Agenda: Development Control Committee

Date: Monday 17 May 2010

Time: 5.30 & 8.00 pm

Session: One & Two

Item: D1 to D12
Outline of Meeting Protocol & Procedure:

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

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

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

Delegated Authority (“D” Items)

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

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

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

Committee Membership: 7 Councillors

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

10 May 2010

To:    His Worship The Mayor, Councillor Andrew Petrie ex-officio
Councillors  Isabelle Shapiro    (Chair)
                Lucienne Edelman    (Deputy)
                Nicola Grieve
                Chris Howe
                Susan Wynne
                Malcolm Young
                Toni Zeltzer

Dear Councillors

Development Control Committee Meeting – 17 May 2010

In accordance with the provisions of the Local Government Act 1993, I request your attendance at a Meeting of the Council’s Development Control Committee to be held in the Committee Room, ground floor level, 536 New South Head, Double Bay, on Monday 17 May 2010 at 5.30pm.

Gary James
General Manager
Additional Information Relating to Committee Matters

Site Inspection

Other Matters
### Meeting Agenda

**Session One – Commencing 5.30pm**

**Part One of Four Parts**

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**Items to be Decided by this Committee using its Delegated Authority**

**D1** Confirmation of Minutes of Meeting held on 3 May 2010  

**Site Inspection Items**

**D2** DA624/2009 – 73 Wolseley Road, Point Piper – Demolish existing building, construct new dwelling house, swimming pools, basement level carparking, landscaping & siteworks – 30/11/2009  

*See Recommendation Page 3*
### Meeting Agenda

**Session One – Commencing 5.30pm**

**Part Two of Four Parts**

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<td>DA301/2009 Part 2 – 5 Edward Street, Woollahra – Section 96 Application - Proposed modification of Condition No. C.1 including a carport to the rear of the site – 8/2/2010</td>
<td>219-238</td>
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<td>*See Recommendation Page 232</td>
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<td></td>
<td>*See Recommendation Page 257</td>
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<td></td>
<td>*See Recommendation Page 283</td>
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### Meeting Agenda
**Session Two - Commencing at 8.00pm**
**Part Three of Four Parts**

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<tr>
<th>Item</th>
<th>Subject</th>
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<tbody>
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<td>D7</td>
<td>DA183/2006 Part 3 – 20 Glendon Road, Double Bay – Section 96 Application – Proposed modification to the hardstand including the construction of a double carport – 20/10/2009  *See Recommendation Page 326</td>
<td>315-331</td>
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<td>D11</td>
<td>Register of Current Land and Environment Court Matters and Register of Court Proceedings for Building Control, Environmental Control &amp; Health Control *See Recommendation Page 442</td>
<td>442-447</td>
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<td>D12</td>
<td>Register of SEPP 1 Objections *See Recommendation Page 448</td>
<td>448-449</td>
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</table>
Item No: D1  Delegated to Committee
Subject: Confirmation of Minutes of Meeting held on 3 May 2010
Author: Les Windle, Manager - Governance
File No: See Council Minutes
Reason for Report: The Minutes of the Meeting of Monday 3 May 2010 were previously circulated. In accordance with the guidelines for Committees’ operations it is now necessary for those Minutes be formally taken as read and confirmed.

Recommendation:

That the Minutes of the Development Control Committee Meeting of 3 May 2010 be taken as read and confirmed.

Les Windle
Manager - Governance
DEVELOPMENT CONTROL COMMITTEE SITE INSPECTION REPORT

ITEM No.  D2
FILE No.  DA 624/2009
ADDRESS:  73 Wolseley Road POINT PIPER 2027
PROPOSAL:  Demolish existing building, construct new dwelling house, swimming pools, basement level carparking, landscaping and siteworks
TYPE OF CONSENT:  Local
APPLICANT:  Gergeley & Pinter Architects
OWNER:  Ms M Jiang & Mr W Zeng
DATE LODGED:  30/11/2009
AUTHOR:  Mr D Lukas

Site Inspection

A site inspection in relation to this Development Application was conducted on Wednesday 5 May 2010, with the following Councillors and staff present:

Present:  His Worship the Mayor, Councillor Andrew Petrie ex-officio
          Councillors  Lucienne Edelman
                      Nicola Grieve
                      Chris Howe
                      Isabelle Shapiro
                      Malcolm Young

Staff:  Nick Economou  (Acting Manager Development Control)
        Sue O’Connor  (Secretarial Support - Governance)
        David Waghorn  (Team Leader – Team Central)

Apologies:  Councillor Susan Wynne

The following people addressed the Councillors:

Peter Martin  31 Wentworth Street, Point Piper
Tony Robb of Urbis representing  Mr Leibowitz 69 Wolseley Road, Point Piper
Tony Robb of Urbis representing  77 Wolseley Road, Point Piper
George Karavanas  of GSA Planning representing the Applicant
Stephen Gergeley  of Gergeley & Pinter the Architect for the Applicant

Note:  Late correspondence was tabled by Stephen Leibowitz.

The Councillors at the site inspection submit the following recommendation for consideration by the Development Control Committee:
Recommendation:

THAT the Council, refuse Development Application No. 624/2009 to demolish the existing building and construct a new dwelling house, swimming pools, basement level car parking, landscaping and site works on land at 73 Wolseley Road, Point Piper, for the following reasons:

1. The development is inconsistent with O4.5.8 which states buildings are to maintain the evolution of residential building styles through the introduction of well designed contemporary buildings. In this regard, the development results in 12 non-compliances with Council controls due to the building not responding to the context and topography of the site, particularly the excavation required to lower the building by 1.5m to comply with Council's Height requirement.

2. The development does not comply with C 4.5.4 which states where the site width is equal to or exceeds 18m, development has a minimum side setback of 3m which is increased in a pro rata basis by 0.5m for each metre or part thereof that the building height exceeds 6m. As such, the building is required to be setback 3-4.5m from the northern boundary and 3-4.5m from the southern boundary. The building is setback 1.5-4.7m from the northern boundary resulting in non-compliances on the ground and second floor levels and 1.5-4.5m from the southern boundary, resulting in non-compliances on the ground, first and second floor levels. The non-compliances will result in excessive bulk and scale and sense of enclosure when viewed from the street and adjoining properties.

3. The development does not comply with C4.5.7.2 which states that dwelling-houses are to be a maximum height of two storeys. In this regard, the three storey appearance of the dwelling-house from the street is considered to be excessive.

4. The development does not comply with C5.2.3 which states buildings are to have a minimum rear setback of 25% (12m) of the average site length. The proposed building will have a minimum setback of 6m from the rear boundary which contributes to the excessive bulk and sale of the building.

5. The development does not comply with C 5.2.4 which states ancillary development, to a maximum height of 3.6m and rear setback of 1.5m may be permitted in the area designated as the rear setback if all other policy controls are met. In this instance, the upper swimming pool for the ground floor level attains a height of 6m, while the decking structures around the pool/gym floor level do not comply with the side setback requirements of 3m. Furthermore, the proposed swimming pools and gym area are all located within the front setback area. The non-compliances will have an adverse impact on the streetscape and the amenity of adjoining properties.

6. The development does not comply with C5.2.8 which states building footprints for dwelling-houses shall comply with the sliding scale (or 30% - 334sqm). The proposed building attains a building footprint of 39% (434sqm) which is considered to be excessive and contributes to the bulk and scale of the building.
7. The development does not comply with C5.2.9 which states the floor space ratio for a
dwelling house shall comply with the sliding scale (or 0.55:1 - 612sqm). The proposed
building attains an FSR of 0.96:1 (1063sqm) which is considered to be excessive and
contributes to the bulk and scale of the building.

8. The development does not comply with C5.2.16 which states that excavation shall not
be less than 1.5m from a front, side or rear boundary. In this regard, the excavation for
the basement level garage is setback 0m from the front boundary resulting in a non-
compliance with the control. The non-compliance contributes to the excessive amount
of excavation for the site.

9. The development does not comply with C5.3.16 which states that the location of
swimming pools is to be at the rear of properties. The proposal involves the
construction of two swimming pools within the front setback area of the site. The
ground floor level swimming pool will have an adverse visual impact on the
streetscape.

10. The development does not comply with C5.11.5 which states that swimming pools are
not to be elevated more than 300mm above ground level and complement the character
of the harbour and foreshore. The proposed ground floor level (upper) swimming pool
will be elevated 2.5m above the pool/gym level and will have an adverse visual impact
on the harbour and streetscape.

11. The development does not comply with C5.4.10 which states that side and rear
boundary fences are no higher than 1.8m on level sites, or 1.8m as measured from the
low side where there is a difference in level either side of the boundary. The proposed
side boundary fences will have a height of 1.8-6m which will have an adverse impact
on the amenity and sense of enclosure of adjoining properties.

12. The development does not comply with C5.9.1 which states the area excavated for
underground carparking is limited to the building footprint of development. The
proposed excavation for the carparking will be forward of the building footprint
adjacent to the street which is a non-compliance with the control. The additional
excavation required for the carparking will contribute to the excessive amount of
excavation for the site.

13. The amount of excavation for the proposal amounts to 1900m3 (bulked) but when
unbulked up results in approximately 2800m3 which is excessive and not supported. In
this regard, the proposal is inconsistent with Clause 18 of WLEP 1995 and O5.2.4 &
C5.2.15 of WRDCP 2003. In this regard the depth and amount of excavation will
significantly alter the topography of the site. Furthermore, the required truck
movements due to the substantial amount of excavation will have an adverse impact on
the amenity of adjoining properties and the locality.

Annexure: Development Assessment Report submitted to the Development Control
Committee at its meeting on Monday 3 May 2010.
DEVELOPMENT CONTROL COMMITTEE
Meeting held on 17 May 2010

Item No. D3

MEMO TO ALL COUNCILLORS

File No. DA 338/2009/1

Address 23 Derby Street VAUCLUSE 2030

Proposal Demolition of the existing dwelling house; construction of a new dwelling house and swimming pool; landscaping and siteworks

Date lodged 09/07/2009

Author MR M BOLDUAN – ASSESSMENT OFFICER

Please note that Item D3 was called at the Application Assessment Panel meeting held on 4 May 2010 by Councillor Edelman.

Reason for calling item:

1. The proposal fails to comply with FSR controls,
2. The proposal fails to comply with side set back controls,
3. Therefore the proposal fails to comply with the maximum 2 storey control being 3 stories,
4. Excessive bulk and scale causing harbour view loss to neighbouring properties.

Referred to you for action.

Les Windle
Manager - Governance

Annexure: Application Assessment Report Dated: 4 May 2010
DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No. D3
FILE No. DA 338/2009

PROPERTY DETAILS
23 Derby Street, Vaucluse
Lot & DP No.: LOT: 6 DP: 17541
Side of Street: East
Site Area (m²): 594.4
Zoning: Residential 2(a)

PROPOSAL:
Demolition of the existing dwelling house; construction of a new
dwelling house and swimming pool; landscaping and siteworks

TYPE OF CONSENT:
Local Development

APPLICANT:
Ms T Esra

OWNER:
Ms T Esra

DATE LODGED:
09/07/2009

AUTHOR:
Mr M Bolduan

DOES THE APPLICATION INVOLVE A SEPP 1 OBJECTION? YES ☐ NO ☒

1. RECOMMENDATION PRECIS
The proposal is recommended for conditional approval.

2. PROPOSAL PRECIS
The proposal involves the demolition of the existing dwelling-house, the construction of a new part
two, part three storey dwelling-house and swimming pool, and landscaping works.
3. LOCALITY PLAN

4. DESCRIPTION OF PROPOSAL

The proposal involves:

- Demolition of the existing dwelling-house.
- Construction of a new part two, part three storey dwelling-house.
- Construction of a new swimming pool within the rear yard.
- Landscaping works.
5. SUMMARY

<table>
<thead>
<tr>
<th>Reasons for report</th>
<th>Issues</th>
<th>Submissions</th>
</tr>
</thead>
</table>
| The DA does not satisfy the criteria for determination under staff delegation | • Excavation setback non-compliances
   • Number of stories non-compliance
   • Setback non-compliances
   • Floor space ratio non-compliance
   • Floor to ceiling height non-compliance
   • Solar access non-compliance
   • Garage frontage width non-compliance | Eight objections were initially received. However, one objection was subsequently withdrawn. |

6. ESTIMATED COST OF WORKS

Council adopted (DCC 6 June 2005) administrative changes for determining DA fees based on the estimated cost of work. The stated cost of the proposed work of $1,000,000 is considered to be accurate.

7. DESCRIPTION OF SITE OF LOCALITY

<table>
<thead>
<tr>
<th>THE SITE AND LOCALITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical features</td>
</tr>
<tr>
<td>Topography</td>
</tr>
<tr>
<td>Existing buildings and structures</td>
</tr>
</tbody>
</table>
| Environment           | The site is located within the Vaucluse East Precinct (Section 4.14 of WRDCP 2003). The following properties adjoin the subject site:  
   • To the north is No 25 Derby Street which is occupied by a two storey dwelling-house with a swimming pool in the rear yard.  
   • To the south is No 21 Derby Street which is occupied by a two storey dwelling-house with a swimming pool in the rear yard.  
   • To the east is No 15 John Dykes Avenue which is occupied by a two storey dwelling-house. |
8. PROPERTY HISTORY

<table>
<thead>
<tr>
<th>PROPERTY HISTORY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current use</td>
</tr>
<tr>
<td>Previous relevant applications</td>
</tr>
<tr>
<td>Pre-DA</td>
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<tr>
<td>Requests for additional information</td>
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<tr>
<td>Amended plans/ Replacement Application</td>
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<tr>
<td>Land &amp; Environment Court appeal</td>
</tr>
</tbody>
</table>

9. REFERRALS

9.1 The following table contains particulars of internal referrals.

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<tr>
<th>INTERNAL REFERRALS</th>
</tr>
</thead>
<tbody>
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<td>Referral Officer</td>
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<tr>
<td>Development Engineer</td>
</tr>
<tr>
<td>Landscaping Officer</td>
</tr>
<tr>
<td>Heritage Officer</td>
</tr>
</tbody>
</table>

9.2 The following table contains particulars of external referrals.

None relevant.

ENVIRONMENTAL ASSESSMENT UNDER S.79C

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

10. RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION
10.1 SEPPs

State Environmental Planning Policy 55 – Remediation of Land

Under clause 7(1)(a) of State Environmental Planning Policy 55 – Remediation of Land, consideration has been given as to whether the land is contaminated. An assessment of the documentation provided by the applicant indicates the land does not require further consideration under clause 7(1)(b) and (c) of SEPP 55.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

SEPP (Building Sustainability Index: BASIX) 2004 applies to the proposed development. The development application was accompanied by BASIX Certificate 220362S committing to environmental sustainability measures.

These requirements are addressed by standard condition prescribed under clause 97A of the Environmental Planning and Assessment Regulation 2000. Refer to Conditions C3, H2 and I2.

10.2 REPs

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 in relation to this development application.

10.3 Section 94 contribution

The Woollahra Section 94A Contributions Plan 2005 is applicable. In accordance with Schedule 1, a 1% levy (of the total cost of works) applies. With a cost of works of $1,000,000 Condition C.2 requires the payment of $10,000 which will be used for a variety of works as outlined in Schedule 2 of the Section 94A Contributions Plan.

10.4 Other relevant legislation

None relevant.

11. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

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

Subject to Conditions, the proposal is permissible and is consistent with the aims and objectives of the WLEP and the relevant objectives of the Residential 2(a) zone.

11.2 Statutory compliance table

<table>
<thead>
<tr>
<th>Site Area: 594.4m²</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site Area and Lot Frontage</td>
<td>594.4m²</td>
<td>675m²</td>
<td>No*</td>
</tr>
<tr>
<td>Overall Height</td>
<td>9.5m</td>
<td>9.5m</td>
<td>Yes</td>
</tr>
</tbody>
</table>

* Existing non-compliance
11.3 Site area requirements

Clause 10 of WLEP 1995 reads as follows:

(1) A person shall not erect a dwelling-house on an allotment of land unless the land has a site area of not less than the minimum allotment size indicated for that land on the density map.

(2) Subclause (1) does not operate to prohibit the erection of a dwelling-house on an allotment of land which was in existence as a separate allotment on the day this plan was gazetted if a dwelling-house could have been lawfully erected on the allotment immediately before that day.

(3) A person shall not subdivide land for the purpose of erecting dwelling-houses unless each allotment on which it is intended to erect a dwelling-house created by the subdivision will have a site area of not less than the minimum allotment size indicated for that allotment on the density map.

The proposal is for a new dwelling-house which is sited on an existing allotment measuring 594.4m$^2$, which is less than the minimum allotment size of 675m$^2$ as prescribed by Clause 10(1).

Clause 10(2) WLEP 1995 applies to the land as the allotment of land was already in existence on the day on which the WLEP 1995 was gazetted (10 March 1995). The proposal therefore complies with Clause 10 WLEP 1995.

11.4 Height

The proposal involves a maximum height of 9.5m which complies with Council's height standard as prescribed by Clause 12 WLEP 1995.

