) of the Act, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  a. showing the name, address and telephone number of the principal certifying authority for the work, and
  b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  c. stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State’s building laws.”
Clause 227A of the Regulation provides:

**Signs on development sites**

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

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

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

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

Standard Condition: D12 (Autotext DD12)

### D.4 Toilet Facilities

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

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

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

In this condition:

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

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

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

**sewage management facility** has the same meaning as it has in the *Local Government (Approvals) Regulation* 1993.

**Note:** This condition does not set aside the requirement to comply with Workcover NSW requirements.

Standard Condition: D13 (Autotext DD13)
D.5 Erosion and Sediment Controls – Installation

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

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

Where there is any conflict The Blue Book takes precedence.


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

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

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

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

Standard Condition: D14 (Autotext DD14)

D.6 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)

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

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

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

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

- Appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
- Notified the principal certifying authority of any such appointment, and
- Unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- Given at least 2 days’ notice to the council of the person’s intention to commence the erection of the building.

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

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

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

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

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

Standard Condition: D15 (Autotext DD15)

E. Conditions which must be satisfied during any development work

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

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

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

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

This condition does not apply:

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

b) To the erection of a temporary building.

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

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

Standard Condition: E1 (Autotext EE1)
E.2  **Compliance with Australian Standard for Demolition**


Standard Condition: E2 (Autotext EE2)

E.3  **Requirement to notify about new evidence**

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

Standard Condition: E4 (Autotext EE4)

E.4  **Critical Stage Inspections**

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

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

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

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

Standard Condition: E5 (Autotext EE5)

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

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

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

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

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

i)  Piling;

ii) Piering;

iii) Rock or concrete cutting, boring or drilling;

iv) Rock breaking;

v) Rock sawing;

vi) Jack hammering; or

vii) Machine excavation,

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

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

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

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

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

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

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


Standard Condition: E6

E.6 Public Footpaths – Safety, Access and Maintenance

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

a) Not erect or maintain any gate or fence swing out or encroaching upon the road or the footway.

b) Not use the road or footway for the storage of any article, material, matter, waste or thing.

c) Not use the road or footway for any work.

d) Keep the road and footway in good repair free of any trip hazard or obstruction.

e) Not stand any plant and equipment upon the road or footway.

f) Provide a clear safe pedestrian route a minimum of 1.5m wide.

g) Protect street name inlays in the footpath which are not to be removed or damaged during development.

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

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

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

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

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

E.7 Maintenance of Environmental Controls

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

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


E.8 Support of adjoining land and buildings

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

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

Note: This condition does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is considered necessary upon any adjoining or supported land by any person the principal contractor or owner builder must obtain:
  a. the consent of the owners of such adjoining or supported land to trespass or encroach, or
  b. an access order under the Access to Neighbouring Land Act 2000, or
E.9 Erosion and Sediment Controls – Maintenance

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

a) The Soil and Water Management Plan required under this consent;

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


Where there is any conflict The Blue Book takes precedence.

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

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

Warning: Irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of the occupation of the land being developed whether or not they actually cause the pollution.

Standard Condition: E15 (Autotext EE15)

E.10 Disposal of site water during construction

The principal contractor or owner builder must ensure:
a) Prior to pumping any water into the road or public stormwater system that approval is obtained from Council under section 138(1)(d) of the Roads Act 1993;

b) That water pollution, as defined by the Protection of the Environment Operations Act 1997, does not occur as the result of the discharge to the road, public stormwater system or other place or any site water;

c) That stormwater from any roof or other impervious areas is linked, via temporary downpipes and stormwater pipes, to a Council approved stormwater disposal system immediately upon completion of the roof installation or work creating other impervious areas.

Note: This condition has been imposed to ensure that adjoining and neighbouring land is not adversely affected by unreasonable overland flows of stormwater and that site water does not concentrate water such that they cause erosion and water pollution.

Standard Condition: E17 (Autotext EE17)

E.11 Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum

The Principal Contractor or Owner Builder must ensure that a surveyor registered under the Surveying Act 2002 carries out check surveys and provides survey certificates confirming the location of the building(s), ancillary works, flood protection works and the stormwater drainage system relative to the boundaries of the site and that the height of buildings, ancillary works, flood protection works and the stormwater drainage system relative to Australian Height Datum complies with this consent at the following critical stages.

The Principal Contractor or Owner Builder must ensure that work must not proceed beyond each of the following critical stages until compliance has been demonstrated to the PCA’s satisfaction:

a) Upon the completion of foundation walls prior to the laying of any floor or the pouring of any floor slab and generally at damp proof course level;

b) Upon the completion of formwork for floor slabs prior to the laying of any floor or the pouring of any concrete and generally at each storey;

c) Upon the completion of formwork or framework for the roof(s) prior to the laying of any roofing or the pouring of any concrete roof;

d) Upon the completion of formwork and steel fixing prior to pouring of any concrete for any ancillary structure, flood protection work, swimming pool or spa pool or the like;

e) Upon the completion of formwork and steel fixing prior to pouring of any concrete for driveways showing transitions and crest thresholds confirming that driveway levels match Council approved driveway crossing levels and minimum flood levels.;

f) Stormwater Drainage Systems prior to back filling over pipes confirming location, height and capacity of works.

g) Flood protection measures are in place confirming location, height and capacity.

Note: This condition has been imposed to ensure that development occurs in the location and at the height approved under this consent. This is critical to ensure that building are constructed to minimum heights for flood protection and maximum heights to protect views and the amenity of neighbours.

Standard Condition: E20 (Autotext EE20)

E.12 Placement and use of Skip Bins

The principal contractor or owner builder must ensure that all waste storage containers, including but not limited to skip bins, must be stored within the site unless:
a) Activity Approval has been issued by Council under section 94 of the *Local Government Act* 1993 to place the waste storage container in a public place, and

b) Where located on the road it is located only in a positions where a vehicle may lawfully park in accordance with the Australian Road Rules to the extent they are adopted under the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation* 1999.

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

**Standard Condition:** E21 (Autotext EE21)

### E.13 Prohibition of burning

There must be no burning of any waste or other materials. The burning of CCA (copper chrome arsenate) or PCP (pentachlorophenol) treated timber is prohibited in all parts of NSW.

All burning is prohibited in the Woollahra local government area.

**Note:** Pursuant to the *Protection of the Environment Operations (Control of Burning) Regulation 2000* all burning (including burning of vegetation and domestic waste) is prohibited except with approval. No approval is granted under this consent for any burning.

**Standard Condition:** E22 (Autotext EE22)

### E.14 Dust Mitigation

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

This generally requires:

a) Dust screens to all hoardings and site fences.

b) All stockpiles or loose materials to be covered when not being used.

c) All equipment, where capable, being fitted with dust catchers.

d) All loose materials being placed bags before placing into waste or skip bins.

e) All waste and skip bins being kept covered when not being filled or emptied.

f) The surface of excavation work being kept wet to minimise dust.

g) Landscaping incorporating trees, dense shrubs and grass being implemented as soon as practically possible to minimise dust.

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

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

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

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

### E.15 Site waste minimisation and management – Demolition

In order to maximise resource recovery and minimise residual waste from demolition activities:
a) The provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work.
b) An area is to be allocated for the storage of materials for use, recycling and disposal (giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation and access and handling requirements).
c) Provide separate collection bins and/or areas for the storage of residual waste.
d) Clearly ‘signpost’ the purpose and content of the bins and/or storage areas.
e) Implement measures to prevent damage by the elements, odour, health risks and windborne litter.
f) Minimise site disturbance, limiting unnecessary excavation.

When implementing the SWMMP the applicant must ensure:

a) Footpaths, public reserves and street gutters are not used as places to store demolition waste or materials of any kind without Council approval.
b) Any material moved offsite is transported in accordance with the requirements of the Protection of the Environment Operations Act (1997).
c) Waste is only transported to a place that can lawfully be used as a waste facility.
d) Generation, storage, treatment and disposal of hazardous waste and special waste (including asbestos) is conducted in accordance with relevant waste legislation administered by the EPA and relevant Occupational Health and Safety legislation administered by Workcover NSW.
e) Evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained.

Note: Materials that have an existing reuse or recycling market should not be disposed of in a landfill. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.

Standard Condition: E31 (Autotext EE31)

E.16 Site waste minimisation and management – Construction

In order to maximise resource recovery and minimise residual waste from construction activities:

a) The provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work.
b) Arrange for the delivery of materials so that materials are delivered ‘as needed’ to prevent the degradation of materials through weathering and moisture damage.
c) Consider organising to return excess materials to the supplier or manufacturer.
d) Allocate an area for the storage of materials for use, recycling and disposal (considering slope, drainage, location of waterways, stormwater outlets and vegetation).
e) Clearly ‘signpost’ the purpose and content of the storage areas.
f) Arrange contractors for the transport, processing and disposal of waste and recycling. Ensure that all contractors are aware of the legal requirements for disposing of waste.
g) Promote separate collection bins or areas for the storage of residual waste.
h) Implement measures to prevent damage by the elements, odour and health risks, and windborne litter.
i) Minimise site disturbance and limit unnecessary excavation.
j) Ensure that all waste is transported to a place that can lawfully be used as a waste facility.
k) Retain all records demonstrating lawful disposal of waste and keep them readily accessible for inspection by regulatory authorities such as council, Department of Environment and Climate Change (DECC) or WorkCover NSW

Standard Condition: E32 (Autotext EE32)

E.17 Asbestos Removal

Where hazardous material, including bonded or friable asbestos has been identified in accordance with Condition B2 above, and such material must be demolished, disturbed and subsequently removed, all such works must comply with the following criteria:

a) Be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (restricted) Asbestos License,


c) No asbestos products may be reused on the site

d) No asbestos laden skip or bins shall be left in any public place

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

Standard Condition: E39

E.18 Classification of Hazardous Waste

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

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

Standard Condition: E40

E.19 Disposal of Asbestos and Hazardous Waste

Asbestos and hazardous waste, once classified in accordance with Condition E18 above must only be transported to waste facilities licensed to accept asbestos and appropriate classifications of hazardous waste.