The objectives of the height standard listed under Clause 12AA of WLEP 1995 are:

(a) To minimise impact of new development on existing views of Sydney Harbour, ridgelines, public and private open spaces and views of the Sydney City skyline,

(b) To provide compatibility with the adjoining residential neighbourhood,

(c) To safeguard visual privacy of interior and exterior living areas of neighbouring dwellings,

(d) To minimise detrimental impacts on existing sunlight access to interior living rooms and exterior open space areas and minimise overshadowing,

(e) To maintain the amenity of the public domain by preserving public views of the harbour and surrounding areas and the special qualities of the streetscapes.

The proposal complies with the above objectives for the following reasons:

- The proposal satisfies the performance criteria and objectives of Section 5.5 of WRDCP 2003 (Views Performance Criteria).
- While the proposed dwelling will be higher than adjacent dwellings, the height of the proposed dwelling is similar to that of existing dwellings on the eastern side of Derby Street, which have basement level parking with two floors above. The proposal is considered to comply with the desired future precinct character objectives of the Vaucluse East precinct and with the streetscape provisions of Section 5.1 of the WRDCP 2003.
- Subject to Condition C1(d) the proposal satisfies the performance criteria and objectives of Section 5.8 of WRDCP 2003 (Visual and Acoustic Privacy).
- The proposal satisfies the performance criteria and objectives of Section 5.2 of WRDCP 2003 (Building Size and Location) in relation to solar access for neighbouring properties.
11.7 Other special clauses/development standards

Clause 18 Excavation:

The provisions of Clause 18 require Council, when considering a development application involving excavation, to have regard to how that excavation may temporarily or permanently affect:

(a) The amenity of the neighbourhood by way of noise, vibration, dust or other similar circumstances related to the excavation process
(b) Public safety
(c) Vehicle and pedestrian movements
(d) The heritage significance of any heritage item that may be affected by the proposed excavation and its setting
(e) Natural landforms and vegetation and
(f) Natural water run-off patterns.

The extent of excavation associated with the proposal relates to:

- Bulk excavation for the basement to a maximum depth of 2.3m over an area of 113m$^2$.
- Bulk excavation for the driveway to a maximum depth of 1.3m over an area of 37m$^2$.
- Footings for the external stairs leading from the front door down to the entry gate and for the external stairs in the northern setback of the dwelling.
- Footings for the dwelling-house associated with the basement floor level and the ground floor level.
- Footings for the front wall and gate.
- Bulk excavation for the swimming pool to a maximum depth of 1.9m over an area of 24m$^2$.
- Bulk excavation of rocky outcrop for the level area surrounding the swimming pool to a depth of 1.4m over an area of approximately 8m$^2$.
- Footings for the decking in the rear yard.
- Footings for the masonry walls on the northern and southern sides of the rear yard.

C5.2.16 WRDCP 2003 requires that the outer edge of excavation, piling and all sub-surface walls shall not be less than 1.5m from a front, side or rear boundary.

The siting of the proposed excavation results in the following setback non-compliances:

- The excavation for the driveway will directly abut the western (front) boundary; a non-compliance of 1.5m.
- The excavation for the footings for stairs leading from the front door down to the entry gate will directly abut the western (front) boundary; a non-compliance of 1.5m.
- The excavation for the footings for stairs on the northern side of the dwelling will directly abut the northern boundary; a non-compliance of 1.5m.
- The excavation associated with the access walkway on the north-western side of the dwelling-house will extend to within 1.0m of the north-western side boundary; a non-compliance of 0.5m.
- The excavation for the swimming pool will extend to within 0.7m of the southern side boundary; a non-compliance of 0.8m.
- The excavation for the footings for the masonry walls on the northern and southern sides of the rear yard will directly abut the northern and southern side boundaries respectively; non-compliances of 1.5m each.
- The excavation for the footings for the front wall and gate will directly abut the western (front) boundary; a non-compliance of 1.5m.
Having regard to the above-mentioned heads of consideration, the following comments are made in relation to the impact of the proposed excavation upon the local environment:

(a) **the amenity of the neighbourhood by way of noise, vibration, dust or other similar circumstances related to the excavation process**

It is considered that subject to **Conditions B1, C9, C10, C11, C12, D1, D2, E1, E2, E7, E8, E11, E13 and E14**, requiring a construction certificate prior to any demolition, certification by a professional engineer of structural adequacy of existing support structures, professional engineering plans, professional geotechnical and hydrogeological design, certification and monitoring, compliance with the Building Code of Australia, dilapidation reports for neighbouring buildings, compliance with the Australian Standard for Demolition, compliance with professional excavation standards and limits on the times and duration of machine excavation, maintenance of environmental controls, support of adjoining land and buildings, compliance with a geotechnical/hydrogeological monitoring program, support of adjoining land and buildings, vibration monitoring and dust mitigation, and prohibiting the use of permanent ground anchors under Council land, the proposal satisfies the abovementioned objective.

(b) **public safety**

(c) **vehicle and pedestrian movements**

Issues relating to public safety and pedestrian movements during the excavation phase are inter-related and are addressed by **Condition D3, D4, E6** requiring site fencing, site signs and maintenance of vehicular and pedestrian safety and access.

(d) **the heritage significance of any heritage item that may be affected by the proposed excavation and its setting**

Any listed heritage items in the vicinity of the site are located beyond the zone of influence associated with the proposed excavation and will not be adversely affected in this instance.

(e) **natural landforms and vegetation**

Council’s Trees and Landscaping Officer has approved the proposal subject to **Conditions B2, B3, C8, E16, E17, E18 and I1** requiring establishment of tree protection zones, details of tree management, preservation of trees, replacement trees and maintenance of landscaping. It is therefore considered that, subject to **Conditions B2, B3, C8, E16, E17, E18 and I1**, the natural landforms and vegetation will be protected.

(f) **natural water run-off patterns**

Council's Development Engineers have assessed the proposal and consider the stormwater and runoff to be satisfactory, subject to **Conditions C1(a) and (b), C7, C14, C15, D5, E9, E15 and F1** requiring there to be a single discharge point from the subject site, the discharge pipe to connect directly to Council’s stormwater pit, submission and approval of a soil and water management plan, the stormwater to discharge to the existing stormwater drainage system, a stormwater management plan, connection to the existing system, installation and maintenance of erosion and sediment controls, disposal of site water during construction and commissioning and certification of systems and works.

Subject to the abovementioned **Conditions C1(a) and (b), C7, C14, D5, E9, E15 and F1**, the excavation associated with the proposal is considered to be satisfactory with regard to the provisions of Clause 18 of WLEP 1995.
Clause 19 HFSPA: The proposal is acceptable in terms of Clause 19(2).

Clause 25 Water, wastewater and stormwater:

Clause 25(1) and (2) of WLEP 1995 requires council to consider the provisions of adequate stormwater drainage and the provisions of adequate water and sewage services.

Council’s Technical Services officer has stated:

In general, there are no objections to Stormwater disposal concept plan prepared by Islecrest P/L, Dwg No. 200805, dated 18/10/2008. However, there is to be only a single point of stormwater discharge from the site (not the proposed two discharge points).

This concept plan is subject to the submission and approval of Stormwater Management Plan for the site prior to release of the Construction Certificate. Details are to be in accordance with Council’s Draft Stormwater Development Control Plan and Local Approvals Policy. This is to ensure that site stormwater is disposed in a controlled and sustainable manner - Conditions applied.

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.

Subject to Conditions C1(a) and (b), C7, C14, D5, E9, E15 and F1 the proposal is considered to be satisfactory with regard to the provisions of Clause 25 of WLEP 1995.

Clause 25D Acid Sulfate Soils:

The subject site is identified to be within a Class 5 Acid Sulfate Soil area within the Woollahra Council Acid Sulfate Soil Map. However, the subject works are not likely to lower the water table beyond 1m AHD below the existing ground level on any land within 500m of Class 1, 2, 3 or 4 land classification and therefore, there is no issue of acid sulfate affectation.

Clauses 26-33 Heritage and conservation area provisions:

The subject site is not a heritage item, located within a heritage conservation area or located in the vicinity of a heritage item.

Council’s Heritage Officer has assessed the proposal and advised as follows:

The property has little heritage value and therefore no objection is raised to the proposed demolition of the existing building.

Accordingly, the proposal is acceptable in terms of Clauses 26 to 33 of WLEP 1995.

12. DRAFT AMENDMENTS TO STATUTORY CONTROLS

None relevant.
### 13. DEVELOPMENT CONTROL PLANS

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

<table>
<thead>
<tr>
<th>Site Area: 594.4m²</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum Number of Storeys – Dwelling</td>
<td>2/3</td>
<td>2</td>
<td>No</td>
</tr>
<tr>
<td>Building Boundary Setbacks</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Front (west)</td>
<td>5.7m</td>
<td>5.7m</td>
<td>Yes</td>
</tr>
<tr>
<td>Rear (east)</td>
<td>11.3m</td>
<td>9.8m</td>
<td>Yes</td>
</tr>
<tr>
<td>Side (south)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basement</td>
<td>1.5m</td>
<td>1.5m</td>
<td>Yes</td>
</tr>
<tr>
<td>Ground Floor</td>
<td>1.5m-8.6m</td>
<td>1.5m-3.0m</td>
<td>No</td>
</tr>
<tr>
<td>First Floor</td>
<td>2.4m-5.1m</td>
<td>3.0m-4.1m</td>
<td>No</td>
</tr>
<tr>
<td>Side (north)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basement</td>
<td>1.6m</td>
<td>1.5m</td>
<td>Yes</td>
</tr>
<tr>
<td>Ground Floor</td>
<td>1.5m-4.6m</td>
<td>1.5m-3.1m</td>
<td>No</td>
</tr>
<tr>
<td>First Floor</td>
<td>2.8m-3.6m</td>
<td>1.8m-4.0m</td>
<td>No</td>
</tr>
<tr>
<td>Building Footprint</td>
<td>36% (215m²)</td>
<td>43% (255m²)</td>
<td>Yes</td>
</tr>
<tr>
<td>Floor Space Ratio</td>
<td>0.70:1 (420m²)</td>
<td>0.55:1 (326.9m²)</td>
<td>No</td>
</tr>
<tr>
<td>Floor to Ceiling Height – Habitable Rooms</td>
<td>2.5m</td>
<td>2.7m</td>
<td>No</td>
</tr>
<tr>
<td>Solar Access to Open Space of Adjacent Properties (Hrs on 21 June)</td>
<td>&gt;50% (or 35m²) for 2 hours</td>
<td>50% (or 35m²) for 2 hours</td>
<td>Yes</td>
</tr>
<tr>
<td>Solar Access to Nth Facing Living Areas of Adjacent Properties (Hrs on 21 June)</td>
<td>&lt;3.0 hours</td>
<td>3.0 hours</td>
<td>No</td>
</tr>
<tr>
<td>Excavation Piling and Subsurface Wall Setback</td>
<td>1.5m</td>
<td>1.5m</td>
<td>Yes</td>
</tr>
<tr>
<td>Deep Soil Landscaping – Dwelling</td>
<td>74% (280m²)</td>
<td>50% (189m²)</td>
<td>Yes</td>
</tr>
<tr>
<td>Deep Soil Landscaping – Front Setback</td>
<td>52% (64.6m²)</td>
<td>40% (49.2m²)</td>
<td>Yes</td>
</tr>
<tr>
<td>Private Open Space at Ground Level – Total</td>
<td>&gt;35m² Min dimension &gt;3m</td>
<td>35m² Min dimension 3m</td>
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</tr>
<tr>
<td>Private Open Space at Ground Level – Principal Area</td>
<td>&gt;16m² Min dimension &gt;4m</td>
<td>16m² Min dimension 4m</td>
<td>Yes</td>
</tr>
<tr>
<td>Location of Swimming Pool</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rear Setback</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Swimming Pool Excavation, Piling and Subsurface Wall Setback</td>
<td>0.8m</td>
<td>1.5m</td>
<td>No</td>
</tr>
<tr>
<td>Front Fence Height</td>
<td>1.2m</td>
<td>1.2m/1.5m where 50% transparent</td>
<td>Yes</td>
</tr>
<tr>
<td>Side and Rear Fence Height</td>
<td>1.8m</td>
<td>1.8m</td>
<td>Yes</td>
</tr>
<tr>
<td>Car Parking Excavation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Within Building Footprint</td>
<td></td>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>Location of Garages and Car Parking Structures</td>
<td>Behind Front Setback</td>
<td>Behind Front Setback</td>
<td>Yes</td>
</tr>
<tr>
<td>Garage Frontage Width</td>
<td>42.8% (7.0m)</td>
<td>40% (6.5m)</td>
<td>No</td>
</tr>
</tbody>
</table>
Site analysis performance criteria (Part 3)

Part 3 of WRDCP 2003 requires adequate site analysis documentation for development applications. The application is considered to be satisfactory in this regard.

C3.2.1 WRDCP 2003 requires development to fit into the surrounding environment and pattern of development by responding to the surrounding neighbourhood character and streetscape.

The locality is characterised by a mix of two and three storey dwelling houses of various architectural styles. The proposal is considered to be comparable with the architectural style, scale and form of surrounding development. Accordingly, the proposal is considered to be satisfactory in respect to the above-mentioned criteria.

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

The subject site is located in the Vaucluse East Precinct under Section 4.14 of WRDCP 2003. The desired future character objectives for this precinct include:

- Retaining the scenic qualities provide by the dramatic topography, natural vegetation and low scale built elements of the precinct;
- Reinforcing the precinct's landscape setting by minimising alterations to the landform and preserving the existing tree canopy;
- Maintaining mature street trees, grassed verges and garden plantings;
- Protecting important views from the public spaces of the precinct to the harbour, the city skyline and to the surrounding districts;
- Maintaining the evolution of low rise residential building styles through the introduction of good contemporary buildings.

The proposal is consistent with the above mentioned objectives for the following reasons:

- The proposal will maintain scenic qualities of the precinct by providing an appropriate replacement dwelling within a landscaped garden setting.
- The proposal will reinforce the precinct’s landscaping setting by providing sufficient deep soil landscaping.
- The proposal will maintain existing significant mature trees on the site.
- The proposal will not affect important views from the public spaces of the precinct to the harbour, the city skyline and to the surrounding districts.
- The proposal will maintain the evolution of low rise residential building styles.

The proposal involves the following non-compliances with the relevant performance criteria stipulated under Section 4.14 of the WRDCP 2003:

Building Height - Storeys

C4.14.7.3 WRDCP 2003 requires that development have a maximum height of two storeys.

The proposed basement will protrude above existing ground level by 0.4m to 2.0m and is deemed to be a separate storey, and the dwelling will therefore be part two/part three storey, which represents a breach of C4.14.7.3 WRDCP 2003.

The non-compliance with the above control is acceptable for the following reasons:
• The proposal complies with the height control in Clause 12 WLEP 1995.
• While the proposed dwelling will be higher than the adjoining dwellings, Derby Street is characterised by a mix of two and three storey dwellings. The proposed dwelling will have a satisfactory streetscape presentation and contextually fit well within the existing built form of Derby Street.
• The proposed building height and part two, part three storey design is consistent and compatible with that of other development in the locality.
• The proposed dwelling accords with Council’s view sharing criteria (see View performance criteria below).
• The proposed dwelling-house complies with the objectives of Council’s solar access controls (see Building size and location performance criteria below).
• Subject to Condition C1(d), the proposed dwelling-house will not adversely impact on the privacy of neighbouring dwellings (see Acoustic and Visual Privacy Performance Criteria below).

Roof Form

C4.14.7.7 WRDCP 2003 requires that roof forms are designed having consideration for neighbouring amenity, over-looking, streetscape suitability and to maintain views across the precinct.

The proposed irregularly pitched roof will attain a maximum RL of 63.76, while the underside ceiling of the first floor will attain an RL of 62.58. The proposed roof is therefore higher than could be the case if it were flat.

The proposed roof form is acceptable for the following reasons:

• The proposal complies with the height control criteria and objectives in the WLEP 1995.
• While the proposed dwelling will be higher than the adjacent dwellings, the proposed dwelling will have a satisfactory streetscape presentation and contextually fit well within the existing built form of Derby Street.
• The proposed dwelling accords with Council’s view sharing criteria (see View performance criteria below).
• The proposed dwelling complies with the objectives of Council’s solar access controls (see Building size and location performance criteria below).
• Subject to Condition C1(d), the proposed dwelling will not adversely impact on the privacy of neighbouring dwellings (see Acoustic and Visual Privacy Performance Criteria below).

Garage Width

C4.14.5 WRDCP 2003 requires that the garage width be no greater than 6.5m. The proposed garage width will be 7.0m; a non-compliance of 0.5m. It is therefore proposed to impose Condition C1(h) which requires that the garage width be no greater than 6.5m.

Building Articulation

C4.14.7.6 WRDCP 2003 requires that buildings are to have a maximum unarticulated length of 6.0m to the public street frontage. The proposed basement, including the garage, will present an unarticulated length (comprised of slatted timber) of 10.0m to the street; a non-compliance of 4.0m. Allowing for the garage width of 6.5m, it is proposed to impose Condition C1(i) which requires that the proposed basement, including the garage, present an unarticulated length (comprised of slatted timber) of 6.5m to the street; a non-compliance of 0.5m.
The proposed unarticulated length of the basement to the public street frontage is acceptable for the following reasons:

- The length of 6.5m is consistent with that of the garage.
- The non-compliance is minor.
- The proposed dwelling-house will have a satisfactory streetscape presentation and contextually fit well within the existing built form of Derby Street.

**Streetscape performance criteria (Part 5.1)**

The objectives of Council’s streetscape performance criteria require development to achieve a scale and character in keeping with the desired future character for the locality and development contributes to cohesive streetscapes and desirable pedestrian movements, a safe environment and recognises predominant streetscape qualities.

For the reasons advanced under *Desired Future Precinct Character Objectives and Performance Criteria* above, the proposal accords with the streetscape provisions of Part 5.1 WRDCP 2003.

While the proposed dwelling-house will be greater in terms of scale and bulk than the adjacent dwellings, it is considered that the proposed dwelling is satisfactory for the following reasons:

- The proposal complies with the height control in the WLEP 1995.
- The proposed dwelling-house will have a satisfactory streetscape presentation and contextually fit well within the existing built form of Derby Street.
- The proposed dwelling-house accords with Council’s view sharing criteria (see *View performance criteria* below).
- The proposed dwelling-house complies with the objectives of Council’s solar access controls (see *Building size and location performance criteria* below).
- Subject to *Conditions C1(d)*, the proposed dwelling-house will not adversely impact on the privacy of neighbouring dwellings (see *Acoustic and Visual Privacy Performance Criteria* below).

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

*Side Setbacks*

C5.2.5 WRDCP 2003 stipulates that at any point where the lot width exceeds 12m (as in this case), the side setback is 1.5m, increased on a pro rata basis by 0.5m for each metre or part thereof of the building height adjacent to the boundary exceeds 3m.

The proposed dwelling-house is required to have a minimum side boundary setback of 1.5m for the basement floor level, 1.8m to 3.1m for the ground floor and 1.8m to 4.1m for the first floor. As such, the proposal results in the following non-compliances:

- A maximum setback non-compliance of 1.5m to the southern elevation of the ground floor level for a length of 14.9m (front balcony, dining room and kitchen).
- A maximum setback non-compliance of 0.3m the northern elevation of the ground floor level for a length of 9.5m (family room, WC and entry foyer).
- A maximum setback non-compliance of 1.8m to the southern elevation of the first floor level for a length of 14.0m (ensuite for masterbedroom, middle bedroom, privacy screen for laundry and bathroom).
• A maximum setback non-compliance of 0.7m to the northern elevation of the first floor level for a length of 13.5m (bedroom, stairwell and study area).

The purposes of the side setback controls (as explained in the introduction to Section 5.2 of WRDCP 2003) are to:

• Protect the visual and aural privacy of residents in adjoining buildings.
• Provide side access to the rear of properties where rear lanes do not occur.
• Avoid buildings or parts of buildings encroaching on adjoining properties.
• Enable opportunities for screen planting.
• Protect significant vegetation.
• Avoid an unreasonable sense of enclosure.
• Safeguard privacy and minimise noise impacts for dwellings.

The above non-compliances will satisfy the above purposes for the following reasons:

• The proposed side setbacks are not uncharacteristic for the locality. The ground floor and first floor side setback of No 21 is approximately 1.1m and the ground floor and first floor side setback of No 25 is approximately 2.85m.
• Subject to Condition C1(d), the proposed dwelling-house will not adversely impact on the privacy of neighbouring dwellings (see Acoustic and Visual Privacy Performance Criteria below).
• Side access to the rear of the subject property will not be affected.
• The subject dwelling will not encroach upon adjoining properties.
• Opportunities for screen planting will exist.
• Significant vegetation will not be affected by the non-compliances.
• The non-compliances will not cause an unreasonable sense of enclosure.
• No views will be adversely affected by the non-compliances.

Floor Space Ratio

C5.2.9 WRDCP 2003 requires that the gross floor area be no greater than 326.9m² (a floor space ratio of 0.55:1). The proposed dwelling will have a gross floor area of 420m² (a floor space ratio of 0.70:1); a non-compliance of 93.1m².

The objectives of Section 5.2 of WRDCP 2003 are as follows:

• The preservation of established tree and vegetation networks and the promotion of new networks by ensuring sufficient areas for deep soil planting and sufficient setbacks between the rear of buildings.
• To ensure the size and location of buildings allow for the sharing of views and preserve privacy and sunlight access for neighbouring residents.
• To ensure the form and scale of development is not excessive and maintains the continuity of building forms and front setbacks in the street.
• To limit site excavation and minimise cut and fill to ensure that building form relates to the topography and to protect the amenity of adjoining properties both during and after construction.

The proposed floor space ratio of 0.70:1 is considered acceptable and will satisfy the above objectives for the following reasons:

• Established tree and vegetation networks will be preserved.
The proposal will comply with the deep soil landscape requirement.

The proposed dwelling-house accords with Council’s view sharing criteria (see View performance criteria below).

The proposed dwelling-house complies with the objectives of Council’s solar access controls (see Solar Access below).

Subject to Condition C1(d), the proposed dwelling-house will not adversely impact on the privacy of neighbouring dwellings (see Acoustic and Visual Privacy Performance Criteria below).

The proposal complies with Council’s height control criteria and objectives in the WLEP 1995.

The proposal complies with Council’s building footprint control in C5.2.8 WRDCP 2003.

The proposal complies with the objectives of Council’s side setback controls (see Side Setbacks above).

The proposal maintains the continuity of building forms and front setbacks in the street.

The proposed excavation is considered reasonable in the circumstances (see Clause 18 Excavation above).

**Solar Access**

C5.2.14 WRDCP 2003 requires that north-facing windows to habitable rooms of neighbouring dwellings do not have sunlight reduced to less than 3 hours between 9.00am and 3.00pm on 21 June.

Shadow diagrams submitted with the development application indicate that the westernmost upstairs bedroom window on the northern elevation of 21 Derby Street will receive one and a half hours of complete sunlight between 9.00am and 3.00pm on 21 June; a non-compliance of one and a half hours. It is noted that the owner of 21 Derby Street has not lodged any objection to the proposal.

Objective O5.2.2 WRDCP 2003 is to ensure that the size and location of buildings allow for the preservation of sunlight access for neighbouring residents. The above non-compliance is considered to satisfy Objective O5.2.2 WRDCP 2003 for the following reasons:

- The Land and Environment Court planning principle set out in the judgement of Parsonage v Ku-ring-gai Council [2004] NSWLEC states that “for a window, door or glass wall to be in sunlight, half of its area should be in sunlight.” All of the north-facing habitable room windows should therefore be in sunlight for a minimum of three hours.
- The proposal will cause overshadowing of the westernmost bedroom window on the northern elevation of the first floor of 21 Derby Street for four and a half hours on 21 June. For one and a half hours out of those four and a half hours, the overshadowing affects only very marginally more than 50% of the relevant window.
- The level of overshadowing is exacerbated by the non-compliant northern side setback of the neighbouring property (No 21 Derby Street).

**Pool Excavation**

This matter has been addressed in Clause 18 Excavation above.
Floor to ceiling height

C5.2.10 WRDCP 2003 requires that habitable rooms must achieve a minimum floor-to-ceiling height of 2.7m. The floor to ceiling height in the master bedroom (first floor) will be 2.5m; a non-compliance of 0.2m. The proposal is considered to facilitate a lower roof ridge line, which will provide measurable benefits for neighbouring amenity and the environmental quality of internal living spaces will not be adversely affected. The proposal therefore complies with C5.2.10 WRDCP 2003.

Open space and landscaping performance criteria (Part 5.3)

The proposal is considered to be satisfactory with regard to the relevant objectives and performance criteria stipulated under Section 5.3 of WRDCP 2003.

Fences and walls performance criteria (Part 5.4)

C5.4.10 WRDCP 2003 requires that side boundary fences are to have a maximum height of 1.8m. The proposal does not specify the height of the side fences on the northern and southern boundaries of the rear yard. It is therefore proposed to impose Condition C1(c) which requires that the side fences on the northern and southern boundaries of the rear yard are to have a maximum height of 1.8m.

Subject to Condition C1(c), the proposal is considered to be satisfactory with regard to the relevant objectives and performance criteria stipulated under Section 5.3 of WRDCP 2003.

Views performance criteria (Part 5.5)

C5.5.6 WRDCP 2003 requires building forms to enable a sharing of views with surrounding residences, particularly from habitable rooms of surrounding residences.

The neighbours at No’s 1, 5, 9, 11, 13, 15 and 17 John Dykes Avenue have lodged objections to the proposal on the basis that it will negatively impact upon their views:

The LEC in Tenacity Consulting Pty Ltd V Warringah Council has adopted a four step assessment view sharing. The steps are as follows:

1. The assessment of the views affected
2. Consideration from what part of the property views are obtained
3. The extent of the impact; and
4. The reasonableness of the proposal that is causing the impact

1. The assessment of the views affected

The Court said: "The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured."

The views which will be affected by the proposal are as follows:
a) No 1 John Dykes Avenue

District views to the north of the subject site.

b) No 5 John Dykes Avenue

District views to the north of the subject site.

c) No 9 John Dykes Avenue

District views and views of Sydney Harbour to the north-west of the subject site.

d) No 11 John Dykes Avenue

It is presumed that views are district views and views of Sydney Harbour to the north-west of the subject site. However, the objector has not provided access onto her property and it has not been possible to verify this.

e) No 13 John Dykes Avenue

District views and views of Sydney Harbour (including a small part of the coastline on the northern side of the Harbour) to the north-west of the subject site.

f) No 15 John Dykes Avenue

District views to the west of the subject site. A large tree currently blocks the view toward the subject site (and the Harbour and city skyline beyond) from the objector’s ground floor level. The objector’s first floor looks down on the subject site, and the angle of sight is such that the proposal will not block any water views.

g) No 17 John Dykes Avenue

District views to the south-west of the subject site. The proposal will not affect views of Sydney Harbour, the city skyline or iconic views.

2. Consideration from what part of the property views are obtained

The Court said: "The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic."

a) No 1 John Dykes Avenue

The district views are obtained across the northern side boundary from the northern side of the rear balcony (sitting and standing).

b) No 5 John Dykes Avenue

The district views are obtained across the northern side boundary from the northern side of the rear balcony and the rear living area (sitting and standing).
c) *No 9 John Dykes Avenue*

District and water views are obtained across the northern side boundary from the rear balcony and lounge (sitting and standing) on the ground floor. District views are obtained from the rear balcony on the first floor (sitting and standing).

d) *No 11 John Dykes Avenue*

The objector has not provided access onto her property and it has not been possible to ascertain this information.

e) *No 13 John Dykes Avenue*

Water and district views are obtained across the western rear boundary and the northern side boundary from the rear balcony and lounge on the ground floor (sitting and standing). District views are obtained from a bedroom on the first floor (standing).

f) *No 15 John Dykes Avenue*

No views are obtained from the ground floor, due to the presence of a tree situated between the objector’s property and the subject site. District views are obtained across the western rear boundary from a bedroom on the first floor (standing).

g) *No 17 John Dykes Avenue*

District views are obtained across the western rear boundary and the southern side boundary from the rear balcony and lounge on the ground floor (sitting and standing), and from the first floor (standing).

3. **The extent of the impact**

The Court said: "The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating."

a) *No 1 John Dykes Avenue*

The views affected are district views to the north of the subject site. No water views are affected. Furthermore, the view of the subject site from this property is highly oblique and difficult to distinguish from that of surrounding properties. The view loss is assessed to be negligible.

The following photograph is taken from the northern side of the rear balcony.
b)  *No 5 John Dykes Avenue*

The views affected are district views to the north of the subject site. No water views are affected. Furthermore, the view of the subject site from this property is oblique and difficult to distinguish from that of surrounding properties. The view loss is assessed to be negligible.

The following photograph is taken from the northern side of the rear balcony.
c) **No 9 John Dykes Avenue**

The views affected are predominantly district views to the north-west of the subject site, although part of Sydney Harbour is also obscured. The proposal will not affect views of the coastline on the northern side of the Harbour from a standing position on the ground floor. As the objectors will continue to enjoy views of the Sydney Harbour Bridge, the North Sydney skyline and expansive views of the Harbour, the view loss is assessed to be minor.

The following photograph is taken from a standing position in the ground floor living area of the objector’s dwelling.
d)  *No 11 John Dykes Avenue*

The objector has not provided access onto her property and it has not been possible to ascertain this information.

e)  *No 13 John Dykes Avenue*

The views affected are of water and district views to the north-west of the subject site. The proposal will disrupt the view of the northern shore of the Harbour from a sitting position although not from a standing position. As the objectors will continue to enjoy views of the Sydney Opera House, the Sydney Harbour Bridge, the City and North Sydney Skylines and expansive views of the Harbour, the view loss is assessed to be moderate.

The following photograph is taken from a standing position on the objector’s ground floor rear balcony.
f) No 15 John Dykes Avenue

The views affected are district views to the west of the subject site. No water views will be affected. As the owner of No 15 John Dykes Avenue will not suffer any view loss from the ground floor and will continue to enjoy views from the first floor of the Sydney Opera House, the Sydney Harbour Bridge, the City and North Sydney skylines and expansive views of the Harbour, the view loss is assessed to be negligible.

The following photograph is from a standing position on the first floor of the objector’s dwelling.
g) No 17 John Dykes Avenue

The views affected are district views to the west of the subject site. While the objectors will continue to enjoy views of the Sydney Opera House, the Sydney Harbour Bridge, the City and North Sydney skylines and expansive views of the Harbour, it could be argued that the bulk and scale of the proposal and its proximity to iconic items (when viewed from No 17) increases its impact on No 17, and that the view loss may be assessed as being minor rather than negligible.

The following photograph is from a standing position on the rear balcony (ground floor).
4. The reasonableness of the proposal that is causing the impact

The Court said: "The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skillful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

The proposal complies with the front and rear setback, the building footprint and the height controls. While the proposal breaches the side setback and the floor space ratio controls, it complies with the objectives of those controls (see Building Size and Location Performance Criteria above). Moreover, any view loss is predominantly caused by the height of the proposal, which complies with Council’s controls.

Given that the proposal complies with the height standard, the second question posed by the Court relates to whether a more skillful design could provide the same development potential while reducing the impact on views. The answer, in this instance, is considered to be no. To significantly the views, the height of the proposal would need to be reduced. This would result in a considerable modification to the design of the building or a reduction to the residential amenity offered to the occupants. Given that the proposal accords with the height standard, this is considered to be unreasonable.
In light of the fact that the views from many of the properties on John Dykes Avenue are across the side boundaries of those properties, the impact on the views will be negligible to moderate, and the proposal is reasonable, the proposal is considered to satisfy Council’s view sharing policy and the relevant objectives and performance criteria stipulated under Part 5.5 of WRDCP 2003.

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

The proposal is considered to be satisfactory with regard to the relevant objectives and performance criteria stipulated under Section 5.6 of WRDCP 2003.

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

As stated in Clause 25 Water, wastewater and stormwater above, Council’s Technical Services officer has stated:

*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*

The proposal is considered to be satisfactory with regard to the relevant objectives and performance criteria stipulated under Section 5.7 of WRDCP 2003.

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

Objective O5.8.1 WRDCP 2003 is to ensure adequate acoustic and visual privacy for occupants and neighbours.

C5.8.5 WRDCP 2003 requires that habitable room windows with a direct sightline to the habitable room windows in an adjacent dwelling within 9.0m:

- are offset from the edge of one window to the edge of the other by a distance sufficient to limit views into the adjacent windows; or
- have sill heights of 1.7m above floor level; or
- have fixed obscure glazing in any part of the window below 1.7m above floor level.

The kitchen awning window on the southern elevation of the ground floor will overlook windows on the northern elevation of 21 Derby Street. The awning window will allow a line of sight above the top of the side boundary fence and will therefore be in breach of C5.8.5 WRDCP 2003. It is therefore proposed to impose **Condition C1(d)** which requires that the kitchen awning window on the southern elevation of the ground floor be a hopper window glazed with translucent glass and fitted with winder mechanisms which allow a maximum opening of 300mm.

Windows and glass doors on the eastern (rear) elevation of the proposed dwelling will be setback from neighbouring properties to the west by a sufficient distance to provide sufficient privacy for the occupants of all relevant properties in accordance with Objective O5.8.1 WRDCP 2003.

Subject to **Condition C1(d)** the proposal complies with Objective O5.8.1 WRDCP 2003.

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

The proposal is considered to be satisfactory with the provisions of this DCP.
13.3 Woollahra Access

This proposal is for a Class 1 building. The Access DCP encourages, rather than requires, visitor access for older people or people with a disability. Access has not been provided in this proposal, however, this is considered acceptable under the provisions of the DCP.

13.4 Other DCPs, codes and policies

None relevant.

14. APPLICABLE REGULATIONS

The applicable regulations are addressed by Conditions.