Note: This condition is imposed to ensure that asbestos and other Hazardous waste is disposed of lawfully under the Protection of the Environment Operations Act 1997 and relevant EPA requirements.

Standard Condition: E41

E.20 Asbestos Removal Signage

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

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

Standard Condition: E42
E.21 Notification of Asbestos Removal

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

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

Standard Condition: E43

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

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

A person must not commence occupation or use of the whole or any part of a new building (within the meaning of section 109H (4) of the Act) unless an occupation certificate has been issued in relation to the building or part.

Note: New building includes an altered portion of, or an extension to, an existing building.

Standard Condition: F1 (Autotext FF1)

F.2 Provision of Category 1 Fire Safety Provisions (clause 93 of the Regulation)

A person must not commence occupation or use of the whole or any part of a the building unless such of the Category 1 fire safety provisions as are applicable to the building’s proposed new use are provided.

Note: Category 1 fire safety provision means the following provisions of the BCA, EP1.3, EP1.4, EP1.6, EP2.1, EP2.2 and EP3.2 in Volume One of that Code and P2.3.2 in Volume Two of that Code.

Standard Condition: F3

F.3 Fire Safety Certificates

In the case of a final occupation certificate to authorise a person:

a) to commence occupation or use of a new building, or
b) to commence a change of building use for an existing building,

a certifying authority must be satisfied that a final fire safety certificate has been issued for the building.

In the case of an interim occupation certificate to authorise a person:

a) to commence occupation or use of a partially completed new building, or
b) to commence a change of building use for part of an existing building,

a certifying authority must be satisfied that a final fire safety certificate or an interim fire safety certificate has been issued for the relevant part of the building.
F.4 Food Premises - Inspection and Registration

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

a) The Principal Contractor or owner must arrange an inspection of the fit out of the Food Premises by Council's Environmental Health Officer;

b) A satisfactory final inspection must have been undertaken by Council's Environmental Health Officer; and

c) The owner or occupier must have registered the Food Premises (Notification of conduct under section 100 of the Food Act 2003).

Note: Notification can be done on-line at www.foodnotify.nsw.gov.au
Note: Inspections are subject to payment of the adopted inspection fee.
Note: Section 100 of the Food Act 2003 requires:

```
100 Notification of conduct of food businesses
(1) The proprietor of a food business must not conduct the food business unless the proprietor has given written notice, in the approved form, of the information specified in the Food Safety Standards that is to be notified to the appropriate enforcement agency before the business is conducted. Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.
```

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 Regulation. This condition can only be satisfied following an inspection and sign off from Council’s Environmental Health Officers.

Standard Condition: F4

F.5 Maintenance of the Kitchen Exhaust

The proprietor(s) of the subject site shall enter into a contract agreement for the regular maintenance and cleaning of the odour control units and filtering systems. A copy of the contract agreement shall be made available to Council’s Health Services Section prior to the occupation of the building.

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

No conditions.

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

H.1 Removal of Ancillary Works and Structures

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

a) The site sign;

b) Ablutions;

c) Hoarding;
d) Scaffolding; and

e) Waste materials, matter, article or thing.

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

Standard Condition: H12 (Autotext HH12)

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

I.1 Annual Fire Safety Statements (Class 1b to 9c buildings inclusive)

Each year, the owner of a building to which an essential fire safety measure is applicable must provide an annual fire safety statement to Council and the Commissioner of the NSW Fire Brigades. The annual fire safety statement must be prominently displayed in the building.

Note: Essential fire safety measure has the same meaning as in clause 165 of the Regulation. Annual fire safety statement has the same meaning as in clause 175 of the Regulation. Part 9 Division 5 of the Regulation applies in addition to this condition at the date of this consent. Visit Council’s web site for additional information in relation to fire safety www.woollahra.nsw.gov.au.

Standard Condition: I22

I.2 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.

This condition has been imposed to protect the amenity of the neighbourhood.


Useful links:
Community Justice Centres—free mediation service provided by the NSW Government (www.cjc.nsw.gov.au).

Standard Condition: I50

I.3 Maintenance of Sound Attenuation

Sound attenuation must be maintained in accordance with the Acoustic Report.

Standard Condition: I51
I.4 Noise from mechanical plant and equipment

The noise level measured at any boundary of the site at any time while the mechanical plant and equipment is operating must not exceed the background noise level. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed background noise level at any time.

The background noise level is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the $L_{A90}$, 15 minute level measured by a sound level meter.

This condition has been imposed to protect the amenity of the neighbourhood.


I.5 Maintenance of the Kitchen Exhaust log

A logbook detailing the schedule maintenance and cleaning of the odour control units and filtering systems shall be kept on the premises at all times and be made available for viewing by Council’s Environmental Health Officer’s as required.

I.6 Waste Removal and General Deliveries (Victoria Street frontage) – including collection of Grease Arrestor Waste

Waste removal and deliveries from Victoria Street are limited as follows:

Monday to Friday: 7.00am to 9.00pm
Saturday: 8.00am to 8.00pm
Sunday and Public Holiday: 8.00am to 8.00pm

This condition has been imposed to protect the amenity of the neighbourhood.

J. Miscellaneous Conditions

J.1 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 the environment.

J.2 Garbage Area

The area must be maintained at all times to ensure that a breeding ground is not created for pests and must be capable of being easily and effectively cleaned.
All garbage containers must have tight fitting lids and be large enough or in sufficient numbers to contain all the waste produced by the food business while awaiting the next removal from the premises.

J.3 Testing of Acoustic Treatment subject to Acoustic Report No.45.5157.R3:MSC (prepared by The Acoustic Group, dated 03/12/2015)

The applicant shall provide Council with certification that appropriate acoustic treatments as recommended in The Acoustic Report No.45.5157.R3:MSC have been fully implemented and the acoustic treatments have satisfied the requirements of Council’s noise criteria.

K. Advisings

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

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

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

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

Warnings as to potential maximum penalties

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

Warning as to enforcement and legal costs

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

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

K.2 Dial before you dig

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

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

Standard Advising: K2 (Autotext KK2)

K.3 Builder’s Licences and Owner Builders Permits

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

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

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

Standard Condition: K5 (Autotext KK5)

K.4 Building Standards - Guide to Standards and Tolerances

The PCA does not undertake detailed quality control inspections and the role of the PCA is primarily to ensure that the development proceeds in accordance with this consent, Construction Certificates and that the development is fit for occupation in accordance with its classification under the Building Code of Australia. Critical Stage Inspections do not provide the level of supervision required to ensure that the minimum standards and tolerances specified by the “Guide to Standards and Tolerances©” ISBN 0 7347 6010 8 are achieved.

The quality of any development is a function of the quality of the principal contractor’s or owner builder’s supervision of individual contractors and trades on a daily basis during the development. The PCA does not undertake this role.

The NSW Office of Fair Trading have published a “Guide to Standards and Tolerances©” ISBN 0 7347 6010 8. The guide can be obtained from the Office of Fair Trading by calling 13 32 20 or by Fax: 9619 8618 or by post to: Marketing Branch, PO Box 972, Parramatta NSW 2124.


Council, as the PCA or otherwise, does not adjudicate building contract disputes between the principal contractor, contractors and the owner.

Standard Condition: K6 (Autotext KK6)
K.5 Workcover requirements

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

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

K.6 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Ms R Coull, Assessment Officer, on (02) 9391 7098.

However, if you wish to pursue your rights of appeal in the Land & Environment Court you are advised that Council generally seeks resolution of such appeals through a Section 34 Conference, site hearings and the use of Court Appointed Experts, instead of a full Court hearing.

This approach is less adversarial, it achieves a quicker decision than would be the case through a full Court hearing and it can give rise to considerable cost and time savings for all parties involved. The use of the Section 34 Conference approach requires the appellant to agree, in writing, to the Court appointed commissioner having the full authority to completely determine the matter at the conference.

Standard Condition: K14 (Autotext KK14)

K.7 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 80A of the Act.

The securities will not be released until a Final Occupation Certificate has lodged with Council, Council has inspected the site and Council is satisfied that the public works have been carried out to Council’s requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council’s requirements.

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

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

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

Standard Condition: K15 (Autotext KK15)

K.8 Recycling of Demolition and Building Material

It is estimated that building waste, including disposable materials, resulting from demolition, excavation, construction and renovation, accounts for almost 70% of landfill. Such waste is also a problem in the generation of dust and the pollution of stormwater. Council encourages the recycling of demolition and building materials.

Standard Condition: K17 (Autotext KK17)

K.9 Owner Builders

Under the Home Building Act 1989 any property owner who intends undertaking construction work to a dwelling house or dual occupancy to the value of $12,000 or over must complete an approved education course and obtain an owner-builder permit from the Office of Fair Trading (see www.fairtrading.nsw.gov.au).

Standard Condition: K18 (Autotext KK18)

K.10 Pruning or Removing a Tree Growing on Private Property

Woollahra Municipal Council's Tree Preservation Order 2006 (TPO) may require that an application be made to Council prior to pruning or removing any tree. The aim is to secure the amenity of trees and preserve the existing landscape within our urban environment.

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

Standard Condition: K19 (Autotext KK19)

Annexures

1. Plans and elevations
2. Referral response - Environmental health
3. Referral response Fire Safety
4. Referral response - Compliance Officer
5. Clause 4.6 Variation - Building Height
6. Clause 4.6 Variation - Floor space ratio
REFERRAL RESPONSE - ENVIRONMENTAL HEALTH

FILE NO: Development Applications/ 615/2015/1
ADDRESS: 382 Oxford Street PADDINGTON 2021
PROPOSAL: Alterations the food & drink premises including upgrade of Oxford St facade, the provision of a roof plant & grease arrester and minor changes to external access at rear lower ground floor
FROM: Graeme Reilly Environmental Health Officer
TO: Ms R Coull

1. ISSUES

   • NOISE AND ODOURS

2. DOCUMENTATION

I refer to the following documents received for this report:

   • Statement of Environment Effects, referenced P-15182 prepared by City Plan Services, dated December 2015.
   • Architectural Plans, referenced A00.01(A) A01.04, 01.05 and 01.06, prepared by Acme and Co, dated 13/11/2015.
   • Acoustic Report, referenced 45.5157.R3:MSC, prepared by The Acoustic Group, dated 03/12/2015.