15. THE LIKELY IMPACTS OF THE PROPOSAL

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

16. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

17. SUBMISSIONS

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

1. Andrew and Helen Demetriou of 17 John Dykes Avenue
2. Robyn Caldwell of 15 John Dykes Avenue
3. Mike and Sylvia Levendis of 13 John Dykes Avenue
4. Mrs F Bunck of 11 John Dykes Avenue
5. Terry Carney of 9 John Dykes Avenue
6. Tom and Colleen Dagworthy of 5 John Dykes Avenue
7. D Kontopos of 1 John Dykes Avenue

The abovementioned objectors raised the following concerns:

1. View Loss

All of the objectors raised the issue of view loss. For the reasons set out under Views Performance Criteria the proposal satisfies the performance criteria and objectives of Section 5.5 of the WRDCP 2003. The objections are therefore not supported in respect to this issue.

2. Location of garage dominates the streetscape and therefore breaches C4.14.5 WRDCP 2003

While the garage in the initial plans lodged by the applicant could be argued to dominate the streetscape, the garage in amended plans subsequently lodged by the applicant has been setback an additional 3.9m to 6.0m from the front boundary and incorporated into the building envelope of the proposed dwelling. The garage is setback further than the existing double garage thereby reducing the prominence of the garage within the streetscape. The amended garage is considered to satisfy
C4.14.5 WRDCP 2003 and the desired future character performance criteria of Part 4.14 of the WRDCP 2003. The objection is therefore not supported in respect to this issue.

3. The roof form contravenes C4.14.7.7 WRDCP 2003

C4.14.7.7 WRDCP 2003 requires that roof forms are to be designed having consideration for neighbouring amenity, overshadowing controls, streetscape suitability and to maintain views across the district. The proposal satisfies the performance criteria and objectives contained in Council’s height controls, privacy controls, overshadowing controls, streetscape controls and view loss controls. The roof form complies with C4.14.7.7 WRDCP 2003 and the objection is therefore not supported in respect to this issue.

4. The proposal breaches the number of stories permitted by C4.14.7.3 WRDCP 2003

For the reasons set out under Desired Future Precinct Character Objectives and Performance Criteria the proposal satisfies the desired future precinct character objectives set out in Section 4.14 WRDCP 2003 and the non-compliance with C4.14.7.3 WRDCP 2003 is considered to be acceptable. The objection is therefore not supported in respect to this issue.

5. The side setback non-compliances will affect the solar access of 21 Derby Street.

This issue was not raised by the owners of 21 Derby Street. The proposal satisfies Objective O5.2.2 WRDCP 2003 in relation to solar access and the objection is therefore not supported in respect to this issue.

6. The proposal breaches Council’s height limit when measured from street level.

Height is defined in the WLEP 1995 to mean “the greatest distance measured vertically from any point on the building to the existing ground level immediately below that point.” The proposal complies with Council’s height limit as thus defined and satisfies the objectives of the height limit control as set out in Clause 12AA WLEP 1995. The objection is therefore not supported in respect to this issue.

7. The proposal breaches Council’s floor space ratio control.

For the reasons set out under Building Size and Location Performance Criteria the non-compliance with C5.2.9 WRDCP 2003 by the proposal satisfies the objectives of Section 5.2 WRDCP 2003. The objection is therefore not supported in respect to this issue.

8. Council should protect the fig tree in the rear yard of 23 Derby Street.

The applicant’s arborist report indicates that the fig tree will be retained. Conditions provide for the protection of the fig tree. Council’s Tree and Landscape Officer has determined that the proposal is satisfactory in terms of tree preservation and landscaping, subject to compliance with the said Conditions. The objections are therefore not supported in respect to this issue.

9. If approved the proposal will set a precedent for development of excessive bulk, height and detrimental impact on the amenity of neighbours.

For the reasons set out in this report, the proposal satisfies the performance criteria and objectives of the WLEP 1995 and of the WRDCP 2003 in relation to these issues. Future applications will be assessed on their merits. The objections are therefore not supported in respect to this issue.
18. REPLACEMENT APPLICATION

It has not been considered necessary to re-advertise the application upon receiving the two sets of amended plans on 11 November 2009 and 23 December 2009 respectively (see Section 8 Property History above). Both sets of amended plans constituted a proposal with less impact than that which had previously been made.

19. CONCLUSION

Subject to Conditions, the proposal is acceptable against the relevant considerations under s79C.

20. DISCLOSURE STATEMENTS

Under S.147 of the Environmental Planning and Assessment Act, 1979 there have been no disclosure statements regarding political donations or gifts made to any councillor or gifts made to any council employee submitted with this development application by either the applicant or any person who made a submission.

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

THAT the Council, as the consent authority, grant development consent to Development Application No. 338/2009 for demolition of the existing dwelling house, construction of a new dwelling house and swimming pool, landscaping and siteworks on land at 23 Derby Street Vaucluse, 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

A.2 Definitions

Unless specified otherwise words have the same meaning as defined by the Act, the Regulation and the Interpretation Act 1987 as in force at the date of consent.

*Applicant* means the applicant for this Consent.

*Approved Plans* mean the plans endorsed by Council referenced by this consent as amended by conditions of this consent.

*AS* or *AS/NZS* means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.
BCA means the Building Code of Australia as published by the Australian Building Codes Board as in force at the date of issue of any Construction Certificate.

Council means Woollahra Municipal Council

Court means the Land and Environment Court

Local native plants means species of native plant endemic to Sydney’s eastern suburbs (see the brochure titled “Local Native Plants for Sydney’s Eastern Suburbs published by the Southern Sydney Regional Organisation of Councils).

Stormwater Drainage System means all works, facilities and documentation relating to:
- The collection of stormwater,
- The retention of stormwater,
- The reuse of stormwater,
- The detention of stormwater,
- The controlled release of stormwater; and
- Connections to easements and public stormwater systems.

Owner means the owner of the site and successors in title to the site.

Owner Builder has the same meaning as in the Home Building Act 1989.

PCA means the Principal Certifying Authority under the Act.

Principal Contractor has the same meaning as in the Act or where a principal contractor has not been appointed by the owner of the land being developed Principal Contractor means the owner of the land being developed.

Professional Engineer has the same meaning as in the BCA.

Public Place has the same meaning as in the Local Government Act 1993.

Road has the same mean as in the Roads Act 1993.

SEE means the final version of the Statement of Environmental Effects lodged by the Applicant.

Site means the land being developed subject to this consent.

WLEP 1995 means Woollahra Local Environmental Plan 1995

Work for the purposes of this consent means:
- the use of land in connection with development,
- the subdivision of land,
- the erection of a building,
- the carrying out of any work,
- the use of any site crane, machine, article, material, or thing,
- the storage of waste, materials, site crane, machine, article, material, or thing,
- the demolition of a building,
- the piling, piering, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
• the delivery to or removal from the site of any machine, article, material, or thing, or
• the occupation of the site by any person unless authorised by an occupation certificate.

Note: Interpretation of Conditions - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.

A.3 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>A102 B</td>
<td>Architectural Plans</td>
<td>MASQ Architects</td>
<td>Nov 09</td>
</tr>
<tr>
<td>A103 B</td>
<td></td>
<td></td>
<td>Nov 09</td>
</tr>
<tr>
<td>A104 A</td>
<td></td>
<td></td>
<td>May 09</td>
</tr>
<tr>
<td>A105 B</td>
<td></td>
<td></td>
<td>Nov 09</td>
</tr>
<tr>
<td>A106 B</td>
<td></td>
<td></td>
<td>Nov 09</td>
</tr>
<tr>
<td>A107 B</td>
<td></td>
<td></td>
<td>Nov 09</td>
</tr>
<tr>
<td>A109 A</td>
<td></td>
<td></td>
<td>Feb 10</td>
</tr>
<tr>
<td>project No. 71127</td>
<td>Geotechnical Report</td>
<td>Douglas Partners</td>
<td>04/2009</td>
</tr>
<tr>
<td>LCP/1</td>
<td>Landscape Plan</td>
<td>Frollic Consortium Landscape Architects</td>
<td>April 09</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.)

A.4 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 January 2003 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.

A.5 Prescribed Conditions

Prescribed conditions in force under the Act and Regulation must be complied with.

Note: It is the responsibility of those acting with the benefit of this consent to comply with all prescribed conditions under the Act and the Regulation. Free access can be obtained to all NSW legislation at www.legislation.nsw.gov.au
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

B.2 Establishment of Tree Protection Zones

To limit the potential for damage to trees to be retained, Tree Protection Zones are to be established around all trees to be retained on site. The Tree Protection Zones are to comply with the following requirements;

a) Tree Protection Zone areas

<table>
<thead>
<tr>
<th>Council Reference No:</th>
<th>Species</th>
<th>Location</th>
<th>Radius from Trunk (metres)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><em>Plumeria acutifolia</em> Frangipanni</td>
<td>Front garden</td>
<td>4m</td>
</tr>
<tr>
<td>4</td>
<td><em>Phoenix robbilini</em> Dwarf Date Palm</td>
<td>Rear garden</td>
<td>2m</td>
</tr>
<tr>
<td>5</td>
<td><em>Ficus rubiginosa</em> Port Jackson Fig</td>
<td>Rear garden</td>
<td>4m</td>
</tr>
<tr>
<td>6</td>
<td><em>Pittosporum undulatum</em> Native Daphne</td>
<td>Rear garden</td>
<td>2m</td>
</tr>
<tr>
<td>7</td>
<td><em>Eucalyptus robusta</em> Swamp Mahogany</td>
<td>Rear garden</td>
<td>6m</td>
</tr>
<tr>
<td>8</td>
<td><em>Eucalyptus robusta</em> Swamp Mahogany</td>
<td>Rear garden</td>
<td>6m</td>
</tr>
</tbody>
</table>

b) Tree Protection Zones are to be fenced with a 1.8 metre high chainmesh or weldmesh fence to minimise disturbance to existing ground conditions. The area within the fence must be mulched, to a depth of 75mm, irrigated and maintained for the duration of the construction works (Figure 1).

![Figure 1](image.png)

Figure 1. A typical example of chainmesh fencing and signage to be installed as fencing for tree protection zones.

c) A sign must be erected on each side of the fence indicating the existence of a Tree Protection Zone and providing the contact details of the site Arborist.
d) Existing soil levels must be maintained within Tree Protection Zones. Where excavation is undertaken adjacent such an area, the edge of the excavation must be stabilised, until such time as permanent measures are installed (eg. retaining wall etc) to prevent erosion within the Tree Protection Zone.

e) Sediment control measures are to be installed around all Tree Protection Zones to protect the existing soil levels.

f) The storage of materials, stockpiling, siting of works sheds, preparation of mixes, cleaning of tools or equipment is not permitted within Tree Protection Zones.

Site personnel must be made aware of all Tree Protection requirements, measures and any actions that constitute a breach of the Conditions of Development Consent with regard to tree protection on site during their site induction.

Standard Condition: B5

B.3 Permissible work within Tree Protection Zones

In accordance with British Standard BS5837, one incursion no greater than 20% of a tree's calculated Tree Protection Zone is considered allowable provided the tree is a healthy and vigorous specimen. Upon completion of approved works within the Tree Protection Zone, the specified Tree Protection Zone fencing must end either side of the allowable incursion. The table below provides a radius distance from the centre of the trunk of existing trees whereby the following incursions are permissible:

a) Permissible Work within Tree Protection Zones

<table>
<thead>
<tr>
<th>Council Reference No:</th>
<th>Species</th>
<th>Location</th>
<th>Radius from Trunk (metres)</th>
<th>Approved works within incursion</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td><em>Phoenix robbellini</em> Dwarf Date Palm</td>
<td>Rear garden</td>
<td>2m</td>
<td>Pool at lower level</td>
</tr>
</tbody>
</table>

b) Where excavation is undertaken within a specified Tree Protection Zone, the edge of the excavation must be stabilised, until such time as permanent measures are installed (eg. retaining wall etc) to prevent erosion within the Tree Protection Zone.

c) To prevent damage to roots and compaction within the Tree Protection Zone of specified trees, excavation must be hand dug. Small hand tools only are to be utilised, mattocks and similar digging tools are not be used within these areas. No root with a diameter equal to or in excess of 50mm is to be cut unless approved, in writing, by a qualified Arborist (minimum qualification of Australian Qualification Framework Level 4 or recognised equivalent).

All root pruning must be undertaken in accordance with the *Australian Standard 4373 “Pruning of Amenity Trees”* and carried out by a qualified Arborist (minimum qualification of *Australian Qualification Framework Level 4* or recognised equivalent).

Beyond this radius, mechanical excavation is permitted, when root pruning by hand along the perimeter line of such works is completed.
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 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) There is to be a single discharge point from the property to Council’s infrastructure (not the two proposed discharge points).

b) The discharge pipe is to connect directly to Council’s stormwater pit located on the boundary of No. 21 and No. 23 Derby Street.

c) All side fences are to have a maximum height of 1.8m above ground level.

d) The kitchen awning window on the southern elevation of the ground floor is to be a hopper window glazed with translucent glass and fitted with winder mechanisms which allow a maximum opening of 300mm.

e) For clarity, ground floor plan A104 Rev A shall be amended to depict the ground floor WC frosted awning window shown on the northern side elevation plan A107 Rev B.

f) For clarity, first floor plan A105 Rev B shall be amended to depict the first floor ensuite frosted windows shown on the southern side elevation plan A107 Rev B.

g) For clarity, the southern and northern side elevation plan A107 Rev B is to be amended to depict the front setback of the ground floor to be 5.7m.

h) The garage width is to be no greater than 6.5m.

i) The proposed basement, including the garage, is to present an unarticulated length (comprised of slatted timber) of 6.5m to the street.

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 Security, Levies and Fees (S80A(6) & S94 of the Act, Section 608 of the Local Government Act 1993)

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>Contact LSL Corporation or use online calculator</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td><strong>SECURITY</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Property Damage Security Deposit</td>
<td>$22,000</td>
<td>No</td>
<td>T115</td>
</tr>
<tr>
<td>- making good any damage caused to any property of the Council</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**DEVELOPMENT LEVY**

under Woollahra Section 94A Development Contributions Plan 2005
Development Levy (Section 94A)

<table>
<thead>
<tr>
<th>Development Levy (Section 94A)</th>
<th>$10,000 + Index Amount</th>
<th>Yes, quarterly</th>
<th>T96</th>
</tr>
</thead>
</table>

**INSPECTION FEES**

Table under Section 608 of the Local Government Act 1993

| Public Road/Footpath Infrastructure Inspection Fee | $394 | No | T16 |
| Security Administration Fee | $175 | No |
| TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES | $32,569 plus any relevant indexed amounts and long service levy |

**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/ 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 2005 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 periodic payment of section 94A levy under the Woollahra Section 94A Development Contributions Plan 2005**

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 this 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 outstanding component 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 BASIX commitments

The applicant must submit to the Certifying Authority BASIX Certificate No. 220362S 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: C7

C.4 Waste Storage - Single Dwelling

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

a) A storage area for 1 x 120 litre general wastes bin, one x 240 litre green waste bin, two x recycling crates behind the building line or within non-habitable areas of the dwelling
b) A path for wheeling bins between the waste and recycling storage area and the collection point free of steps and kerbs and having a maximum grade of 1:8.

Standard Condition: C15
C.5 Road and Public Domain Works

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) The existing vehicle crossing is to be fully removed
b) Full width vehicular crossings having a width of 4.0m in accordance with Council’s standard driveway drawing RF2. The new crossing is to be at right angles to the footpath.
c) A design longitudinal surface profile for the proposed driveway must be submitted for assessment.
d) Any disturbed areas of footpath, K&G and grass verge are to be reinstated in accordance with Council’s standard drawing RF1 and RF3.

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

C.6 Utility Services Generally

The Construction Certificate plans and specifications, required by clause 139 of the Regulation, must demonstrate that all utility services (telecommunications, electricity, gas, water and waste water) will be provided underground. All service ducts, pipes and conduits must be provided within the fabric of the building (excluding stormwater down pipes).

Where telecommunications and electricity are provided from existing poles in the road they must, in accordance with the relevant suppliers’ requirements, be carried to the site underground directly to the main switch board within the fabric of the building.

Note: Where adequate provision has not been made for an electrical sub-station within the building, this may necessitate the lodgement of an application to amend this consent under section 96 of the Act to detail the location, landscape/streetscape impacts and compliance with AS2890 as applicable.

The location of service poles and substations required by the relevant suppliers must be shown upon the plans submitted with any Construction Certificate application together with a letter from each relevant supplier setting out their requirements.

Proposed water pipes, waste pipes, stack work, duct work, mechanical ventilation plant and the like must be located within the building unless expressly shown upon the approved DA plans. Details confirming compliance with this condition must be shown on the Construction Certificate plans and/or detailed within the Construction Certificate specifications. Required external vents or vent pipes on the roof or above the eaves must be shown on the Construction Certificate plans.
Note: The intent of this condition is that the design quality of the development must not be compromised by cables, pipes, conduits, ducts, plant, equipment, electricity substations or the like placed such that they are visible from any adjoining public place. They must be contained within the building unless shown otherwise by the approved development consent plans.

The Construction Certificate plans and specifications, required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation, must detail the replacement of all private sewer pipes between all sanitary fixtures and Sydney Waters sewer main where they are not found by inspection to be UPVC or copper with continuously welded joints.

Note: This condition has been imposed to ensure that where private sewer pipes are old, may leak or may be subject to root invasion (whether from existing or proposed private or public landscaping) that existing cast iron, concrete, earthenware or terracotta pipes be replaced with new UPVC or copper continuously welded pipes between all sanitary fixtures and Sydney Waters sewer main, such that clause 25(1) of WLEP 1995 be satisfied. Further, leaking sewer pipes are a potential source of water pollution, unsafe and unhealthy conditions which must be remedied in the public interest.

C.7 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

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 – Australasiahttp://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.

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

Note: Pursuant to clause 161(1)(a)(5) of the Regulation an Accredited Certifier may satisfied as to this matter.

Standard Condition: C25

C.8 Tree Management Details

The Construction Certificate plans and specifications required by clause 139 of the Regulation must, show the following information;

a) Trees to be numbered in accordance with these conditions,
b) Shaded green where required to be protected and retained,
c) Shaded yellow where required to be transplanted,
d) Shaded blue where required to be pruned,
e) Shaded red where authorised to be removed and,
f) References to applicable tree management plan, arborists report, transplant method statement or bush regeneration management plan.

Standard Condition: C30
C.9 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

C.10 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.11 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 preset 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

C.12 Ground Anchors

This development consent does NOT give approval to works or structures over, on or under public roads or footpaths excluding minor works subject to separate Road Opening Permit.

The use of permanent ground anchors under Council land is not permitted.

Temporary ground anchors may be permitted, in accordance with Council’s “Rock Anchor Policy”, where alternative methods of stabilisation would not be practicable or viable, and where there would be benefits in terms of reduced community impact due to a shorter construction period, reduced disruption to pedestrian and vehicular traffic on adjacent public roads, and a safer working environment.

If temporary ground anchors under Council land are proposed, a separate application, including payment of fees, must be made to Council under Section 138 of the Roads Act 1993. Application forms and Council’s “Rock Anchor Policy” are available from Council’s web-site [http://www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au). Approval may be granted subject to conditions of consent. Four weeks should be allowed for assessment.

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: 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.

Standard Condition: C41

C.13 Bicycle, 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
C.14 Stormwater management plan (Site greater than 500m²)(Clause 25(2) WLEP 1995)

The Construction Certificate plans and specifications, required by clause 139 of the Regulation, must include a Stormwater Management Plan for the site. The Stormwater Management Plan must detail:

a) general design in accordance with Stormwater disposal concept plan and report prepared by Islecrest P/L, dated 14/10/2008 and 18/10/2008, Dwg No. 200805 respectively other than amended by this and other conditions;
b) the discharge of stormwater, by direct connection, to Council’s stormwater gully pit located on the boundary of No. 21 and No. 23 Derby Street;
c) compliance the objectives and performance requirements of the BCA;
d) any rainwater tank (see Note below) required by BASIX commitments including their overflow connection to the Stormwater Drainage System, and
e) general compliance with the Council’s draft Development Control Plan Stormwater Drainage Management (Draft Version 1.1, Public Exhibition Copy dated 14 December 2006), and
f) on-site stormwater detention (“OSD”).

OSD Requirements

The minimum (OSD) Site Storage Requirements (“SSR”) and the Peak Site Discharge (“PSD”) from the site must be in accordance with the following minimum storage/discharge relationships based upon a 1000m² site area:

<table>
<thead>
<tr>
<th>Average Recurrence Interval</th>
<th>PSD (L/s)</th>
<th>Minimum Site Storage Requirement (SSR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 year</td>
<td>23.5 L/s</td>
<td>4m³</td>
</tr>
<tr>
<td>100 year</td>
<td>34 L/s</td>
<td>25m³ – Dwelling House 27m³ – Residential Flat Building 29m³ – Other Development</td>
</tr>
</tbody>
</table>

Note: All values based on per 1000m² site area (interpolate to site area).

Where a rainwater tank is proposed in conjunction with OSD, the volume of the rainwater tank may contribute to the SSR as follows:

a) Where the rainwater tank is used for external uses only, 40% of the rainwater tank volume to a maximum of 4m³, or
b) Where the rainwater tank is used for external and internal uses, 75% of the rainwater tank volume to a maximum of 7.5m³.

Example: The Site Storage Requirements may be 25,000 litres and a 10,000 litre rainwater tank is to be used for garden irrigation. Therefore, the rainwater tank contributes 4,000 litres toward SSR. Therefore, the OSD tank needs to be 21,000 litres (25,000 litres less the 4,000 litres allowance). Note: 1m³ = 1,000 litres.

The Stormwater Management Plan must include the following specific requirements:

Layout plan

A detailed drainage plan at a scale of 1:100 based on drainage calculations prepared in accordance with the Institute of Engineers Australia publication, Australian Rainfall and Runoff, 1987 edition or most current version thereof.
It must include:

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

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

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

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

Subsoil Drainage - Subsoil drainage details, clean out points, discharge point.

**Note:** This Condition is imposed to ensure that site stormwater is disposed of in a controlled and sustainable manner.

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

**Standard Condition: C51**

C.15 **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*.

**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**

C.16 **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

### 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 clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4),
- 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

#### 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):

- a) 21 Derby Street,
- b) 25 Derby Street,
- c) 13 John Dykes Avenue
- d) 15 John Dykes Avenue
- e) 17 John Dykes Avenue
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 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.

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/overheadprotstructs.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.4 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.

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 International Erosion Control Association – Australasia (http://www.austieca.com.au/) lists consultant experts who can assist in ensuring compliance with this condition. Where Soil and Water Management Plan is required for larger projects it is recommended that this be produced by a member of the International Erosion Control Association – Australasia.
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
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.

D.7 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.

D.8 Establishment of boundary location, building location and datum

Prior to the commencement of any work the principal contractor or owner builder must ensure that a surveyor registered under the Surveying Act 2002 sets out:

a) the boundaries of the site by permanent marks (including permanent recovery points);
b) the location and level of foundation excavations, footings, walls and slabs by permanent marks, pegs or profiles relative to the boundaries of the land and relative to Australian Height Datum (“AHD”) in compliance with the approved plans;
c) establishes a permanent datum point (bench mark) within the boundaries of the site relative to AHD; and
d) provides a copy of a survey report by the registered surveyor detailing, the title boundaries, pegs/profiles, recovery points and bench mark locations as established pursuant to this condition to the PCA.

Note: Where the principal contractor or owner builder notes any discrepancy between the approved development consent and the Construction Certificate, especially in relation to the height, location or external configuration of the building (but not limited to these issues) the principal contractor or owner builder should not proceed until satisfied that the variations as shown are consistent with the consent. Failure to do so may result in a breach of development consent.

Note: On larger developments, or where boundary redefinition is required, the placement of new State Survey Marks as permanent marks should be considered by the registered surveyor.

Standard Condition: D18
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, and
d) No piling, piering, cutting, boring, drilling, rock breaking, rock sawing, jack hammering or bulk excavation of land or loading of material to or from trucks must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday.
e) 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 Maintenance of Vehicular and Pedestrian Safety and Access

The principal contractor or owner builder and any other person acting with the benefit of this consent must:

Not erect or maintain any gate or fence swing out or encroaching upon the road or the footway.

a) Not use the road or footway for the storage of any article, material, matter, waste or thing.
b) Not use the road or footway for any work.
c) Keep the road and footway in good repair free of any trip hazard or obstruction.
d) Not stand any plant and equipment upon the road or footway.
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;


**Standard Condition: E7**

**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
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.

**E.9 Erosion and Sediment Controls – Maintenance**

The principal contractor or owner builder must maintain water pollution, erosion and sediment 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.
E.10 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

E.11 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

E.12 Compliance with Council’s Specification for Roadworks, Drainage and Miscellaneous Works

Road works and work within the Road and Footway

All work carried out on assets which are under Council ownership or will revert to the ownership, care, control or management of Council in connection with the development to which this consent relates must comply with Council’s Specification for Roadworks, Drainage and Miscellaneous Works dated January 2003.

The owner, principal contractor or owner builder must meet all costs associated with such works.

This condition does not set aside the need to obtain relevant approvals under the Roads Act 1993 or Local Government Act 1993 for works within Roads and other public places.
Note: A copy of Council’s “Specification for Roadworks, Drainage and Miscellaneous Works” can be downloaded free of charge from Council’s website www.woollahra.nsw.gov.au

Standard Condition: E24

E.13 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

E.14 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 subcontractor 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 by 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 mean 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.

**E.15 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.

**E.16 Tree Preservation**

All persons must comply with Council’s Tree Preservation Order (“the TPO”), other than where varied by this consent. The order applies to any tree, with a height greater than 5 metres or a diameter spread of branches greater than 3 metres, is subject to Council’s Tree Preservation Order unless, exempted by specific provisions. Works to be carried out within a 5 metre radius of any tree, subject to the Tree Preservation Order, require the prior written consent of Council.

**General Protection Requirements**

a) There must be no excavation or work within the required Tree Protection Zone(s). The Tree Protection Zone(s) must be maintained during all development work.

b) Where excavation encounters tree roots with a diameter exceeding 40mm excavation must cease. The principal contractor must procure an inspection of the tree roots exposed by a qualified arborist. Excavation must only recommence with the implementation of the recommendations of the qualified arborist or where specific instructions are given by Council's Tree Management Officer in strict accordance with such Council instructions.
c) 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 qualified arborist or where specific instructions are given by Council's Tree Management Officer in strict accordance with such Council instructions.

**Note:** Trees must be pruned in accordance with Australian Standard AS 4373 – 2007 “Pruning of Amenity Trees” and Workcover NSW Code of Practice Amenity Tree Industry 1998. Standard Condition: E8

**E.17 Tree Preservation & Approved Landscaping Works**

All landscape works must be undertaken in accordance with the approved landscape plan, arborist report, tree management plan and transplant method statement as applicable.

a) The following trees must be retained:

**Trees on Private Land**

<table>
<thead>
<tr>
<th>Council Reference No:</th>
<th>Species</th>
<th>Location</th>
<th>Dimension (metres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><em>Plumeria acutifolia</em> Frangipanni</td>
<td>Front garden</td>
<td>5x5</td>
</tr>
<tr>
<td>4</td>
<td><em>Phoenix roSELLini</em> Dwarf Date Palm</td>
<td>Rear garden</td>
<td>4m</td>
</tr>
<tr>
<td>5</td>
<td><em>Ficus rubiginosa</em> Port Jackson Fig</td>
<td>Rear garden</td>
<td>7x8</td>
</tr>
<tr>
<td>6</td>
<td><em>Pittosporum undulatum</em> Native Daphne</td>
<td>Rear garden</td>
<td>4x2</td>
</tr>
<tr>
<td>7</td>
<td><em>Eucalyptus robusta</em> Swamp Mahogany</td>
<td>Rear garden</td>
<td>11x9</td>
</tr>
<tr>
<td>8</td>
<td><em>Eucalyptus robusta</em> Swamp Mahogany</td>
<td>Rear garden</td>
<td>11x9</td>
</tr>
</tbody>
</table>

**Trees on Council Land**

Nil

**Note:** The tree trees required to be retained should appear coloured green on the construction certificate plans.

b) The following trees must be transplanted and successfully established in the location(s) indicated on the approved landscape plan:

Nil

c) The following trees may be removed:

<table>
<thead>
<tr>
<th>Council Reference No:</th>
<th>Species</th>
<th>Location</th>
<th>Dimension (metres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td><em>Hibiscus rosa-sinensis</em> Rose of China</td>
<td>Rear yard</td>
<td>5x2</td>
</tr>
<tr>
<td>3</td>
<td><em>Syagrus romanzoffianum</em> Cocos Palm</td>
<td>Rear yard</td>
<td>6m</td>
</tr>
</tbody>
</table>

**Note:** The tree trees that may be removed should appear coloured red on the construction certificate plans.
E.18 Replacement trees which must be planted

The following compensatory replacement plantings must be planted to ensure the preservation of the landscape character of the area. Areas for future planting must be plotted on the submitted landscape or architectural plans and be protected from damage, especially soil compaction and contamination from construction activity by erecting a barrier or implementing ground protection. Where ground protection during construction activity is not implemented, remediation measures prior to planting such as soil ripping or subsoil aeration must be employed.

Any replacement plant is to be maintained in a healthy and vigorous condition until it attains a height of 5 metres or a spread of 3 metres, whereby it will be protected by Council’s Tree Preservation Order. If the replacement plant is found to be faulty, damaged, dying or dead before it attains a size whereby it is protected by Council’s Tree Preservation Order, it must be replaced with another of the same species which complies with the criteria outlined below.

<table>
<thead>
<tr>
<th>Species/Type</th>
<th>Planting Location</th>
<th>Container Size or Size of Tree (@ time of planting)</th>
<th>Minimum Dimensions at Maturity</th>
</tr>
</thead>
<tbody>
<tr>
<td>11 x Acmena smithii Lillypilly</td>
<td>Site boundary</td>
<td>45ltrs</td>
<td>4m</td>
</tr>
<tr>
<td>5 x Howea forsteriana Kentia Palm</td>
<td>Site boundary</td>
<td>45ltrs</td>
<td>4m</td>
</tr>
<tr>
<td>Glochidion ferdinandii Cheese Tree</td>
<td>Front garden</td>
<td>45ltrs</td>
<td>8m</td>
</tr>
<tr>
<td>Livistonia australis Cabbage Tree Palm</td>
<td>Site boundary</td>
<td>45ltrs</td>
<td>12m</td>
</tr>
</tbody>
</table>

All replacement trees are to be NATSPEC grown.

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 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 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 Waste minimisation and management – Demolition

In order to maximise resource recovery and minimise residual waste from demolition activities:

- the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work
- 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)
- provide separate collection bins and/or areas for the storage of residual waste
- clearly ‘signpost’ the purpose and content of the bins and/or storage areas
• implement measures to prevent damage by the elements, odour, health risks and windborne litter
• minimise site disturbance, limiting unnecessary excavation

When implementing the SWMMP the applicant must ensure:
• footpaths, public reserves and street gutters are not used as places to store demolition waste or materials of any kind without Council approval
• any material moved offsite is transported in accordance with the requirements of the *Protection of the Environment Operations Act (1997)*
• waste is only transported to a place that can lawfully be used as a waste facility
• 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
• 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

**E.21 Waste minimisation and management – Construction**

In order to maximise resource recovery and minimise residual waste from construction activities:

• the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work
• arrange for the delivery of materials so that materials are delivered ‘as needed’ to prevent the degradation of materials through weathering and moisture damage
• consider organising to return excess materials to the supplier or manufacturer
• allocate an area for the storage of materials for use, recycling and disposal (considering slope, drainage, location of waterways, stormwater outlets and vegetation)
• clearly ‘signpost’ the purpose and content of the storage areas
• 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.
• promote separate collection bins or areas for the storage of residual waste
• implement measures to prevent damage by the elements, odour and health risks, and windborne litter
• minimise site disturbance and limit unnecessary excavation
• ensure that all waste is transported to a place that can lawfully be used as a waste facility
• 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
E.22 Shoring and adequacy of adjoining property

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 an excavation that extends below the level of the base of the footings of a building on adjoining land.

The person having the benefit of the development consent must, at the person’s own expense;

a) protect and support the adjoining premises from possible damage from the excavation, and

b) where necessary, underpin the adjoining premises to prevent any such damage

Note: this condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

Standard Condition: E33

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 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
F.2 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

F.3 Amenity Landscaping

The owner or principal contractor must install all approved amenity landscaping (screen planting, soil stabilisation planting, etc.) prior to any occupation or use of the site.

Note: This condition has been imposed to ensure that the environmental impacts of the development are mitigated by approved landscaping prior to any occupation of the development.

Standard Condition: F6

F.4 Commissioning and Certification of Public Infrastructure Works

The principal contractor or owner builder must submit, to the satisfaction of Woollahra Municipal Council, certification from a professional engineer that all public infrastructure works have been executed in compliance with this consent and with Council’s Specification for Roadworks, Drainage and Miscellaneous Works dated January 2003.

The certification must be supported by closed circuit television / video inspection provided on DVD of all stormwater drainage together with Works As Executed engineering plans and a survey report detailing all finished reduced levels.

Standard Condition: F9

F.5 Swimming and Spa Pools – Permanent Child Resistant Barriers and other matters

Prior to any occupation or use of the development and prior to filling any swimming pool as defined by the Swimming Pool Act 1992:


c) Public Pools must comply with the NSW Health Public Swimming Pool and Spa Pool Guidelines in force at that time and private pools are encouraged to comply with the same standards as applicable.

d) Water recirculation and filtration systems must be installed in compliance with AS 1926.3-2003:Swimming pool safety - Water recirculation and filtration systems.

Backwash must be discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996:

a) Water recirculation and filtration systems must be connected to the electricity supply by a timer that limits the systems operation such that it does not operate:

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

No relevant Conditions.

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

H.1 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 January 2003 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.

Note: Security held by Council pursuant to section 80A(6) of the Act will not be release by Council until compliance has been achieved with this condition. An application for refund of security must be submitted with the Final Occupation Certificate to Council. This form can be downloaded from Council’s website www.woollahra.nsw.gov.au or obtained from Council’s customer service centre.

Standard Condition: H13

H.2 Fulfillment of BASIX commitments – Clause 154B of the Regulation

All BASIX commitments must be effected in accordance with the BASIX Certificate No. 220362S.