3. RESEARCH

The following research was undertaken in the preparation of this assessment:

   • A site inspection was carried out on the following date: 10/12/2015

4. SUMMARY OF PROPOSAL

   • Alterations the food & drink premises including upgrade of Oxford St facade, the provision of a roof plant & grease arrester and minor changes to external access at rear lower ground floor,
   • New roof plant room to accommodate A Conditioning Plant and Mechanical Exhaust/extraction from chicken shop.

5. ASSESSMENT

Comments have been prepared on the following. **Where Approval is recommended, Conditions of Consent follow at the end of the comments.**
a) **Acoustics**

Acoustic Report undertaken by The Acoustic Group Report No 45.5157.R3:MSC dated 03/12/2015 has been submitted in relation to the Acoustic impact of the operation of the mechanical plant on the local residential community.

### 6. RECOMMENDATION

Council’s Environmental Health Officer has determined that the proposal is satisfactory, subject to the following conditions:

**A. General Conditions**

**A.1 Approved Plans and supporting documents**

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

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<thead>
<tr>
<th>Reference</th>
<th>Description</th>
<th>Author/Drawn</th>
<th>Date(s)</th>
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<tbody>
<tr>
<td>45.5157.R3:MSC</td>
<td>Acoustic Report</td>
<td>The Acoustic Group</td>
<td>03/12/2015</td>
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<td></td>
<td>Noise Management Plan</td>
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<td>Plan of Management</td>
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<td>Contaminated Land - Initial Site Investigation Report (Stage 1)</td>
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<td>Contaminated Land - Detailed Site Investigation Report (Stage 2)</td>
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<td>Contaminated Land - Remedial Action Plan (Stage 3)</td>
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**Note:** Warning to Accredited Certifiers – You should always insist on sighting the original Council stamped approved plans. You should not rely solely upon the plan reference numbers in this condition. Should the applicant not be able to provide you with the original copy Council will provide you with access to its files so you may review our original copy of the approved plan.

**Note:** These plans and supporting documentation may be subject to conditions imposed under section 80A(1)(g) of the Act modifying or amending the development (refer to conditions which must be satisfied prior to the issue of any Construction Certificate.)

Standard Condition: A5

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

C. **Conditions which must be satisfied prior to the issue of any construction certificate**
C.1 Sound Attenuation of the <INSERT>

The Construction Certificate plans and specification required to be submitted pursuant to clause 139 of the Regulation must detail the sound attenuation works required to the Mechanical Plant to ensure that the noise level measured at any boundary of the site at any time while the proposed Mechanical Plant is operating will not exceed the background noise level.

The background noise level is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the $L_{A90}$, 15 minute level measured by a sound level meter.

Note: Further information including lists of Acoustic Engineers can be obtained from:


Standard Condition: C61

C.2 Acoustic Certification of Mechanical Plant & Equipment

The Construction Certificate plans and specification required to be submitted pursuant to clause 139 of the Regulation must be accompanied by a certificate from a professional engineer (acoustic engineer) certifying that the noise level measured at any boundary of the site at any time while the proposed mechanical plant and equipment is operating will not exceed the background noise level. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed background noise level, at any time.

The background noise level is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the $L_{A90}$, 15 minute level measured by a sound level meter.

Where sound attenuation is required this must be detailed.

Note: Further information including lists of Acoustic Engineers can be obtained from:


Standard Condition: C62

C.3 Ventilation - Kitchen Exhaust- Smoke & Odour Control

1. The discharge of air from the kitchen exhaust ventilation system(s) is considered an obnoxious discharge under Section 3.7 of Australian Standard 1668.2-1991. The ductwork serving the proposed kitchen exhaust system(s) shall be arranged vertically with a discharge velocity of not less than 5 m/s and be situated at least 1 m above the ridge of a pitched roof or 3 m above the flat of the building.

2. All exhaust air and spill air shall be discharged to atmosphere in such a manner as not to cause a danger or nuisance to occupants in the building, occupants of neighbouring buildings or members of the public.

4. A Smoke & Odour Impact Assessment Report is to be prepared by a suitably qualified engineer detailing the design specification of the proposed kitchen exhaust system, including all smoke and odour inhibiting controls and filtering systems.

5. The Construction Certificate plans and specifications, required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation, must detail all the kitchen exhaust ventilation system(s), including all smoke and odour controls and filtering systems. Upon completion and prior to occupation of the premises, the kitchen exhaust ventilation system(s) shall be certified by a qualified engineer that the system(s) has been installed in accordance with AS 1668.1 and AS 1668.2 and the design specification as detailed in the Smoke & Odour Impact Assessment Report.

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

E. Conditions which must be satisfied during any development work

E.1 Hours of Work –Amenity of the neighbourhood

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

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

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

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

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


**Standard Condition: E6**

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

**F.1 Food Premises - Inspection and Registration**

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

a) The *Principal Contractor or owner* must arrange an inspection of the fit out of the Food Premises by Council's Environmental Health Officer;

b) A satisfactory final inspection must have been undertaken by Council's Environmental Health Officer; and

c) The *owner or occupier* must have registered the Food Premises (Notification of conduct under section 100 of the *Food Act* 2003).

**Note:** Notification can be done on-line at [www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au)

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

**Note:** Section 100 of the *Food Act* 2003 requires:

> “100 Notification of conduct of food businesses

> (1) The proprietor of a food business must not conduct the food business unless the proprietor has given written notice, in the approved form, of the information specified in the Food Safety Standards that is to be notified to the appropriate enforcement agency before the business is conducted. Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.”

**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 *Regulation*. This condition can only be satisfied following an inspection and sign off from Council’s Environmental Health Officers.

**Standard Condition: F15**

**F.2 Maintenance of the Kitchen Exhaust**

The proprietor(s) of the subject site shall enter into a contract agreement for the regular maintenance and cleaning of the odour control units and filtering systems. A copy of the contract agreement shall be made available to Council’s Health Services Section prior to the occupation of the building.
G. Conditions which must be satisfied prior to the issue of any Subdivision Certificate

Nil.

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

Nil.

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

I.1 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.

This condition has been imposed to protect the amenity of the neighbourhood.


Useful links:
- Community Justice Centres—free mediation service provided by the NSW Government (www.cjc.nsw.gov.au).

Standard Condition: I50

I.2 Maintenance of Sound Attenuation

Sound attenuation must be maintained in accordance with the Acoustic Report.

Standard Condition: I51

I.3 Noise from mechanical plant and equipment

The noise level measured at any boundary of the site at any time while the mechanical plant and equipment is operating must not exceed the background noise level. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed background noise level at any time.
The *background noise level* is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the $L_{A90, 15\text{ minute}}$ level measured by a sound level meter.

This condition has been imposed to protect the amenity of the neighbourhood.

**Note:** Words in this condition have the same meaning as in the:
ISBN 0 7313 2715 2, dated January 2000, and
Standard Condition: I53

### I.4 Maintenance of the Kitchen Exhaust log

A logbook detailing the schedule maintenance and cleaning of the odour control units and filtering systems shall be kept on the premises at all times and be made available for viewing by Council’s Environmental Health Officer’s as required.

### J. Miscellaneous Conditions

#### J.1 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 the environment.

#### J.2 Garbage Area

The area must be maintained at all times to ensure that a breeding ground is not created for pests and must be capable of being easily and effectively cleaned.

All garbage containers must have tight fitting lids and be large enough or in sufficient numbers to contain all the waste produced by the food business while awaiting the next removal from the premises.

#### J.3 Waste Collection and collection of Grease Arrestor Waste

Waste collection is to be undertaken between the hours of:

- 7.00am and 9.00pm Monday to Friday, and
- 8.00am and 8.00pm Saturday, Sunday and Public Holidays

### K. Advisings

Nil

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Graeme Reilly  
Environmental Health Officer  
Date: 11/12/2015
REFERRAL RESPONSE – FIRE SAFETY

FILE NO: DA 615/2015/1
ADDRESS: 382 Oxford Street PADDINGTON 2021
PROPOSAL: Alterations the food & drink premises including upgrade of Oxford St facade, the provision of a roof plant & grease arrester and minor changes to external access at rear lower ground floor
FROM: Richard Smith - Fire Safety Officer
TO: Ms R Coull

1. ISSUES

The subject building is old and may have exit dimension issues as well as final exit path issues at the rear of the site onto Victoria Street.

2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environment Effects, referenced minor alterations & additions including the upgrade of the Oxford St facade, new roof plant to accommodate cooking extraction and A/C, installation of grease arrester and new access from the rear lane prepared by City Plan Services, dated December 2015.
- Architectural Plans, referenced A.00.01, A.00.03, A.00.05, A.00.06, A.00.07, A.01.02, A.01.04, A.01.05, A.01.06, DA E01 & AS APP.01, prepared by ACME & CO, dated 30 October 2015.

3. RESEARCH

The following research was undertaken in the preparation of this assessment:

- A site inspection was carried out on the following date: 17 December 2015

4. LEGISLATION

A Building Code of Australia (BCA) assessment of this development application is required to satisfy the following statutory provisions of the Environmental Planning & Assessment Regulation 2000.

- Clause 94 – ‘Consent authority may require buildings to be upgraded’
  - Compliance with the BCA if more than 50% of the volume has been changed in the last 3 years
  - Fire safety – to protect persons using the building and facilitate their egress from the building as well as restricting the spread of fire from the building to other buildings
5. BUILDING DESCRIPTION

Type of Construction: B
Class: 6
Number of Storeys: 3
Rise in Storeys: 3
Effective Height: < 25 metres

6. ASSESSMENT

Comments have been prepared on the following. Where Approval is recommended, Conditions of Consent follow at the end of the comments.

6.1 Clauses of BCA referenced:

- Exit travel distances Clause D1.4 of the BCA
- Dimensions of exits Clause D1.6 of the BCA
- Discharge from exits Clause D1.10 of the BCA
- Smoke detection system table E2.2a of the BCA
- Emergency lighting Clauses E4.2 & E4.4 of the BCA
- Exit & directional signage Clauses E4.5, E4.6 and E4.8 of the BCA
- Portable fire extinguishers Clause E1.6 of the BCA

7. RECOMMENDATION

Council’s Fire Safety Officer has determined that the proposal is satisfactory, subject to the following conditions:

A. General Conditions

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

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

C.1 Building upgrade (Clause 94 of the Regulation)

Council considers pursuant to clause 94 of the Regulation that it is appropriate to require the existing building to be brought into total or partial conformity with the BCA.