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

H.3 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

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

I.1 Maintenance of Landscaping

All landscaping must be maintained in general accordance with this consent.

This condition does not prohibit the planting of additional trees or shrubs subject that they are native species endemic to the immediate locality.

This condition has been imposed to ensure that the landscaping design intent is not eroded over time by the removal of landscaping or inappropriate exotic planting.

Note: This condition also acknowledges that development consent is not required to plant vegetation and that over time additional vegetation may be planted to replace vegetation or enhance the amenity of the locality. Owners should have regard to the amenity impact of trees upon the site and neighbouring land. Further, drought proof vegetation being native species endemic to the immediate locality is encouraged. Suggested native species endemic to the immediate locality are listed in the Brochure Titled “Local Native Plants for Sydney’s Eastern Suburbs” published by Woollahra, Waverley, Randwick and Botany Bay Councils.
Standard Condition: I8

I.2 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No. 220362S.

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.
Standard Condition: I7

I.3 Swimming and Spa Pools – Maintenance

Swimming and Spa Pools must be maintained:

a) In compliance with the Swimming Pools Act 1992 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.


Standard Condition: 113

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.

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: 113

J. Miscellaneous Conditions

No relevant 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: http://www.theshopfront.org/documents/ConvictionsCriminalRecords.pdf and the Attorney General’s www.agd.nsw.gov.au.

Standard Advising: K1

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

K.3 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): 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

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.

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.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

K.6 Asbestos Removal, Repair or Disturbance

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Workcover NSW.

Before starting work, a work site-specific permit approving each asbestos project must be obtained from Workcover NSW. A permit will not be granted without a current Workcover licence.

All removal, repair or disturbance of or to asbestos material must comply with:

a) The Occupational Health and Safety Act 2000;
b) The Occupational Health and Safety Regulation 2001;

Note: The Code of Practice and Guide referred to above are known collectively as the Worksafe Code of Practice and Guidance Notes on Asbestos. They are specifically referenced in the Occupational Health and Safety Regulation 2001 under Clause 259. Under the Occupational Health and Safety Regulation 2001, the Worksafe Code of Practice and Guidance Notes on Asbestos are the minimum standards for asbestos removal work. Council does not control or regulate the Worksafe Code of Practice and Guidance Notes on Asbestos. You should make yourself aware of the requirements by visiting www.workcover.nsw.gov.au or one of Workcover NSW’s offices for further advice.

Standard Advising: K8

K.7 Lead Paint

Industrial paints, may contain lead. Lead is used in some specialised sign-writing and artist paints, and road marking paints, and anti-corrosive paints. Lead was a major ingredient in commercial and residential paints from the late 1800s to 1970. Most Australian commercial buildings and residential homes built before 1970 contain lead paint. These paints were used both inside and outside buildings.

Lead hazards - Lead particles are released when old lead paint flakes and peels and collects as dust in ceiling, wall and floor voids. If dust is generated it must be contained. If runoff contains lead particles it must be contained. Lead is extremely hazardous, and stripping of lead-based paint and the disposal of contaminated waste must be carried out with all care. Lead is a cumulative poison and even small levels in the body can have severe effects.

K.8 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/.

K.9 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Mark Bolduan, Assessment Officer, on (02) 9391 7138.

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.

K.10 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.


**K.11 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

**K.12 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

**K.13 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

**K.14 Dilapidation Report Condition**

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 Council 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.15 Roads Act Application

Works or structures over, on or under public roads or footpaths are subject to Sections 138, 139 & 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 draft Development Control Plan Stormwater Drainage Management (Draft Version 1.1, Public Exhibition Copy dated 14 December 2006), and

Temporary ground anchors may be permitted, in accordance with Council’s “Rock Anchor Policy”.

All public domain works must comply with Council’s “Specification for Roadworks, Drainage and Miscellaneous Works” dated January 2003 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
DEVELOPMENT CONTROL COMMITTEE

Meeting held on soc

Item No. D4

MEMO TO ALL COUNCILLORS

File No. DA 301/2009/2

Address 5 Edward Street WOOLLAHRA 2025

Proposal Modification of Condition C1 to provide a carport to the rear of the site

Date lodged 08/02/2010

Author MS S COURT – ASSESSMENT OFFICER

Please note that Item D2 was called at the Application Assessment Panel meeting held on 11 May 2010 by Councillor Shoebridge.

Reason for calling item:

- Streetscape issues in the HCA; and
- Loss of public parking

Referred to you for action.

Les Windle
Manager - Governance

Annexure: Application Assessment Report Dated: 11 May 2010
**SECTION 96 APPLICATION ASSESSMENT REPORT**

<table>
<thead>
<tr>
<th>ITEM No.</th>
<th>D4</th>
</tr>
</thead>
<tbody>
<tr>
<td>FILE No.</td>
<td>DA 301/2009/2</td>
</tr>
<tr>
<td>ADDRESS:</td>
<td>5 Edward Street WOOLLAHRA</td>
</tr>
<tr>
<td>EXISTING CONSENT:</td>
<td>Alterations and additions to existing dwelling including a new carport</td>
</tr>
<tr>
<td>TYPE OF CONSENT:</td>
<td>Local</td>
</tr>
<tr>
<td>DATE OF CONSENT:</td>
<td>12 January 2010</td>
</tr>
<tr>
<td>PROPOSED MODIFICATION:</td>
<td>Modification of Condition C1 including a carport to the rear of the site</td>
</tr>
<tr>
<td>DATE S96 LODGED:</td>
<td>08/02/2010</td>
</tr>
<tr>
<td>CONSENT AUTHORITY</td>
<td>Council</td>
</tr>
<tr>
<td>APPLICANT:</td>
<td>Mr W Warner</td>
</tr>
<tr>
<td>OWNER:</td>
<td>Mr W R Warner</td>
</tr>
<tr>
<td>AUTHOR:</td>
<td>Ms S Court</td>
</tr>
</tbody>
</table>

**LOCALITY PLAN**

![Locality Plan Image]
1. SUMMARY

Reason for report

The application has been referred to the Application Assessment Panel as there are 5 objectors.

Issues

Car space dimensions (non-compliance with Australian Standards)
Objector concerns

Objections

Five (5) objections have been received.

Recommendation

The application is recommended for approval, subject to conditions.

2. DESCRIPTION OF APPROVED PROPOSAL

The original development application involved the following:

- Demolition of the rear portion of the building
- Restoration of the principal building and elevations to Edward Street and Russell Street
- Restoration of the timber picket fence to Edward Street
- Construction of a contemporary two storey addition towards the rear of the property along Russell Street
- Construction of a carport and crossover at the rear of the property off Russell Street
- Construction of a courtyard garden between the dwelling and garage

The application was approved, subject to Condition C.1:

C.1 Modification of details of the development (s80A(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 car parking space, carport and vehicular crossover shall be deleted. This condition is imposed as due to the width of the site (5.3m) the proposal cannot comply with AS 2890.1

b) The subject site shall provide an additional 3% (4m²) of deep soil landscaping to ensure the site contains 8% (13m²) deep soil landscaping in compliance with C1 of Section 3.4.6 of the Woollahra Heritage Conservation Area Development Control Plan 2003

c) The (side) eastern boundary fence and pedestrian gate shall be restricted to 1.8m in height in compliance with C6 of Section 3.4.7 of the Woollahra Heritage Conservation Area Development Control Plan 2003. This condition is imposed to ensure the fence contributes positively to the streetscape

d) The southern (rear) and western (side) boundary fences shall be restricted to 1.8m above existing ground level
3. DESCRIPTION OF PROPOSED MODIFICATION

The proposed modification seeks to delete **Condition C.1**. More specifically, the modified application involves the following:

- Addition of a car space, carport and associated vehicular crossing to the rear;
- Additional deep soil landscaping;
- Addition of a 400mm privacy screen to the east side boundary fence; and
- Reduction in height of the boundary fences to the west and south to 1.8m.

4. DESCRIPTION OF SITE WITHIN WOOLLAHRA HCA

<table>
<thead>
<tr>
<th>Description</th>
<th>Heritage Item or Contributory Item</th>
<th>Group Element</th>
<th>Precinct</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federation house</td>
<td>Contributory item</td>
<td>N/A</td>
<td>Harbour View</td>
</tr>
</tbody>
</table>
THE SITE AND LOCALITY

<table>
<thead>
<tr>
<th>Physical features</th>
<th>The subject site is located on the southern side of Edward Street and the western side of Russell Street. The site is rectangular in shape and measures 5.36 metres along Edward Street and 30.48 metres along Russell Street with an area of approximately 166.7m².</th>
</tr>
</thead>
<tbody>
<tr>
<td>Topography</td>
<td>The subject site slopes from the rear (southern) boundary towards the front (northern) boundary by approximately 2m.</td>
</tr>
<tr>
<td>Existing buildings and structures</td>
<td>The building on the site is a one storey dwelling house and is in a dilapidated state.</td>
</tr>
<tr>
<td>Environment</td>
<td>The area is dominated by residential developments including single to three storey dwelling houses.</td>
</tr>
</tbody>
</table>

5. PROPERTY HISTORY

<table>
<thead>
<tr>
<th>Current use</th>
<th>Residential</th>
</tr>
</thead>
<tbody>
<tr>
<td>Previous relevant applications</td>
<td>229/2009/1 for the reinstatement of the front entry portico was approved on 17 June 2009.</td>
</tr>
<tr>
<td>Pre-DA</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Requests for additional information</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Amended plans/Replacement Application</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Land &amp; Environment Court appeal</td>
<td>Not Applicable</td>
</tr>
</tbody>
</table>

6. REFERRALS

6.1 The following table contains particulars of internal referrals.

No internal referrals were required. Technical Services, Landscaping and Heritage all stated that previous comments remain relevant. Of these, the comments received from Technical Services and Heritage remain relevant to the proposed carport. Refer to annexure 2 and 3 as detailed below:

<table>
<thead>
<tr>
<th>INTERNAL REFERRALS</th>
<th>Referral Officer</th>
<th>Comments</th>
<th>Annexure</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Technical Services</td>
<td>Council’s Development Engineer considered the application unsatisfactory due to the non-compliance with AS 2890.1, however all other aspects of the development were considered satisfactory, subject to conditions.</td>
<td>2</td>
</tr>
<tr>
<td>Heritage Officer</td>
<td>The carport was supported by Council’s Heritage Officer in the initial application. The officer considered the carport to be of a contemporary and recessive design which, in combination with a new single crossover, would not be a dominant element nor adversely impact on the character of the Russell Street streetscape. Furthermore, the crossover and carport structure were supported due to their siting in a traditional location and the sensitive detailing. All relevant comments have been attached.</td>
<td>3</td>
<td></td>
</tr>
</tbody>
</table>

6.2 The following table contains particulars of external referrals.

No external referrals were required.

ASSESSMENT UNDER S96

7.1 S96 (2) Other modifications

The proposed development results in a change to the impacts of the development and in particular its impact on the amenity of adjoining residents and as such the application is assessed under the provisions of s.96 (2).
7.2 Substantially the same development

The proposed modification relates to aspects of the original approval and relates to the scope of the approved works. Accordingly, the proposal would be substantially the same development to that which was originally approved, thus satisfying the relevant criteria prescribed by the Act.

ENVIRONMENTAL ASSESSMENT UNDER S.79C

8. STATE/REGIONAL INSTRUMENTS AND LEGISLATION

8.1 SEPPs

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

Not relevant to this application.

State Environmental Planning Policy No. 55

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

8.2 REPs

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject site is within the area to which the SREP applies as shown on Sheet 10. However the site does not fall within the Foreshores and Waterways Area boundary where specific impacts are required to be assessed. Furthermore, the works would not be visible from the Harbour.

8.3 Additional Section 94 Contribution

No additional contribution is required.

8.4 Other legislation

No other legislation is applicable.

9. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

9.1 Aims and objectives of WLEP 1995 and zone

The proposal is permissible and is consistent with the aims and objectives of the LEP and the relevant objectives of the Residential 2(b) zone.

9.2 Statutory compliance table

<table>
<thead>
<tr>
<th>Site Area: 166.7m²</th>
<th>Approved Development</th>
<th>Proposed Modification</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall Height (metres)</td>
<td>Works to 6.4m</td>
<td>Works to 2.7m</td>
<td>9.5m</td>
<td>Yes</td>
</tr>
</tbody>
</table>
9.3 Height

The proposal complies with Council’s statutory height requirement of 9.5m under Clause 12 of WLEP 1995.

9.4 Other special clauses/development standards

Clause 18 Excavation: The proposed excavation is limited to footings for the carport structure and driveway and is deemed acceptable in terms of Clause 18.


Clauses 26-33 Heritage and conservation area provisions: The subject site is identified within WHCA DCP as a Contributory item. It is located in the Harbour View Precinct and described as Federation House. The proposed carport and associated works would not result in any detrimental heritage impact, as detailed by Council’s Heritage Officer in the referral for the initial development application. Accordingly, the proposal is deemed acceptable in terms of Clause 26-33.

10. DEVELOPMENT CONTROL PLANS

10.1 Compliance table - Woollahra Heritage Conservation Area DCP 2003

<table>
<thead>
<tr>
<th>Site Area (166.7m²)</th>
<th>Approved Development</th>
<th>Proposed Modification</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deep Soil Landscaped Area (m²)</td>
<td>Complied via condition</td>
<td>8% (13m²)</td>
<td>8% (13m²)</td>
<td>Yes</td>
</tr>
<tr>
<td>Excavation Piling &amp; Subsurface Wall Setback (metres)</td>
<td>0m</td>
<td>0m</td>
<td>1.5m</td>
<td>No*</td>
</tr>
<tr>
<td>Solar Access to Ground Level Open Space of Adjacent Properties</td>
<td>&gt;50% Dimension - 2.5m 2 hours</td>
<td>&gt;50% Dimension - 2.5m 2 hours</td>
<td>50% Dimension - 2.5m 2 hours</td>
<td>Yes</td>
</tr>
<tr>
<td>Solar Access to North-Facing Living Areas of Development (Hours in mid winter)</td>
<td>&gt;3</td>
<td>&gt;3</td>
<td>&gt;3</td>
<td>Yes</td>
</tr>
<tr>
<td>Private Open Space Per Dwelling</td>
<td>Complied via condition</td>
<td>Not incl. carport 11% (18m²) &gt; 3m</td>
<td>Area – 16% (26m²) Dimension – 3m</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Complied via condition</td>
<td>Incl. carport 21% (35.5m²) &gt; 3m</td>
<td>Principal Area – 12m² Dimension – 3m</td>
<td>Yes</td>
</tr>
<tr>
<td>Side and Rear Fence Height (metres)</td>
<td>Complied via condition</td>
<td>2.2m</td>
<td>1.8m</td>
<td>No</td>
</tr>
<tr>
<td>Car Parking Spaces</td>
<td>0</td>
<td>1</td>
<td>&lt; 2</td>
<td>Yes</td>
</tr>
<tr>
<td>Location of Car Parking Structures</td>
<td>N/A</td>
<td>Behind Front Building Line</td>
<td>Behind Front Building Line</td>
<td>Yes</td>
</tr>
</tbody>
</table>

* existing non-compliance
10.2 Precinct Controls

The proposal conserves the significant characteristics of the Harbour View Precinct. There are no relevant controls relating to the subject modifications.

10.3 Significant items and group significant buildings

The cottage has been identified as a contributory item but does not form part of a group. There are no relevant controls relating to the subject modifications.

10.4 Building Type Controls

The subject property is identified as a single storey house. There are no relevant controls relating to the subject modifications.

10.5 General controls for development

Building location

C9 of Section 3.4.3 requires that the outer edge of excavation, piling and all sub-surface walls be setback not be less than 1.5 metres from a front, side or rear boundary.

Although not compliant with the 1.5 metre setback, having regard to the site constraints and the minimal level of the excavation for footings, the proposed excavation is considered to be acceptable in this instance.

Building height, form, bulk, scale and character

C8 of Section 3.4.4 stipulates that sunlight is provided to at least 50% of the main ground level private open space of adjacent properties for a minimum of two hours between 9am and 3pm on June 21. Where existing overshadowing is great that this, sunlight is not further reduced.

The proposed carport structure would result in extremely minimal additional overshadowing however would remain compliant with the above solar access requirement for 2 hours on June 21 to the private open space.

Materials, finishes and colours

The proposed materials are light weight and would not be highly discernible from the public domain, thus satisfying the relevant criteria prescribed by the DCP.

Open space and landscaping

O1 of Section 3.4.6 aims to ensure that adequate provision is made for accessible and useable private open space. Furthermore, C1 requires a minimum area of 26m$^2$ (16%) of private open space to be provided on the subject site.

The original application recommended the deletion of the carport due to an inadequate level of private open space and deep soil landscaping being available on site.
The subject s96 application has modified the original partially enclosed carport by removing the wall dividing the carport from the courtyard area. The proposed open carport area will now connect with the outdoor courtyard area and hence provide an extended or dual use area of private open space for residents when required. As a result, if the courtyard and open carport areas are combined a compliant level (34m²) of private open space for the occupants is achieved.

It is noted that whilst the proposal does not technically comply with the private open space requirements, the dual use area for parking and private open space is commonplace in the Woollahra municipality, particularly in the Paddington area, due to the small and narrow lots (similar to the situation on Edward Street). In this instance, the provision of 18m² of rear private open space is considered to be adequate as insisting on full compliance with the requirement by providing an additional 8m² of private open space will have no significant benefit to the use or enjoyment of the private open space area. As such, no objection is raised to the non-compliance in this instance.

The proposal complies with Council’s controls for deep soil landscaping.

Accordingly, the proposal is deemed acceptable with regard to part 3.4.6 of the HCA DCP 2003.

**Fences, gates and retaining walls**

C6 stipulates that the height of a side or rear fence is not to exceed 1.8m.

The proposal seeks the addition of a 400mm privacy screen/head rail support to the approved 1.8m high timber side fence. The screen battens are openly spaced and will not present as a bulky or excessive structure. In addition, the existing and approved eastern elevation is dominated by the eastern façade of the dwelling. It is not considered that the addition of a 400mm privacy screen/ head rail will have a detrimental effect on the Russell Street streetscape given the context of the existing and proposed building.

Accordingly, the proposal is considered unacceptable with regard to part 3.4.7 of the DCP

**Parking and garages**

The proposed modification seeks to provide for one off-street parking space at the rear of the site with access off Russell Street and associated vehicle cross over. In the original application, the proposal for an off-street parking space was not supported on the following basis:

> The proposed length of the car space is 5m and the required length is 5.4m; a non compliance of 0.4m. The proposal cannot comply with the Australian Standards, therefore the proposed parking space, carport and vehicle cross over is to be deleted. Refer to Condition C1.

It is noted that the dimensions of the proposed rear car space does not comply with the AS 2890.1. AS.2890 stipulates that a B99 vehicle (eg. Ford Transit Van) which is 5.2 metres in length plus an additional 0.2m for positioning tolerance, thereby equating to 5.4m in length is required to comply with the standard. It is argued that the B99 vehicle is uncommon in inner city residential areas such as Woollahra and conforming to the standard in this instance would be overly prohibitive and excessive.
The proposed parking space has a maximum length of 5.11m; resulting in a non-compliance with the B99 vehicle standard by 0.29m. Given the site width constraint, there is no scope to provide any additional length and as such it is not possible for the proposal to comply with AS 2890.1 in terms of the minimum 5.4m length required for housing the B99 vehicle.

However, the dimensions of the B85 vehicle as shown below indicate that a vehicle fitting such a model could be contained within the confines of the site. The B85 vehicle (eg. Ford Falcon sedan) has a length of 4.91m which is 0.2m less than the 5.11m provided on the subject site. As such, the B85 vehicle when including the 0.2m for positioning tolerance would be accommodated within the off-street parking space for the subject site.

Furthermore, Part 2.3.4 of AS2890.1 stipulates that in certain circumstances it may be appropriate to provide car parking for a ‘small’ car space. In Australia, the ‘small’ space is required to have dimensions of 2.3m wide and 5.0m long. This requirement is based on what is referred to as a ‘light’ car in the standard. The dimensions of such a vehicle are 4.45m in length and 1.7m in width and this represents the B35 vehicle (a Volkswagon Golf hatchback). In this instance, the proposal would comply with the ‘small’ vehicle requirement under AS 2890.1.

In addition, consideration has been given to a recent Land and Environment Court judgement – Proceedings No. 11228 of 2006, Defterios v Woollahra Municipal Council [2007] NSWLEC 434 with regard to the refusal of DA505/606 for alterations and additions to a terraced dwelling and rear garage with rooftop deck. This appeal was upheld with the judgement, amongst other things, permitting an off-street car parking space with a vehicle length of 3.845m. This length is 0.6m below the length of the B35 vehicle.

It is noted that Council’s Development Engineer has also raised concerns with regard to vehicles that are in the off-street car parking space may protrude onto Council’s verge. Given that the proposal will conceivably accommodate all but the largest vehicles (e.g a Ford Transit van), including numerous 4WD models, albeit with limited to no positioning tolerance, the proposal is considered to be satisfactory in this instance. In addition, Condition 1.2 has been imposed to ensure all vehicles parked in the designated space shall not project beyond the property boundary, hence ensuring pedestrian and vehicle safety.

Other than this non-compliance, no other concerns were raised by Council’s Engineers.

In terms of the design and location of the proposed carport, Council’s Heritage Officer has stated the following in his previous referral response for the original application:
The design of the carport is contemporary and recessive. It will not be a dominant element in the Russell Street streetscape.

The eastern side of Russell Street is dominated by garage structures. The introduction of a single crossover and carport to the subject site will not adversely impact on the character of the Russell Street streetscape.

The carport structure is located adjacent to the boundary of No. 1 Russell Street and 3 Edward Street. Both are contributory Federation period houses. The solid wall to the rear and side boundaries incorporated into the design of the carport will assist in minimising adverse amenity impacts to the occupants of the adjoining residences.

The lightweight roof with grey finish will result in a carport that will appear contemporary and recessive.

In terms of the WHCA DCP requirements, the following is stated:

C1 stipulates that on-site parking may not be permitted in certain circumstances relating to amenity impacts, pedestrian and traffic movements, and inadequate sight distances. For the reasons discussed in the body of the report above, the proposal is deemed satisfactory in this regard.

C2 stipulates that parking is to be provided behind the front building alignment. The proposed carport is located to the rear is the only conceivable location for off-street car parking. As such, the proposal complies with this requirement.

C3 states that additional vehicle crossovers may not be permitted off street frontages. As detailed by Council’s Heritage Officer above, the siting of the crossover is in a traditional location and will not result in any adverse impacts on the streetscape.

A number of objectors have raised concerns that the proposed off-street car parking space and crossover will result in a loss of on-street car parking. The proposed crossover will have a width of 4m. As such, one car parking space, or the equivalent of a B35 vehicle (Volkswagen Golf) will be lost on the street. However, this loss will be off-set by the provision of one off-street car parking space, or the equivalent of a B85 vehicle (Ford Falcon). As such, there would be no nett loss in car parking and it could be argued that given the length of the vehicle parked on site (5.11m) will be greater than the length for the driveway crossover that is lost (4m), additional car parking could be provided on the street.

Subject to the above-mentioned condition, the proposal is deemed acceptable with regard to part 3.4.9 of the HCA DCP 2003.

Acoustic and visual privacy

The proposal is deemed acceptable with regard to part 3.4.12 of the DCP.

10.6 DCP for off-street car parking provision and servicing facilities

Under part 4.1 of the DCP, a minimum parking bay length of 5.4m is stipulated in accordance with the requirements of the Australian Standards. This issue has been addressed under parking and garages in section 10.5 of this report.
10.7 Other DCPs, codes and policies

None relevant

11. APPLICABLE REGULATIONS

The application will comply by condition

12. LIKELY IMPACTS OF THE MODIFIED DEVELOPMENT

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

13. SUBMISSIONS

The proposal was advertised and notified in accordance with Council’s Advertising and Notifications DCP. Five (5) submissions were received from:

- Mr Len Keyte – 3 Russell Street, Woollahra
- Mr J Marshall – 7 Russell Street, Woollahra
- Dr Matthew Miles – 4 Russell Street, Woollahra
- Ms Jane Summerhayes – 3 Edward Street, Woollahra
- Mr and Mrs Barnes – 1 Russell Street, Woollahra

The objectors raised the following issues:

Public safety – *It is not considered that the proposed car port and associated crossover would result in any significant public safety issues, subject to Condition I.2 restricting the parking of vehicles beyond property boundaries.*

Heritage impact – *It is not considered that the proposed car port would have a significant heritage impact. Council’s Heritage Officer did not raise any Heritage issues with the proposed structure.*

Bulk and overshadowing to 3 Edward Street – *The proposed carport would attain a maximum height of 2.7m and is a light weight structure. It is not excessively bulky and would not unreasonably overshadow the adjoining property to the west.*

Height of privacy screen on top of side fence – *This issue is addressed under section 10.5 (Fences, gates and retaining walls) of this report.*

The proposal would set a precedent for other properties along Russell Street – *All applications will be considered on their individual merits. In this instance, the subject dwelling faces Edward Street and the siting of the parking space complies with Council’s requirement to have parking structures located behind the front building line.*

There is already a shortfall of available parking in Russell Street and the proposal would further exacerbate the situation – *There will be a loss of one on-street car space as a result of the proposal. This is offset by one off-street space such that there will be no net reduction in car parking. Furthermore, considering the DCP allows for up to two spaces per dwelling, the addition of one car space is considered reasonable.*
Introducing a car port structure would have an adverse impact on the aesthetics of the street – *It is not considered that the proposal would result in an adverse impact of street aesthetics. The proposed carport roof is light weight and is contained wholly within the property boundaries. Furthermore, there are numerous examples of more obtrusive off-street car parking space on the eastern side of the street and in comparison the proposed carport roof is considered modest.*

The family at 12 Russell Street object to the application however they never received a letter advising them of the application – *All residents are able to submit an objection to a development proposal, regardless of whether or not they receive a notification letter.*

The car space does not comply with the Australian Standards – *Refer to parking and garages in section 10.5 of this report.*

### 14. CONCLUSION - THE PUBLIC INTEREST

The proposal is acceptable against the relevant considerations under S96 and S79C.

### 15. DISCLOSURE STATEMENTS

Under S.147 of the Environmental Planning and Assessment Act, 1979 there have been no disclosure statements regarding political donations or gifts made to any councillor or gifts made to any council employee submitted with this development application by either the applicant or any person who made a submission.

### 16. RECOMMENDATION: Pursuant to Section 96 of the Environmental Planning and Assessment Act, 1979

THAT Council, as the consent authority, modify development consent to Development Application No. 301/2009/2 for alterations and additions to the existing dwelling including a new carport on land at 5 Edward Street Woollahra, in the following manner:

**Condition C.1 is to be deleted from the consent**

**Conditions A.6, C.11, C.12, E.16 and I.2 is to be added to the consent:**

**A.6 Approved Amended (s96) Plans and supporting documents**

Those acting upon or under this amended consent must carry out all work and maintain the use and works in accordance with the approved plans and supporting documents listed in the original consent, as amended by the amended approved plans and supporting documents as submitted by the Applicant and to which is affixed a Council stamp “Approved Section 96 Plans” listed below otherwise than modified by further condition(s). Where the plans relate to amendments, 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>S96-100, S96-200, S96-201, S96-202 (all revision A)</td>
<td>Architectural Plans</td>
<td>Ancher/Mortlock/Woolley</td>
<td>01.02.2010</td>
</tr>
</tbody>
</table>

**Note:** These plans and supporting documentation may be subject to conditions modifying the development imposed under section 80A(1)(g) of the Act (refer to conditions which must be satisfied prior to the issue of any Construction Certificate.) Standard Condition: A6
C.11 Road and Public Domain Works

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 4.0m in accordance with Council’s standard driveway drawing RF2A.

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

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

C.12 Stormwater discharge to existing Stormwater Drainage System (Clause 25(2) WLEP 1995)

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 draft Development Control Plan Stormwater Drainage Management (Draft Version 1.1, Public Exhibition Copy dated 14/12/2006)

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 January 2003.
A note that 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

E.16 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, 52-54 O’Dea Avenue, Waterloo. Prior to delivery contact the Purchasing Officer, Mr Dave Byatt, on 9391 7973.

Standard Condition: E25

I.2 Parking of vehicles

Vehicles parked in the carport shall not project beyond the side (eastern) property boundary at any time to ensure pedestrian and vehicular safety.

Ms S Court Mr D Waghorn
ASSESSMENT OFFICER TEAM LEADER

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ANNEXURES

1. Plans and elevations
2. Technical Services Referral
3. Heritage comments from previous application in relation to proposed carport
Please note that this Item was called prior to it being put on the Application Assessment Panel meeting of the 11 May 2010 by Councillor Boskovitz.

Reason for calling item:

- Applicants desire to address the Committee on issues brought up in the report.

Referred to you for action.

Les Windle
Manager - Governance

Annexures: Report dated 11 May 2010
## SECTION 82A REVIEW OF DETERMINATION REPORT

<table>
<thead>
<tr>
<th>ITEM No.</th>
<th>D5</th>
</tr>
</thead>
<tbody>
<tr>
<td>FILE No.</td>
<td>DA 328/2009</td>
</tr>
<tr>
<td>ADDRESS</td>
<td>4A Wentworth Street, Point Piper</td>
</tr>
<tr>
<td>ORIGINAL PROPOSAL</td>
<td>Alterations and additions to the existing dwelling house comprising the enlargement of the roof terrace and construction of a new gymnasium</td>
</tr>
<tr>
<td>DATE DA DETERMINED</td>
<td>7 August 2009</td>
</tr>
<tr>
<td>SUBJECT OF REVIEW</td>
<td>Refusal of application</td>
</tr>
<tr>
<td>MODIFICATIONS MADE</td>
<td>Deletion of original gymnasium and reduction in area of proposed roof terrace</td>
</tr>
<tr>
<td>DATE S82A REVIEW APPLICATION LODGED</td>
<td>3 March 2010</td>
</tr>
<tr>
<td>APPLICANT/OWNER</td>
<td>Mr V White and Mrs Y White</td>
</tr>
<tr>
<td>REVIEW OFFICER</td>
<td>Simon Taylor</td>
</tr>
</tbody>
</table>

### 1. SEPP 1 OBJECTION

Yes – Clause 12 of the Woollahra LEP 1995 (Maximum building height)

### 2. LOCALITY PLAN

![Locality Plan](image)
3. SUMMARY

<table>
<thead>
<tr>
<th>Reason for report</th>
<th>Issues</th>
<th>Submissions</th>
</tr>
</thead>
<tbody>
<tr>
<td>A Section 82A review of determination application is required to be determined by a higher level of delegation than the originally determined application. In this instance, the original development application was determined (refused) under delegated authority. Accordingly, the subject review of determination application is referred to Council’s Application Assessment Panel for determination.</td>
<td>• Loss of views&lt;br&gt;• Visual privacy&lt;br&gt;• Acoustic privacy&lt;br&gt;• Objectors concerns</td>
<td>Five submissions were received</td>
</tr>
</tbody>
</table>

4. ORIGINAL REFUSAL

DA328/2009 was refused under delegated authority on 6 August 2009 for the following reasons:

1. The proposal would exceed the maximum height development standard. The proposal would fail to satisfy Woollahra Local Environmental Plan 1995 - Part 3, Clause 12(1).
2. A State Environmental Planning Policy No. 1 objection has not been submitted to vary the height development standard prescribed by Woollahra Local Environmental Plan 1995.
3. The proposal would have an unreasonable impact on existing views, would not promote the practice of view sharing and would have an unreasonable impact on the amenity of adjoining residents. The proposal would fail to satisfy Woollahra Local Environmental Plan 1995 - Part 1, Clause 2, Objective (2)(h)(iv) and Clause 12AA Objective (a) and Woollahra Residential Development Control Plan 2003 - Section 5.5, Objective O5.5.2 and Control C5.5.6.
4. The proposal would exceed the maximum floor space ratio control, would be excessive in scale and bulk and would have an unreasonable impact on views from adjoining property. The proposal would fail to satisfy Woollahra Residential Development Control Plan 2003 - Section 5.2, Objective O5.2.2 and O5.2.3 and Control C5.2.9.
5. The proposal would exceed the maximum storey height control. The proposal would fail to satisfy Woollahra Residential Development Control Plan 2003 - Section 4.5, Control C4.5.7.2.
6. The proposal would fail to comply with the minimum side setback control resulting in a development that is excessive in scale and bulk. The proposal would fail to satisfy Woollahra Residential Development Control Plan 2003 - Section 5.2, Objective O5.2.3 and Control C5.2.5.
7. The proposal would enable a direct line of sight into private living areas and dormitories of adjoining property and would have an unreasonable impact on the amenity of adjoining residents with regard to privacy. The proposal would fail to satisfy Woollahra Local Environmental Plan 1995 - Part 3, Clause 12AA(c) and Woollahra Residential Development Control Plan 2003 - Section 5.8, Objective O5.8.1 and Control C5.8.4, C5.8.6 and C5.8.9.
8. The proposed development is not in the public interest.

5. DESCRIPTION OF PROPOSAL/SUBJECT OF REVIEW

The subject Section 82A review of determination application seeks the review of Council’s decision to refuse consent to the subject development application.

The subject review of determination application contains the following amendments from the refused scheme in an effort to address Council’s concerns:

- The deletion of the gymnasium building
- Reduction in the area of the roof terrace by setting back the balustrade 4.2m from the north eastern side, 0.9m from the southern side and 0.85m-3.15m from the western side
The proposal, as amended, involves the construction of a roof terrace comprising paving and plantings and measuring 80m². The plantings and tilings have been undertaken in the construction of the dwelling house. A gate also provides access to the roof from a staircase and smaller existing roof terrace.