The Construction Certificate plans and specification required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation must detail building upgrade works required by this condition.
The Certifying Authority must be satisfied that such work, to be implemented as part of the development, will upgrade the building to bring it into compliance with the following provisions of the BCA as in force at the date of the Construction Certificate application:

a) That the distance to the exits shall comply with the requirements of Clause D1.4 of the BCA or an alternative solution shall be proposed by an accredited C10 fire engineer meeting performance requirements DP2, DP4, DP6 & EP2.2 of the BCA.

b) That the dimensions of the exits shall comply with the requirements of D1.6 of the BCA or an alternative solution shall be proposed meeting performance requirements DP2, DP4 and DP6 of the BCA.

c) That the discharge from the exits shall comply with the requirements of Clause D1.10 of the BCA or an alternative solution shall be proposed by an accredited C10 fire engineer meeting performance requirements DP4 and DP6 of the BCA.

d) That an automatic smoke detection and alarm system shall be installed throughout the building in accordance with Specification E2.2a of the BCA.

e) That a system of emergency lighting shall be installed throughout the building to provide sufficient light in an emergency in accordance with the requirements of Part E4 of the BCA.

f) That exit signs shall be installed above all required exit doors. Signs shall be illuminated at all times and generally be of sufficient number that direction of travel to all exits is clearly visible from any part of the major egress routes. Exit signs shall be installed to the standard expressed in Clauses E4.5, E4.6 and E4.8 of the BCA.

g) That portable fire extinguishers shall be provided throughout the building to the requirements of Clause E1.6 of the BCA and the relevant requirements of AS 2444.

Note: The Certifying Authority issuing the Construction Certificate has no power to remove the requirement to upgrade the existing building as required by this condition. Where this condition specifies compliance with performance requirements of the BCA the Certifying Authority, subject to their level of accreditation, may be satisfied as to such matters. Where this condition specifies compliance with prescriptive (deemed-to-satisfy) provisions of the BCA these prescriptive requirements must be satisfied and cannot be varied unless this condition is reviewed under section 82A or amended under section 96 of the Act.

Note: This condition does not set aside the Certifying Authorities responsibility to ensure compliance with clause 143 of the Regulation in relation to Fire Protection and Structural Adequacy.

Note: AS 4655 Guidelines for fire safety audits for buildings (or any succeeding AS) should form the basis of any fire upgrade report.

Standard Condition: C10

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

E. Conditions which must be satisfied during any development work

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

F.1 Provision of Category 1 Fire Safety Provisions (clause 93 of the Regulation)

A person must not commence occupation or use of the whole or any part of a the building unless such of the Category 1 fire safety provisions as are applicable to the building’s proposed new use are provided.
F.2 Fire Safety Certificates

In the case of a final occupation certificate to authorise a person:

a) to commence occupation or use of a new building, or
b) to commence a change of building use for an existing building,

a certifying authority must be satisfied that a final fire safety certificate has been issued for the building.

In the case of an interim occupation certificate to authorise a person:

a) to commence occupation or use of a partially completed new building, or
b) to commence a change of building use for part of an existing building,

a certifying authority must be satisfied that a final fire safety certificate or an interim fire safety certificate has been issued for the relevant part of the building.

Note: This condition does not apply to a class 1a or class 10 building within the meaning of clause 167 of the Regulation.

Note: In this condition:
interim fire safety certificate has the same meaning as it has in Part 9 of the Regulation.
final fire safety certificate has the same meaning as it has in Part 9 of the Regulation.
new building has the same meaning as it has in section 109H of the Act.

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

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

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

I.1 Annual Fire Safety Statements (Class 1b to 9c buildings inclusive)

Each year, the owner of a building to which an essential fire safety measure is applicable must provide an annual fire safety statement to Council and the Commissioner of the NSW Fire Brigades. The annual fire safety statement must be prominently displayed in the building.

Note: Essential fire safety measure has the same meaning as in clause 165 of the Regulation. Annual fire safety statement has the same meaning as in clause 175 of the Regulation. Part 9 Division 5 of the Regulation applies in addition to this condition at the date of this consent. Visit Council’s web site for additional information in relation to fire safety www.woollahra.nsw.gov.au.

J. Miscellaneous Conditions
K. Advisings

Nil

Richard Smith  
Fire Safety Officer  
Date: 22 December 2015
REFERRAL RESPONSE

FILE NO: DA 615/2015/1

ADDRESS: 382 Oxford Street PADDINGTON 2021

PROPOSAL: Alterations the food & drink premises including upgrade of Oxford St facade, the provision of a roof plant & grease arrester and minor changes to external access at rear lower ground floor

FROM: M Easton, Compliance Officer

TO: Ms R Coull

The proposal includes a non-illuminated awning fascia sign displaying the words “Chicken Shop”.

The proposed sign satisfies the exempt development standards for awning fascia signs under the Codes SEPP and no further assessment is required.

M Easton
Compliance Officer
Clause 4.6 Variation Request
Building Height Development Standard ~
Woollahra Local Environmental Plan 2014

382 Oxford Street, Paddington
Submitted to Woollahra Council
On Behalf of Merivale Pty Ltd
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1. Introduction

This Clause 4.6 variation request accompanies a Development Application (DA) submitted to Woollahra Council for minor alterations and additions to the existing building at the site.

The site is located at 382 Oxford Street Paddington, and is legally described as Lot 1 DP 83330 ("the site").

We note that despite all works occurring below the highest point of the existing building, a variation may occur depending upon an interpretation of "ground level (existing)" as defined by the Woollahra Local Environmental Plan (WLEP) 2014.

The existing building has a maximum height of RL 72.68. The proposed addition of roof plant toward the rear of the existing building for kitchen extraction and air conditioning will occur entirely below RL 72.68, with the acoustic screen for the plant reaching a maximum height of RL 72. Despite not breaching the building's existing height the addition of an acoustic screen for roof plant will breach the 9.5m height limit at the rear of the site if ground level (existing) were to be measured from an inferred ground level between the rear of the building and the Oxford Street ground level. Based on that approach the acoustic screen represents the only current breach on the site, with exact specifications regarding the height of roof plant equipment being the subject of future detailed design. It can be noted that under no circumstances will the height of this equipment protrude above the building's existing maximum height of RL 72.68. Whist it is arguable whether there is in fact a variation to the standard, as a matter of abundant caution, this Clause 4.6 variation request is submitted to Council to ensure that the items raised in this application are appropriately considered with regard to all provisions of Clause 4.3(2) in the Woollahra Local Environmental Plan 2014.

2. What is the environmental planning instrument (EPI) that applies to the land?

The Environmental Planning Instrument (EPI) to which this variation relates is the Woollahra Local Environmental Plan 2014 (WLEP).

3. What is the zoning of the land?

The zoning of the land is B4 Mixed Use under the WLEP 2014.

4. What are the objectives of the zone?

The objectives of the B4 Mixed Use zone are:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
5. What is the development standard being varied?

The development standard being varied is the "maximum building height".

The subject development standard is listed under Clause 4.3(2) of the WLEP 2014, and the maximum height is shown on the 'Height of buildings' map.

The maximum allowable building height that applies to the site is 9.5m, as demonstrated in Figure 1 below.

![Figure 1: Extract of 'Height of Buildings' Map showing the maximum building height of the site is 9.5m (site outlined in red).](image)

6. What are the objectives of the development standard?

The objectives of the building height development standard are set out below:

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

(b) to establish a transition in scale between zones to protect local amenity.
(c) to minimise the loss of solar access to existing buildings and open space,

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

(e) to protect the amenity of the public domain by providing public views of the harbour and surrounding areas."

7. What is the proposed variation to the development standard?

The building has a maximum existing building height of RL 72.68m, which is 9.24m above the Oxford Street level and 11.47m above the Victoria Street level. This height will remain unchanged.

It is noted that two interpretations of building height are available in relation to this site, only one of which results in a variation to the maximum height standard. Firstly height may be interpreted as per Figure 2 below, which takes "ground level (existing)" to be measured from the site’s Oxford Street level taking into account the prevailing building form and the way that this standard has perceivably been applied in this context. Ground level existing is taken to be applied from Oxford Street as this has operated as the primary ground level commercial street frontage since the late 19th century (as noted in Section 3.2 of the Heritage Impact Statement that accompanied the original DA submission).

![Figure 2: Section showing height measured based on an existing ground level taken from the Oxford Street level (this line is indicated in red).](image)

Alternatively, Figure 3 below shows interpretation, whereby "ground level (existing)" is inferred based on the drop in level between Oxford Street and Victoria Street. This is the only interpretation that results in a variation to the standard. Applying this interpretation there is a minor breach of the standard, equalling a maximum of approximately 1m at its highest extent. It is this potential breach that is the subject of this Clause 4.6 variation.
Figure 3: Section showing the inferred ground level approach, with inferred ground level shown in red and the height variation circled in green.

8. Matters to be considered under Clause 4.6

The following table provides a summary of the key matters for consideration under Clause 4.6 of the WLEP 2014 and a response as to where each is addressed in this written request:

<table>
<thead>
<tr>
<th>Requirement/Subclause of Clause 4.6</th>
<th>Response/Comment</th>
</tr>
</thead>
</table>
| (1) The objectives of this clause are as follows:  
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,  
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances. | It is key to note that the objectives of the clause are to provide flexibility in applying development standards in that in so doing better development outcomes ensue. |
| (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause. | The maximum building height development standard under clause 4.3(2) is not expressly excluded from operation of this clause. |
| (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:  
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and  
(b) that there are sufficient environmental planning grounds to justify contravening the development standard. | (a) Refer to Section 9 below  
(b) Refer to Section 10 below |
| (4) Development consent must not be granted for development that contravenes a development standard unless:  
(a) the consent authority is satisfied that:  
(i) the applicant’s written request has adequately addressed the matters required to | This written request addresses all requirements of subclause (3).  
As set out in Section 11 of this written request, the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the zone. |
be demonstrated by subclause (3), and

(i) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(ii) the concurrence of the Director-General has been obtained.

(5) In deciding whether to grant concurrence, the Director-General must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if......

Concurrence is assumed but is a matter to be determined by the consent authority.

There are no matters of significance for State or regional environmental planning as addressed in Section 12. Consideration of whether there is any public benefit in maintaining the development standard is considered in 13.

There are no matters to be taken into consideration by the Director General which concurrence can be assumed pursuant to Planning Circular PS 08-003 dated 9 May 2008.

Does not apply.

Does not apply.

This is a matter for the determining authority.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following....

Does not apply to the site/proposed variation.

9. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The NSW Land and Environment Court (LEC) in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, considered how this question may be answered, referring to the earlier LEC decision in *Webbe v Pittwater Council* [2007] NSW LEC 827. The decision *Four2Five* refines the approach in *Webbe*, whereby consistency with the objectives and the absence of any environmental impacts would demonstrate that strict compliance with a development standard is both unreasonable and unnecessary. The most common way in *Webbe* of demonstrating this is to show consistency with the objective of the standard, this is now dealt with under the separate consideration of Clause 4.6(4)(a)(ii) (see below). Whilst this remains relevant to the question of “unreasonable and unnecessary” it is appropriate to consider “additional ways” through which the question may be answered.

The remaining four ways of demonstrating that compliance with a development standard is unreasonable or unnecessary, as described in *Webbe*, are appropriately considered below:

The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

We do not rely on this reason.
The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

We do not rely on this reason.

The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

We do not rely on this reason.

The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

It is accepted that the zone is appropriate to the site. Nonetheless, the development standard does not reflect the height of the building on the site in existence at the time the LEP was gazetted as measured in accordance with the 'inferred ground level' approach (Figure 3 above). The standard applies a height that is not consistent with surrounding development and is particularly restrictive to the use of the existing property. The existing building was, at the time of the making of the LEP, and remains appropriate in height for the site and within its context. The current proposal does not alter this maximum height. Therefore the development standard is inappropriate and its strict application in the circumstances of the case would be unreasonable.

For this reason we consider that strict compliance with the standard is unreasonable and unnecessary in the circumstances of the case.
10. Sufficient environmental planning grounds to justify the contravention

The variation arises only as a result of a ‘technicality’ in terms of statutory interpretation. On one interpretation there is no height variation and the proposal is appropriate in height. The fact that a ‘variation’ arises only in definitional terms in relation to the ground level below RL height of the building that does not alter, should not alter the acceptability of the proposed max height of the building.

The proposed external alterations occur entirely beneath the existing building height. The modifications to the existing roof form relate to a part of the building that is at a lower RL than the tallest part of the building.

The breach will not result in any adverse impact on the surrounding development or public land as it will be largely obscured from potential vantage points at Victoria Street. The additions are obscured by screening and stopping of plant equipment as well as the site’s significant rear setback (approximately 12.5m) and the tree located at the Victoria Street frontage (Figures 3). Moreover as the additions occur below the building’s existing maximum height they will not be visible from Oxford Street.

Figure 4: The site as viewed from its Victoria Street frontage. (Source: City Plan Heritage)

The addition of roof plant is part of a proposal to improve the overall appearance and functionality of the site. This proposal represents a beneficial planning outcome for the locality. The breach in height will have no detrimental impact on surrounding development in relation to loss of views, overshadowing, loss of privacy, visual impact, or aural privacy.

11. Is the variation in the public interest?

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.
The objectives of the standard are addressed below:

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

The proposal is a suitable development option which maintains the desired character of the locality and enhances the streetscape presentation of the site, with minimal alterations to the external facade of the building. The addition of a roof plant will remain below the existing building's maximum height and will remain below the prevailing building heights of the buildings located directly adjacent to building.

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

The site is in close proximity to a B1 Neighbourhood Centre and a R2 Low Density Residential zone. Therefore a “transition in scale” is relevant to the site, this however, is not an issue as the proposed development does not impact on the surrounding local amenity.

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

The proposed height variance is minor as indicated in Section 10. There would be no loss of solar access to existing buildings and open space, as the development alterations are proposed entirely below the existing building height, the existing building is setback approximately 10.5m from Victoria Street and the buildings adjoining the site on each side are in fact taller than the building in question.

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

The proposed height variance is minor as indicated in Section 10. There would be no further impact on adjoining or nearby properties, in terms of views, loss of privacy, overshadowing or visual intrusion, as the alterations are proposed entirely below the existing building height, the existing building is setback approximately 10.5m from Victoria Street and the buildings adjoining the site on each side are in fact taller than the building in question.

(e) To protect the amenity of the public domain by providing public views of the harbour and surrounding areas,

The proposal will not adversely impact on the public domain. The proposed plant is not visible from the site’s primary frontage (or from the secondary frontage at Victoria St). The external modifications to the site's Oxford Street facade involve the upgrade of the existing facade to provide a desirable design that is in keeping with the heritage character of the area, as discussed in the Statement of Environmental Effects and Heritage Impact Statement that accompany this application.

The proposal is considered a positive and compatible contribution to the existing public domain, with the use of the site as a food and drink premises providing street level activation to Oxford Street that is both compatible with its surrounds and engaging for passers-by.

For the reasons outlined above, the objectives of the standard are achieved notwithstanding the non-compliance.

The objectives of the B4 Mixed Use zone are addressed below:

a) To provide a mixture of compatible land uses.
The proposed development provides a food and drink premises. This use is permissible within the zone, and is reflective of the desired future character as anticipated under the WLEP and WDCP.

The proposed exceedance of the height standard does not affect consistency with this objective.

b) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

The proposed development enhances the operation of a food and drink premises in an area that has good access to public transport, with Oxford Street benefitting from numerous and frequent bus routes providing services between Sydney CBD and the Eastern Suburbs.

The proposed exceedance of the height standard does not affect consistency with this objective.

c) To provide active ground floor uses to create vibrant centres.

The enhancement of the site’s operation as a food and drink premises provides street level activation to Oxford Street. The upgrade of the site’s Oxford Street facade proposed as part of this application will further improve ground floor activation along Oxford Street and contribute positively to the vibrancy of the centre.

The proposed exceedance of the height standard does not affect consistency with this objective.

d) To provide for development of a scale and type that is compatible with the amenity of the surrounding residential area.

The proposed development enhances the operation of a food and drink premises that is of a scale and type that is compatible with the amenity of the surrounding residential area of Paddington.

The proposed exceedance of the height standard does not affect consistency with this objective.

e) To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.

The proposed development enhances the operation of a food and drink premises within an existing building. The proposal is a suitable development option that maintains the desired character of the locality and enhances the streetscape presentation of the site, with minimal alterations to the external facade of the building. The overall maximum height RL 72.68 will remain unchanged.

The proposed exceedance of the height standard does not affect consistency with this objective.

The objectives of the zone, as demonstrated above, as well as the objectives for the standard have been satisfied. Therefore, the variation to the height standard is in the public interest.
12. Matters of state or regional significance (cl. 4.6(5)(a))

We have not identified any outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

13. The public benefit of maintaining the standard (cl. 4.6(5)(b))

Pursuant to case law of Ex Gratia PIL v Dungog Council (NSWLEC 148), the question that needs to be answered is “whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development”.

There is no public benefit in maintaining strict compliance with the development standard given that there are no impacts that will result from the breach of the height standard in a location that is not visible and given the breach relates to an existing building.

14. Is the variation well founded?

The potential variation only arises as a result of a possible interpretation of the definition of “ground level [existing]” on the site. It is arguable that there is in fact no variation; however this request is made on a ‘without prejudice’ basis to avoid any doubt. Therefore, on this basis the Clause 4.6 variation request is well founded as it demonstrates, as required by Clause 4.6 of the WLEP 2014, that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development.
- There are sufficient environmental planning grounds to justify the contravention;
- The development meets the objectives of the development standard and the objectives of the B4 Mixed Use zone, notwithstanding the variation;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The proposed variation will not hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and
- The contravention does not raise any matter of State or Regional Significance.

The variation is therefore considered appropriate in the circumstances of the case.
Clause 4.6 Variation Request
Floor Space Ratio Development Standard ~
Woollahra Local Environmental Plan 2014

382 Oxford Street, Paddington

Submitted to Woollahra Council
On Behalf of Merivale Pty Ltd
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1. Introduction

This Clause 4.6 variation request accompanies a Development Application (DA) submitted to Woollahra Council for minor alterations and additions to the existing building at the site.

The site is located at 382 Oxford Street Paddington, and is legally described as Lot 1 DP 83330 ("the site"). The site has a total area of 135m² (as seen on the Survey Plan at Appendix 1).

Clause 4.4(2) of the Woollahra Local Environmental Plan 2014 (WLEP) identifies a floor space ratio (FSR) of 1:1 for the subject site. The existing building has a gross floor area (GFA) of 200.5m², providing a FSR of 1.485:1. The alterations proposed to the rear access of the building will increase this existing GFA by 3m² (as seen at Appendix 2) to a total of 203.5m², providing a FSR of 1.5:1. This Clause 4.6 variation request is submitted to Council to ensure that the items raised in this application are appropriately considered with regard to all provisions of Clause 4.4(2) in the Woollahra Local Environmental Plan 2014.

2. What is the environmental planning instrument (EPI) that applies to the land?

The Environmental Planning Instrument (EPI) to which this variation relates is the Woollahra Local Environmental Plan 2014 (WLEP).

3. What is the zoning of the land?

The zoning of the land is B4 Mixed Use under the WLEP 2014.

4. What are the objectives of the zone?

The objectives of the B4 Mixed Use zone are:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To provide active ground floor uses to create vibrant centres.
- To provide for development of a scale and type that is compatible with the amenity of the surrounding residential area.
- To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.
5. What is the development standard being varied?

The development standard being varied is the "maximum floor space ratio".

The subject development standard is listed under Clause 4.4(2) of the WLEP 2014, and the maximum FSR is shown on the 'Floor Space Ratio' map.

The maximum allowable FSR that applies to the site is 1:1, as demonstrated in Figure 1 below.

![Floor Space Ratio Map](image)

*Figure 1: Extract of 'Floor Space Ratio' Map showing the maximum FSR of the site is 1:1 (site outlined in red)*

6. What are the objectives of the development standard?

The objectives of the FSR development standard are set out below:

"(a) for development in Zone R3 Medium Density Residential:

(i) to ensure the bulk and scale of new development is compatible with the desired future character of the area, and

(ii) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain, and

(iii) to ensure that development allows adequate provision on the land for deep soil planting and areas of private open space,

(b) for buildings in Zone B1 Neighbourhood Centre, Zone B2 Local Centre, and Zone B4 Mixed Use—to ensure that buildings are compatible with the desired future character of the area in terms of bulk and scale."
The subject site is zoned B4 Mixed Use. Therefore, only objective (b) is applicable.

7. What is the proposed variation to the development standard?

The building has a maximum existing FSR of 1.486:1, which is 0.486:1 or 65.5m² greater than the 1:1 permissible under the WLEP. The modification proposed pursuant to this application will increase this existing non-compliance by 3m², providing a FSR of 1.5:1 and a total increase of 0.015:1.

The additional proposed GFA is located at the rear of the lower ground floor of the building, as seen in Figure 2 below. The proposed extension at the rear of the lower ground floor occurs only on that level. There are no changes proposed to GFA at the ground or first floor of the building, as seen in Figure 3 below.

Figure 2: Extract from DA Architectural Plans, prepared by ACME & Co showing the proposed alterations to the building’s rear access arrangement and the location of the addition 3m² of GFA.

Figure 3: Extract from DA Architectural Plans, prepared by ACME & Co showing that the addition to the rear of the lower ground floor is not carried throughout the floors above.

The proposed change to the building’s rear access arrangement is included within this application as a means of upgrading the existing building to operate efficiently in accordance with its CDC approved use as a food and drink premises.
8. Matters to be considered under Clause 4.6

The following table provides a summary of the key matters for consideration under Clause 4.6 of the WLEP 2014 and a response as to where each is addressed in this written request:

<table>
<thead>
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<th>Requirement/Subclause of Clause 4.6</th>
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<td>It is key to note that the objectives of the clause are to provide flexibility in applying development standards in that in so doing better development outcomes ensue.</td>
</tr>
<tr>
<td>(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.</td>
<td>The maximum FSR development standard under clause 4.4(2) is not expressly excluded from operation of this clause.</td>
</tr>
<tr>
<td>(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating: (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and (b) that there are sufficient environmental planning grounds to justify contravening the development standard.</td>
<td>(a) Refer to Section 9 below (b) Refer to Section 10 below</td>
</tr>
<tr>
<td>(4) Development consent must not be granted for development that contravenes a development standard unless: (a) the consent authority is satisfied that: (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and (iii) the concurrence of the Director-General has been obtained.</td>
<td>This written request addresses all requirements of subclause (3). As set out in Section 11 of this written request, the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the zone. Concurrency is assumed but is a matter to be determined by the consent authority.</td>
</tr>
<tr>
<td>(5) In deciding whether to grant concurrence, the Director-General must consider: (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and (b) the public benefit of maintaining the development standard, and (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.</td>
<td>There are no matters of significance for State or regional environmental planning as addressed in Section 12. Consideration of whether there is any public benefit in maintaining the development standard is considered in 13. There are no matters to be taken into consideration by the Director-General which concurrence can be assumed pursuant to Planning Circular PS 08-003 dated 9 May 2008.</td>
</tr>
<tr>
<td>(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone RS Large Lot Residential, Zone E2 Environmental Conservation, Zone E3</td>
<td>Does not apply.</td>
</tr>
</tbody>
</table>
9. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The NSW Land and Environment Court (LEC) in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, considered how this question may be answered, referring to the earlier LEC decision in *Wehbe v Pittwater Council* [2007] NSW LEC 827. The decision *Four2Five* refines the approach in *Wehbe*, whereby consistency with the objectives and the absence of any environmental impacts would demonstrate that strict compliance with a development standard is be both unreasonable and unnecessary. The most common way in *Wehbe* of demonstrating this is to show consistency with the objective of the standard, this is now dealt with under the separate consideration of Clause 4.6(4)(a)(ii) (see below). Whilst this remains relevant to the question of "unreasonable and unnecessary" it is appropriate to consider "additional ways" through which the question may be answered.

The remaining four ways of demonstrating that compliance with a development standard is unreasonable or unnecessary, as described in *Wehbe*, are appropriately considered below:

*The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

We do not rely on this reason.

*The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

We do not rely on this reason.

*The development standard has been virtually abandoned or destroyed by the council’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

We do not rely on this reason.

*The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

It is accepted that the zone is appropriate to the site. Nonetheless, the development standard does not reflect the existing FSR on the site at the time the WLEP was gazetted. The standard applies a FSR that is not consistent with surrounding development and is particularly restrictive to the use of the existing property. The existing building was, at the time of the making of the WLEP, and remains appropriate in density for the site and within its context. The current proposal creates an additional noncompliance of approximately
0.015:1 or 1.5%. The additional GFA will have no visual or environmental impacts on adjoining properties and the building remains lower in density when compared with adjoining building that are also subject to the 1:1 maximum FSR standard. Due to the existing improvements on the site and those that adjoin it, the development standard is inappropriate and its strict application in the circumstances of the case would be unreasonable.

For this reason, we consider that strict compliance with the standard is unreasonable and unnecessary in the circumstances of the case.

10. Sufficient environmental planning grounds to justify the contravention

The proposed alteration of access arrangements at the rear of the building occurs behind the existing building line and will have minimal impact on the visual presentation of the building’s Victoria Street facade. The building is setback approximately 10.5m from Victoria Street, however the adjoining buildings are built to their boundaries with minimal openings facing the subject site. Therefore, the minor alteration of rear access arrangements will have no impact on adjoining properties.

Moreover, the alteration is obscured by its location underneath the ground floor landing of the existing external rear staircase. The location of the proposed addition can be seen in Figure 4 below. The addition will not impact the site’s Oxford Street frontage in any way.

![Figure 4: The site as viewed from its Victory Street frontage. (Source: City Plan Heritage)](image)

The alteration of rear access arrangements is part of a proposal to improve the overall appearance and functionality of the site. This proposal represents a beneficial planning outcome for the locality. The breach of the FSR development standard will have no detrimental impact on surrounding development in relation to loss of views, overshadowing, loss of privacy, visual impact, or aural privacy.
11. Is the variation in the public interest?

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The objectives of the standard are addressed below:

(b) for buildings in Zone B1 Neighbourhood Centre, Zone B2 Local Centre, and Zone B4 Mixed Use—to ensure that buildings are compatible with the desired future character of the area in terms of bulk and scale.

The proposed alteration of rear access arrangements at the lower ground floor does not alter the buildings compatibility with the desired future character of the area in terms of bulk and scale. The building is of a comparatively small scale when considered within the surrounding locality. Figures 5 and 6 show the building’s bulk and scale at both its the Oxford St and Victoria St frontages.

Figure 5 (left): The subject site viewed from Oxford Street and outlined in red. (Source: CPH)
Figure 6 (right) The subject site viewed from Victoria Street and outlined in red. (Source: CPH)

The alterations will not change the visual presentation of the building in any substantive manner. This is affirmed by the Heritage Impact Statement (HIS) that accompanied the DA at Appendix 5. The HIS states:

“The rear changes proposed to the Victoria Street elevation seek the removal of the existing ground floor doors and replacement with a new door and wall. The new door and wall will extend slightly further than the existing wall/doors, however, this is deemed acceptable from a heritage perspective as it enables a slight increase in floor space towards an elevation which does not retain any original elements. The adjacent properties extend at the rear right towards the boundary line and therefore will be not be impacted by this addition.

[...]

The proposed changes to the rear of the [lower] ground floor entrance include a slight extension in order to create better access and flow. This change will have no impact on the existing landscaping. The proposal is therefore compliant under this clause.”
In keeping with the heritage character of the locality and having no environmental impact on adjoining or surrounding properties the proposal is consistent with the desired future character of the area in terms of bulk and scale.

The objectives of the B4 Mixed Use zone are addressed below:

a) To provide a mixture of compatible land uses.

The proposed development provides a food and drink premises. This use is permissible within the zone, and is reflective of the desired future character as anticipated under the WLEP and WDCP.

The proposed exceedance of the FSR standard does not affect consistency with this objective.

b) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

The proposed development enhances the operation of a food and drink premises in an area that has good access to public transport, with Oxford Street benefitting from numerous and frequent bus routes providing services between Sydney CBD and the Eastern Suburbs.

The proposed exceedance of the FSR standard does not affect consistency with this objective.

c) To provide active ground floor uses to create vibrant centres.

The enhancement of the site’s operation as a food and drink premises provides street level activation to Oxford Street. The upgrade of the site’s Oxford Street facade proposed as part of this application will further improve ground floor activation along Oxford Street and contribute positively to the vibrancy of the centre.

The proposed exceedance of the FSR standard does not affect consistency with this objective.

d) To provide for development of a scale and type that is compatible with the amenity of the surrounding residential area.

The proposed development enhances the operation of a food and drink premises that is of a scale and type that is compatible with the amenity of the surrounding residential area of Paddington.

The proposed exceedance of the FSR standard does not affect consistency with this objective.

e) To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.

The proposed development enhances the operation of a food and drink premises within an existing building. The proposal is a suitable development option that maintains the desired character of the locality and enhances the streetscape presentation of the site, with minimal alterations to the external facade of the building. The 3m2 increase in GFA does not impact upon the site’s existing consistency with the desired future character of the neighbourhood.
The proposed exceedance of the FSR standard does not affect consistency with this objective.

The objectives of the zone, as demonstrated above, as well as the objectives for the standard have been satisfied. Therefore, the variation to the FSR standard is in the public interest.

12. Matters of state or regional significance (cl. 4.6(5)(a))

We have not identified any outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

13. The public benefit of maintaining the standard (cl. 4.6(5)(b))

Pursuant to case law of Ex Gratia PIL v Dungog Council (NSWLEC 148), the question that needs to be answered is “whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development”.

There is no public benefit in maintaining strict compliance with the development standard given that there are no impacts that will result from the breach of the FSR standard in a location that is not visible and given the breach relates to an existing building.

14. Is the variation well founded?

This Clause 4.6 variation request is well founded as it demonstrates, as required by Clause 4.6 of the WLEP 2014, that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development.
- There are sufficient environmental planning grounds to justify the contravention;
- The development meets the objectives of the development standard and the objectives of the B4 Mixed Use zone, notwithstanding the variation;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard; and
- The contravention does not raise any matter of State or Regional Significance.

The variation is therefore considered appropriate in the circumstances of the case.
Appendix 1

Survey Plan – Prepared by True North Surveyors
Appendix 2

Mark up of ACME & Co’s DA Lower Ground Floor Plan showing the additional GFA proposed
Item No: D6  Delegated to Committee
Subject: REGISTER OF CURRENT LAND AND ENVIRONMENT COURT MATTERS AND REGISTER FOR COURT PROCEEDINGS FOR BUILDING CONTROL, ENVIRONMENTAL CONTROL AND HEALTH CONTROL
Author: Grace Hawley, PA to Manager, Development Control
Approvers: Nick Economou, Manager - Development Control
Tim Tuxford, Manager - Compliance
File No: 16/16803
Reason for Report: Update DCC on all Legal Matters

Recommendation:

A. THAT the attached register of current Land and Environment Court Matters for Development Applications be received and noted.

B. THAT the attached register for Court Proceedings for Building Control, Environmental Control and Health Control be received and noted.

Council at its meeting of 17 August 1994 resolved in the following terms:

THAT the register of current Land and Environment Court Matters for Development Applications presented in the Development Applications Summary be transferred to the Development Control Committee to be considered at each meeting.

Further, the Development Control Committee at its meeting of 29 March 2010 resolved in the following terms:

THAT a ‘Register of Court Proceedings for Building Control, Environmental Control and Health Control’ be presented to the Development Control Committee at least once a month to highlight the prosecution activities being undertaken by Council’s Compliance section.

Please find attached copies of the current registers.

Annexures

1. Legal Register
<table>
<thead>
<tr>
<th>Applicant</th>
<th>Respondent</th>
<th>File Ref.</th>
<th>Legal Rep</th>
<th>Address</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rekolet Property Pty Ltd</td>
<td>Woollahra Municipal Council</td>
<td>DA27/2015/1</td>
<td>Lindsay Taylor</td>
<td>2 Greens Rd, Woollahra</td>
<td>Judgement Finalised on 24 November 2015. The appeal is laid for a preliminary hearing on 21 March 2016. The appeal is heard by the Appeal Panel on 21 December 2016. The judgment was handed down on 24 November 2015. The appeal was dismissed.</td>
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<tr>
<td>756 Goulburn St, Potts Point</td>
<td>Woollahra Municipal Council</td>
<td>DA07/2015/1</td>
<td>Home Wilkinson</td>
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<td>Awaiting 534 Conference</td>
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<td>Andrew Graham Mackie v Woollahra Municipal Council</td>
<td>DA498/2014/3</td>
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<td>17 &amp; 19 Small St, WOOLLAHRA</td>
<td>Simon Taylor</td>
<td>This is an appeal against the refusal of a s.96 application for the deletion of Condition C1 in its entirety and the reinstatement of the attic level. First directions hearing to be held on 27 January 2016. The matter has been adjourned to 10 February 2016. This is an appeal against the Conditions of Consent of an application for the demolition of the dwellings at 17 and 19 Small Street Woollahra and the construction of a new part three, part four storey dwelling house including basement level car parking, new swimming pool, landscaping, siteworks and consolidation of the allotments. First directions hearing to be held on 27 January 2016. The matter has been adjourned to 10 February 2016.</td>
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<td>Simon Taylor</td>
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<td>Chacknell &amp; Loneran Architects Pty Ltd v Woollahra Municipal Council</td>
<td>DA171/2015/1</td>
<td>Wildair Webb, Staunton Beattie &amp; Partners</td>
<td>6-10 Cecil St, PADDINGTON</td>
<td>George Fodis</td>
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<td>Teda Bayside Pty Ltd v Woollahra Municipal Council</td>
<td>DA546/2014/1</td>
<td>Home Wilkinson, Lowry</td>
<td>4-8 Patterson St, DOUBLE BAY</td>
<td>Simon Taylor</td>
<td>This is an appeal against the refusal of an application for the demolition of 3 existing dwellings and structures over 3 sites and the construction of a new 4 storey residential flat building for 28 units and basement car parking for 18 vehicles; landscaping and siteworks; consolidations of the allotments and strata subdivision. First directions hearing to be held on 21 January 2016. The appeal is listed for a preliminary s.34 conference on 29 February 2016. The Respondent to file and serve its Statement of Facts and</td>
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<td>Purse Pty Ltd v Woollahra Municipal Council</td>
<td>DA387/2012/2</td>
<td>Lindsay Taylor Lawyers</td>
<td>28 Bay St DOUBLE BAY David Waghorn</td>
<td></td>
<td>This is an appeal against the conditions of consent of a s36 application for the extension of the approved hours of footsteps, noise and traffic from 8am until 10pm during the week and 10am until 10:45pm (Sun) for a 1 year trial period. First directions hearing to be held on 12 May 2015. Section 34 conference set down for 25 June 2015. Section 34 conference adjourned for further acoustic testing and noise mitigation measures. The matter has been adjourned. After agreement between the parties.</td>
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<tr>
<td>Stand Over Catiover-Mention</td>
<td>DA77/2015/1</td>
<td>Norton Rose Lawyers</td>
<td>635 New South Head Rd ROSE BAY</td>
<td>Eleanor Smith</td>
<td>This is an appeal against the refusal of an application for the demolition of existing dwellings and erection of residential flat building comprising 5 apartments and basement car parking. First directions hearing to be held on 15 July 2015. This matter is listed for a s34 conciliation conference on 17 September 2015, commencing on-site at 9:30am and then returning to Court. Deferred to allow for the applicant to submit amended plans. Directions hearing to be held on 29 October 2015. The matter has been.</td>
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<td>Class 4 - Orders &amp; Civil Enforcement</td>
<td>Awaiting Catiover-Mention</td>
<td>DA37/2015/1</td>
<td>Lindsay Taylor Lawyers</td>
<td>22 New South Head Rd George Fots</td>
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<td>Discontinuance</td>
<td>Concerned Scots Neighbours Inc v First Respondent - Simon Fraser (As Chairman of the Council of The Scots College), Second Respondent - Dr Ian Lambert (As Principal of The Scots College), Third Respondent - The Presbyterian Church (New South Wales), Property Trust, Fourth Respondent</td>
<td>DA354/2005 &amp; DA525/2004</td>
<td>Lindsay Taylor Lawyers</td>
<td>29-53 Victoria Rd BELLEVUE HILL</td>
<td>David Booth</td>
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<td>CSKS Holdings Pty Ltd v Woollahra Municipal Council</td>
<td>DA 2013/0094</td>
<td>Lindsay Taylor Lawyers</td>
<td>2-4 Quarry St PADDINGTON</td>
<td>Adrian Gelderdale</td>
<td>This is a Class 4 Summons which orders the Respondent within 14 days to determine a development application. This summons is listed for 22 July 2014. The matter has been adjourned for 1 week. A directions hearing has been scheduled on 1 August 2014. This matter will more than likely be adjourned at this directions hearing until 22 August 2014 as agreed by Tony Sattler to Stuart Smilton to allow DCC to determine the matter on 18 August 2014. Formal orders as follows: a. Amended</td>
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</table>
Woollahra Municipal Council Legal Matter
746 OSH Pty Ltd v Woollahra Municipal Council
746 New South Head Rd, ROSE BAY

Jurisdiction: Land & Environment Court
Court Matter No.: 11140 of 2015
Penalty Infringement Number:
Type of Matter: Class 1 - Appealed Deemed Refusal
Council File Reference: DA447/2015/1
Status: Awaiting s34 Conference
F1 Account Number: 141.3620.A096

Precis

This is an appeal against the refusal of an application for the demolition of an existing residential flat building and ancillary structures, the construction of a new residential flat building, garaging and flood wall, and strata subdivision. First directions hearing to be held on 19 January 2016. Statement of Facts and Contentions to be filed and served by 1 February 2016. The matter is listed for a s.34 conference on 11 February 2016.

Parties to Proceeding
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
Woollahra Municipal Council Legal Matter
Prudhoe Limited v Woollahra Municipal Council
147 Darling Point Rd, DARLING POINT

Jurisdiction: Land & Environment Court
Court Matter No.: 11229 of 2015
Penalty Infringement
Number: Class 1 - Appealed Deemed Refusal
Type of Matter: Awaiting s34 Conference
Council File Reference: DA272/2015/1
Status: Costs Centre-3620-Project Number
F1 Account Number:

Precis

This is an appeal against the deemed refusal of an application for alterations and additions to existing building including new garaging to Darling Point Road; new attic level with dormer windows and new re-pitched roof and the strata sub-division of the building. First directions hearing to be held on 21 January 2016. The Respondent to file and serve a Statement of Facts and Contentions by 25 February 2016. The appeal is listed for a preliminary s.34 conference on 22 March 2016. The proceedings are listed for a second directions hearing on 31 March 2016.

Parties to Proceeding
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
Woollahra Municipal Council Legal Matter
Hestian Pty Ltd v Woollahra Municipal Council
2 Cascade St, PADDINGTON

Jurisdiction: Land & Environment Court
Court Matter No.: 10846 of 2015
Penalty Infringement Number:
Type of Matter: Class 1 - Appealed Deemed Refusal
Council File Reference: DA-447/2014/1
Status: Judgement Finalised
F1 Account Number: 141.3520.A095

Precis

This is an appeal against the deemed refusal of an application for the change of use of the first floor from residential to a commercial office; alterations and additions to the existing building including a new two storey addition with link structure to the rear of the site and new fencing. First directions hearing to be held on 21 October 2015. The appeal is listed for a s34 conference on 26 November 2015. Council to file and serve Statement of Facts and Contentions by 4 November 2015. The proceedings are listed for a second directions hearing on 10 December 2015. Entered into a s.34 agreement on 10 December 2015.

Parties to Proceeding
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
Woollahra Municipal Council Legal Matter
Andrew Graham Mackie v Woollahra Municipal Council
17 &19 Small St, WOOLLAHRA

Jurisdiction: Land & Environment Court
Court Matter No.: 11148 of 2015
Penalty Infringement Number:
Type of Matter: Class 1 - Appealed Determination
Council File Reference: DA/498/2014/1
Status: Awaiting Call-over-Mention
F1 Account Number: 141.3620.A097

Precis

This is an appeal against the Conditions of Consent of an application for the demolition of the dwellings at 17 and 19 Small Street Woollahra and the construction of a new part three, part four storey dwelling-house including basement level car parking, new swimming pool, landscaping, siteworks and consolidation of the allotments. First directions hearing to be held on 27 January 2016. The matter has been adjourned to 10 February 2016.

Parties to Proceeding
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
Woollahra Municipal Council Legal Matter
Cracknell & Lonergan Architects Pty Ltd v Woollahra Municipal Council
6-10 Cecil St Paddington, PADDINGTON

Jurisdiction: Land & Environment Court
Court Matter No.: 11163 of 2015
Penalty Infringement Number:
Type of Matter: Class 1 - Appealed Determination
Council File Reference: DA171/2015/1
Status: Awaiting Callover-Mention
F1 Account Number: 141.3620.A098

Precis
This is an appeal against the refusal of an application for the alterations and additions to the existing two (2) storey warehouse building and its adaptive re-use as a four (4) storey boarding house comprising twenty seven (27) self-contained rooms including a caretakers room, ground floor parking comprising of six (6) car parking spaces and one (1) motorbike space accessed from Cedl Lane and associated landscaping. First directions hearing to be held on 28 January 2016. In addition a Notice of Motion has been lodged with a returnable date of 17 December 2015. The matter has been set down for a s34 conference on 1 March 2016 commencing onsite at 9:30am. The statement of facts and contentions is due to be filed and served Thursday, 4 February 2016.

Parties to Proceeding
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
Woollahra Municipal Council Legal Matter
Teda Bayside Pty Ltd v Woollahra Municipal Council
4-8 Patterson St, DOUBLE BAY

Jurisdiction: Land & Environment Court
Court Matter No.: 11223 of 2015
Penalty Infringement Number: Class 1 - Appealed Determination
Type of Matter: DA546/2014/1
Council File Reference: Awaiting s34 Conference
Status: Costs Centre-3620-Project Number
F1 Account Number:

Precis

This is an appeal against the refusal of an application for the demolition of 3 existing dwellings and structures over 3 sites and the construction of a new 4 storey residential flat building for 28 units and basement car parking for 18 vehicles; landscaping and siteworks; consolidations of the allotments and strata subdivision. First directions hearing to be held on 21 January 2016. The appeal is listed for a preliminary s.34 conference on 29 February 2016. The Respondent to file and serve its Statement of Facts and Contentions by 29 January 2016. The proceedings are listed for a second directions hearing on 8 March 2016.

Parties to Proceeding
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
Woollahra Municipal Council Legal Matter
Puruse Pty Ltd v Woollahra Municipal Council
28 Bay St, DOUBLE BAY

Jurisdiction: Land & Environment Court
Court Matter No.: 10324 of 2015
Penalty Infringement Number:
Type of Matter: Class 1 - Appealed Determination
Council File Reference: DA387/2012/2
Status: Judgement Finalised - Awaiting Case Outcome Report
F1 Account Number: 141.3620.A058

Precis

This is an appeal against the conditions of consent of a s96 application for the extension of the approved hours of footpath seating to 10am until 11:45pm (Mon-Sat) and 10am until 10:45pm (Sun) for a 1 year trial period. First directions hearing to be held on 13 May 2015. Section 34 conference set down for 25 June 2015. Section 34 Conference adjourned for further acoustic testing and noise mitigation measures. The matter has been adjourned. After agreement between the parties Commissioner Dixon upheld the appeal, subject to agreed conditions on 27 January 2016.

Parties to Proceeding
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
Woollahra Municipal Council Legal Matter
Jewel Rose Bay Developments Pty Ltd v Woollahra Municipal Council
635 New South Head Rd, ROSE BAY

Jurisdiction: Land & Environment Court
Court Matter No.: 10523 of 2015
Penalty Infringement Number: 
Type of Matter: Class 1 - Appealed Determination
Council File Reference: DA77/2015/1
Status: Stood Over Callover-Mention
F1 Account Number: 141.3620.A070

Precis
This is an appeal against the refusal of an application for the demolition of existing dwelling and erection of residential flat building comprising 5 apartments and basement car parking. First directions hearing to be held on 15 July 2015. This matter is listed for a s34 conciliation conference on 17 September 2015, commencing on-site at 9.30am and then returning to Court. Deferred to allow for the applicant to submit amended plans. Directions hearing to be held on 29 October 2015. The matter has been standover to 13 November 2015. The matter has been listed for a telephone directions hearing on 18 March 2016.

Parties to Proceeding
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
Woollahra Municipal Council Legal Matter
22 New South Head Rd, VAUCLUSE

Jurisdiction: Land & Environment Court
Court Matter No.: 41024 of 2015
Penalty Infringement Number: 
Type of Matter: Class 4 - Orders & Civil Enforcement
Council File Reference: DA37/2015/1
Status: Awaiting Callover-Mention
F1 Account Number: 141.3520.A093

Precis

Class 4 Proceedings against the First and Second respondents. The applicant seeks the following relief; a declaration that development consent granted by the Second Respondent to the First Respondent on 17 August 2015 is void and of no effect; an order that the First Respondent be permanently restrained from acting upon the Consent; an order that the Respondents pay the Applicant's costs of these proceedings; such further or other relief or order the Court considers appropriate. First directions hearing to be held on 11 December 2015. Matter adjourned to 12 February 2016 to allow s82A application to be determined.

Parties to Proceeding
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
Woollahra Municipal Council Legal Matter
Concerned Scots Neighbours Inc v First Respondent - Simon Fraser (As Chairman of the Council of The Scots College), Second Respondent - Dr Ian Lambert (As Principal of The Scots College), Third Respondent - The Presbyterian Church (New South Wales) Property Trust, Fourth Respondent - Woollahra Municipal Council
29-53 Victoria Rd, BELLEVUE HILL

Jurisdiction: Land & Environment Court
Court Matter No.: 40902 of 2013
Penalty Infringement Number:
Type of Matter: Class 4 - Orders & Civil Enforcement
Status: Discontinuance
F1 Account Number: 151.3520.0975 (P/O 97857)

Precis
The applicant is seeking a declaration from the Court relating to student numbers at The Scots College. Matter stood over pending Class 1 Appeal. Following a request by Scots College, made with the consent of CSN, the Court has now ordered that the Proceedings are adjourned to 28 November 2014. The proceedings are further adjourned pending an outcome of the s96 Class 1 appeals. The matter has been stoodover until 24 July 2015. Matter adjourned to 14 August 2015. The matter has been adjourned to 28 August 2015. The matter has been further adjourned to 23 October 2015 at which time a timetable is to be set for further preparation of the case. Proceedings to go to a further directions hearing on 5 February 2016. The appeal has been discontinued.

Parties to Proceeding
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
Woollahra Municipal Council
Development Control Committee Agenda 15 February 2016

Annexure 1  Legal Register  Page 306
<table>
<thead>
<tr>
<th>Applicant v Respondent</th>
<th>File Ref.</th>
<th>Legal Rep</th>
<th>Address</th>
<th>Officer</th>
<th>Comment</th>
</tr>
</thead>
</table>
Woollahra Municipal Council Legal Matter
Woollahra Municipal Council v A F Edwards
19 Alton St, WOOLAHRA

Jurisdiction: Land & Environment Court
Court Matter No.: Class 4 - Orders & Civil Enforcement
Penalty Infringement Number: Order 126/2014
Type of Matter: Awaiting Callover-Mention
Council File Reference: 151-3620-A065

Precis

Class 4 action to enforce the requirements of Council's Order 126/2014 to demolish the unauthorised third storey to the dwelling. On 5 June 2015 Development Application DA298/2015 was submitted to Council for assessment of the unauthorised works. Proceedings deferred pending determination of DA298/2015. DA 298/2015 refused on 24 September 2015. 23 November 2015 application lodged with Council for a Section 82A review of DA298/2015 refusal. Matter to be reviewed pending outcome of Section 82A review application.

Parties to Proceeding
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
Political Donations – matters to be considered by Councillors at Meetings

**Matter before Committee or Council Meeting**

- **Did the applicant, owner (if not the applicant) or someone close to the applicant make a donation in excess of $1,000 that directly benefited your election campaign?**
  - (Code of Conduct Cl 4.21)
  - **Yes**
    - **Action**
      - Declare a significant non-pecuniary conflict of interest, absent yourself from the meeting and take no further part in the debate or vote on the matter
        - (Code of Conduct Cl 4.16(b))
    - **No**
      - **Action**
        - Consider appropriate action required.

- **Did the applicant or someone close to the applicant make a donation less than $1,000 that directly benefited your election campaign?**
  - (Code of Conduct Cl 4.2)
  - **Yes**
    - **Action**
      - Declare a significant non-pecuniary conflict of interest, absent yourself from the meeting and take no further part in the debate or vote on the matter
        - (Code of Conduct Cl 4.16(b))
    - **No**
      - **Action**
        - Consider appropriate action required.

- **Do you believe the political contribution creates a significant non-pecuniary conflict of interest for you?**
  - (Code of Conduct Cl 4.23)
  - **Yes**
    - **Action**
      - Declare a significant non-pecuniary conflict of interest, absent yourself from the meeting and take no further part in the debate or vote on the matter
        - (Code of Conduct Cl 4.16(b))
  - **No**

**Staff to record decision process (motions/amendments) and Division of votes for the determinative resolution or recommendation in the meeting minutes.**

- **Is the matter before the meeting a Planning Matter?**
  - **No**
    - **Action**
      - Participate in debate and vote on the matter
  - **Yes**
    - **Action**
      - Participate in debate and vote on the matter