6. DESCRIPTION OF SITE AND LOCALITY

<table>
<thead>
<tr>
<th>Physical features</th>
<th>The subject site is located on the western side of Wentworth Street. It is irregular in shape with a total site area of 758.8m². The frontage to Wentworth Street measures 24.5m. A right-of-way servicing 4B, 4C, 4D and 4E Wentworth Street runs along the south western boundary.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Topography</td>
<td>The site slopes from west to east or rear to front by 6.1m and across the site from north to south by 1.1m.</td>
</tr>
<tr>
<td>Existing buildings</td>
<td>Located on the subject site is a contemporary three storey dwelling house completed in late 2006.</td>
</tr>
<tr>
<td>Environment</td>
<td>The surrounding streetscape of Wentworth Street to the north and east is characterised by two and three storey dwelling houses on medium sized allotments. The streetscape of Wolseley Road to the west and south comprises largely of multi-storey residential flat buildings on relatively large allotments.</td>
</tr>
</tbody>
</table>

7. COUNCIL’S STATUTORY RESPONSIBILITIES UNDER SECTION 82A

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

a) Designated development  
b) Integrated development  
c) State significant development

The request for review must be made within 12 months after the date of determination and the review must occur in the following way: -
a) If the determination was made by a delegate of Council – the review must be undertaken by Council or another delegate of Council that is not subordinate to the delegate who made the determination

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

Upon making a determination of the review application, the following must be undertaken:

a) If upon review, Council grants development consent, or varies the conditions of a development consent, it must endorse on the notice of determination the date from which the consent, or the consent as varied by the review, operates.

b) If upon review, Council changes a determination in any way, the changed determination replaces the earlier determination as from the date of the review

CONSIDERATION OF REVIEW

8.1 Substantially the Same Development

The amendments made to the proposal, as discussed under Section 5 of this report, are considered to be minor relative to the scope of the overall development such that the amended development is substantially the same as that previously refused by Council. The primary aspect of the proposal is still the roof terrace.

8.2 Estimated Cost of Works

The applicant’s estimated cost of the proposed development is $47,000. This has been checked using our adopted practice and is considered to be accurate.

8.3 Internal and External Referrals

No referrals were required.

9. ENVIRONMENTAL ASSESSMENT UNDER SECTION 79C

9.1 SEPP (Building Sustainability Index: BASIX) 2004

The proposal does not alter any BASIX requirements.

9.2 SREP (Sydney Harbour Catchment) 2005

The provisions of Clauses 13, 25 and 26 of this instrument and the accompanying DCP for SREP (Sydney Harbour Catchment) 2005 require Council to consider the visual impact that a development proposal will have upon Sydney Harbour and adjoining foreshore areas and the likely impact upon available views to and from Sydney Harbour.

The subject site is located along the ridgeline of Point Piper and commands views of Sydney Harbour towards the east and less prominent views of the CBD skyline to the west. It is visible from Sydney Harbour. The matters of consideration in Clause 25 relate to the maintenance, protection and enhancement of the scenic quality of foreshores and waterways, and are as follows:
a) The scale, form, design and siting of any building should be based on an analysis of:
   (i) the land on which it is to be erected
   (ii) the adjoining land
   (iii) the likely future character of the locality

b) Development should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands, foreshores and tributaries

The scale of the building will remain acceptable, with visible modifications confined to the glass balustrade surrounding the roof terrace. Whilst visible to some extent in the streetscape, it is of a modest scale and will remain appropriate in terms of its relationship with the multi-storey nature of surrounding development to the south and west.

The matters of consideration in Clause 26 in relation to the maintenance, protection and enhancement of views are as follows:

a) Development should maintain, protect and enhance views (including night views) to and from Sydney Harbour

b) Development should minimise any adverse impacts on views and vistas to and from public places, landmarks and heritage items

The introduction of a glass balustrade to the roof terrace will remove private views to Sydney Harbour (specifically Rose Bay), Vaucluse and Manly from units within the adjoining building to the south (2A Wentworth Street). In terms of the concept of view sharing between the respective properties, the proposal does not achieve the above objectives (Refer to view loss assessment in Section 9.5). This forms Reason for Refusal 2.

There will be no change to public views.

Accordingly, the proposal is considered to be satisfactory with regard to the provisions of Clause 25 of SREP (Sydney Harbour Catchment) 2005 but given the impact upon views afforded to unit owners at 2A Wentworth Street, is unacceptable with regard to Clause 26.

9.3 Section 94A Contributions Plan

As the cost of works is less than $100,000, Section 94A Contributions are not applicable.

9.4 Woollahra Local Environmental Plan 1995

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

The proposal is permissible and satisfies the objectives of the Residential 2(a) zone. It is, however, unacceptable with regard to objective (h)(iv) in Part 1.2(2) of Woollahra LEP 1995, which requires development ‘to consider the impact of development on the views of Sydney Harbour enjoyed by existing residents and promote the practice of view sharing.’ This is discussed in Section 9.5 and forms Reason for Refusal 2.

Clause 12 Height

<table>
<thead>
<tr>
<th></th>
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<th>Refused DA</th>
<th>Proposed S82A</th>
<th>Control</th>
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<tr>
<td>Overall Height</td>
<td>12.6m</td>
<td>14.0m</td>
<td>13.6m</td>
<td>9.5m</td>
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Under the provisions of Clause 12 of the Woollahra LEP 1995, a maximum height control of 9.5m applies to the subject site.

The proposed balustrade has an RL of 55.95, which is 0.9m lower than the maximum height of the dwelling house (RL 56.85). Even so, the proposed balustrade to the terrace extends to a height of 13.6m, which breaches the height limit by 4.1m. The applicant has submitted an objection pursuant to State Environmental Planning Policy No. 1 – Development Standards in relation to the non-compliance. The SEPP No.1 objection forwarded by the applicant reads as follows:

The existing at the site has a maximum building height of 9.49m. As is evidenced above in Table 1 of our S82A Review Application report, the proposed new roof terrace incorporates a glass balustrade around its perimeter. The balustrade has a height of 1.1m, and will result in an overall building height of 10.59m to the top of the balustrade. The remainder of the existing house remains unchanged, and maintains compliance with the maximum 9.5m height control.

Despite this non-compliance, the proposal is consistent with the above-stated height-related objectives, as follows:

- the proposal does not give rise to any unreasonable view-related impacts in respect of adjoining properties as outlined in Section 5.3 of our S82A Review Application report;
- the proposed roof terrace will not be readily visible from street level in the vicinity of the site, and will therefore not add to the bulk or scale of the existing dwelling house on the site. To this end, the proposal will not significantly alter the appearance of the existing dwelling house;
- the proposal has been amended to provide for greater setbacks to the north and south, so as to minimise the potential for adverse privacy impacts;
- the proposed roof terrace is separated by 16m from the nearest balcony within No. 2A Wentworth Street, which is sufficient to minimise potential privacy impacts;
- the proposal will not create any additional overshadowing impacts;
- the proposed roof terrace is oriented to the north-east, and will not result in any unreasonable privacy-related impacts in respect of adjoining properties, due to this orientation and the setbacks of the proposed balustrades; and
- the proposal will not result in any loss of public views of the harbour and surrounding areas, nor the special qualities of the streetscape, through its sensitive low-scale design and general compliance with Council’s planning controls.

On the basis of the above, it is considered that strict compliance with the building height Development Standard is considered unreasonable and unnecessary in the circumstances of the case, and the minor departure from the Standard is supported in this regard.

The following assessment of the SEPP 1 objection applies the principles arising from Hooker Corporation Pty Limited v Hornsby Shire Council (NSWLEC, 2 June 1986, unreported) by using the questions established in Winten Property Group Limited v North Sydney Council(2001) NSW LEC 46 (6 April 2001), as follows: -
1. Is the planning control in question a development standard?

2. What is the underlying purpose of the standard?

3. Is compliance with the development standard consistent with the aims of the Policy, and in particular, does the development standard tend to hinder the attainment of the objects specified in s.5(a)(i) and (ii) of the EPA Act?

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

5. Is the objection well founded?

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

The planning control in question is the height standard set by Clause 12 of Woollahra LEP 1995. As such, any variation of the standard requires a SEPP 1 objection, as has been prepared in this case.

2. What is the underlying purpose of the standard?

The objectives of the height standard listed under Clause 12AA of Woollahra LEP 1995 are:

   a) To minimise the impact of new development on existing views of the Harbour, ridgelines, public and private open space and views of the city skyline;
   b) To ensure compatibility with the adjoining neighbourhood;
   c) To safeguard visual privacy of interior and exterior living areas of neighbouring dwellings;
   d) To minimise detrimental impacts on existing sunlight access to interior living rooms and exterior open space areas and minimise overshadowing
   e) To ensure development maintains the amenity of the public domain by preserving public views of the Harbour and surrounding areas and the special qualities of the streetscape

3. Is compliance with the development standard consistent with the aims of the Policy, and in particular, does the development standard tend to hinder the attainment of the objects specified in s.5(a)(i) and (ii) of the EPA Act?

The proposal will not alter the public views of Sydney Harbour or the surrounding areas. It is therefore acceptable with regard to objective (e).

The scale of the addition is not extensive – limited to the balustrade around the terrace. This remains compatible with the surrounding neighbourhood and does not pose any further issue with regard to overshadowing. It is therefore acceptable with regard to objectives (b) and (e) respectively.

However, despite the minimal scale of the proposed development, there are unreasonable implications in terms of the impact upon the views and acoustic and visual privacy afforded to adjoining properties to the north and south (Refer to Section 9.5 below). This is contrary to objectives (a) and (c) of Clause 12AA.

In relation to the objectives specified in Section 5(a)(i) and (ii) of the EPA Act, they are as follows:

5(a)(i) To encourage the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.
5(a)(ii) To encourage the promotion and co-ordination of the orderly and economic use and development of land.

Enforcement of the height control has not been applied in the approval of the original development application for the redevelopment of the subject site as it would have hindered the proper management of the site or the orderly and economic use and development of the land. However, in this instance, the proposal seeks to add to the approved development and the impacts associated with the additional height are unacceptable. The additional height of the proposal is not supported as it would not satisfy the objectives prescribed by the EPA Act 1979.

On the above basis, the proposal is inconsistent with the aims and objectives of Clause 12AA of Woollahra LEP 1995.

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

The proposal would not satisfy the underlying intent and stated objectives of Council’s maximum building height standard in Clause 12AA of Woollahra LEP 1995. Thus, strict compliance with the standard is considered necessary and is reasonable in the circumstances of the case.

5. Is the objection well founded?

The SEPP No. 1 objection in relation to the non-compliance with the height standard is considered to be unfounded. It is considered that the proposed development is inconsistent with the aims and objectives set out in Clause 3 of SEPP 1. Council is therefore unable to support the SEPP 1 objection due to Reasons for Refusal 1 and 2. The unreasonableness of the SEPP 1 objection also forms Reason for Refusal 3.

Clause 25 Water, wastewater and stormwater

Clause 25 of WLEP 1995 requires Council to take into consideration the provision of adequate stormwater drainage and the provision of adequate water and sewerage services. The proposal is considered to be satisfactory.

9.5 Woollahra Residential Development Control Plan 2003

<table>
<thead>
<tr>
<th></th>
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<th>Proposed 82A Review</th>
<th>Control</th>
<th>Complies</th>
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<td>5.5m-6.1m</td>
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Desired future precinct character objectives and performance criteria

C4.5.4 requires development to be setback 3.0m from side boundaries, increasing on a pro rata basis by 0.5m for each 1.0m the development exceeds 6.0m.

In this instance, the balustrade to the balcony is required to be setback 3.8m on the northern or high side and up to 6.1m on the southern or low side. The location of the balustrade is such that compliance is achieved along the northern side whilst there is a maximum non-compliance of 1.6m along the southern side.
The scale of the balustrade is not necessarily of concern as it is of minimal scale and only partially visible from the street or Sydney Harbour. Its proximity, however, presents issues with regard to overlooking. This is contrary to building size and location objectives in Section 5.2 and forms Reasons for Refusal 1.

**Streetscape performance criteria**

The provisions of Part 5.1 of WRDCP 2003 require development to achieve consistency with the desired future character for the locality and contribute to cohesive streetscapes and desirable pedestrian environments. The proposal is acceptable in this regard.

**Building size and location performance criteria**

The floor space ratio is unchanged.

**Views performance criteria**

C5.5.6 of Woollahra RDCP 2003 requires building forms to enable a sharing of views, particularly from the main habitable rooms.

The four objectors from 2A Wentworth Street (Units 11, 19, 20 and Penthouse) raised concern in relation to the loss of views from their properties.

The extent of view loss to the adjoining properties is assessed via the four-step assessment of view sharing as detailed in the Land and Environment Court, in Tenacity Consulting Pty Ltd V Warringah Council (2004).

- **What is the value of the view?**

The Court said: "The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured."

The available views from each unit are varied due to the varying interruptions posed by the existing approved development on the subject site and the level of each unit within 2A Wentworth Street.

From Unit 11 (Level 3), there are some views towards Rose Bay and the ridgeline of Vaucluse. Some views are also available towards the CBD skyline to the west.

From Unit 19 (Level 5), there are views of Rose Bay and the ridgeline of Vaucluse to Nielsen Park. From Unit 20 (Level 5), views are available further to the north towards Manly as it is located closer to the street. Views of the CBD skyline to the west are more pronounced from Unit 19 than from Unit 20.

From the Penthouse, the view extends from Middle Head to the foreshore of Rose Bay and also includes prominent views to the CBD skyline to the west. A dwelling house currently under construction at 4B Wentworth Street partially interrupts the view of the ridge on the North Shore (in a standing position).
• From what part of the property the views are obtained?

The Court said: "The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic."

In each instance, the views are obtained from a main bedroom, lounge room and kitchen, with adjoining balconies. Given they are obtained from main living spaces, they are obtained in both a sitting and standing position.

• What is the extent of the impact?

The Court said: "The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating."

The proposal involves a glass balustrade around the edge of the roof terrace.

In either a sitting or standing position, the view loss from Unit 11 will be of the sky. The impact is negligible.

In a standing position, the view loss from Unit 19 will be of the ridgeline of Vaucluse (to Neilsen Park) and the ridgeline of Vaucluse and from Unit 20, further north towards Manly. Sightlines will be interrupted by the glass balustrade. The impact is minor-moderate but more pronounced in a sitting position.

Standing in the bedroom of Unit 11  Standing on the balcony of Unit 19

The view loss from the penthouse will be of the immediate foreground of Point Piper extending to the foreshore of Sydney Harbour. Irrespective of whether a person is sitting or standing, the impact is minor.
Standing on the terrace of the Penthouse

The applicant has stated in correspondence to Council that they are willing to accept a condition that the roof terrace is to be used for short term private use and any furniture or temporary elements are not to be left on the roof terrace following conclusion of its use. Despite this being very difficult to police, it signals the intention to have furniture on the roof, which further erodes the extent of view loss outlined above.

- What is the reasonableness of the proposal that is causing the impact?

The Court said: “The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”

The view loss from Unit 11 is negligible and no concern is raised. Meanwhile, the view loss from the Penthouse is minor but considered to be acceptable on the basis of view sharing, considering that the impact is limited to the foreground of Point Piper and the remaining views from the CBD skyline to the North Shore and of Vaucluse remain unaffected.

However, the view loss from Units 19 and 20 is of some concern. Whilst it would be possible to view through the frameless glass balustrade, it is still seen as an unnecessary and unreasonable interruption of the view to the ridgeline of Vaucluse, Neilsen Park and Manly. Furthermore, the establishment of a roof terrace in this area is likely to lead to the establishment of temporary structures on the roof, regardless of whether they are prohibited by conditions in any development consent.

The Court poses two questions in Tenacity Consulting v Warringah (2004) NSWLEC 140 (paragraphs 23-33). The first question relates to whether a non-compliance with one or more planning controls results in view loss. The view loss from Units 19 and 20 arises solely because of the non-compliance with the height control.

The second question posed by the Court relates to whether a more skilful design could provide the same development potential whilst reducing the impact on views.
As the level of view loss through the frameless glass balustrade is deemed unsatisfactory, there is no redesign of the proposed roof terrace that would bring about a satisfactory outcome. A reduction in the height of the balustrade would not meet compliance with the Building Code of Australia. Reducing the size of the terrace to concentrate it towards the west of the roof would have an improvement in terms of view loss. However, it would not resolve concerns in relation to acoustic and visual privacy.

The existing dwelling house on the subject site was constructed in late 2006 and was seen to eliminate some views, albeit in an acceptable manner, from various levels of the residential flat building at 2A Wentworth Road. The introduction of the glass balustrade is seen to exacerbate the view loss, primarily from Level 4 (Units 19 and 20). Whilst it is acknowledged that sightlines are possible through the glass, the concern relates to the fact that the glass results in an interruption of these sightlines to the ridgelines of Vaucluse, Neilsen Park and Manly.

Furthermore, a smaller terrace already exists within the roof and provides views to the west and east.

Accordingly, the increase in the height of the building is considered to be unsatisfactory on the basis of the extent of view loss. Refer to Reason for Refusal 2.

**Stormwater management performance criteria**

The proposal is acceptable with regard to Section 5.7.

**Acoustic and visual privacy performance criteria**

All the objections received by Council (2A and 4B Wentworth Street) raised concerns about the loss of acoustic and visual privacy.

C5.8.6 requires roof terraces to be suitably screened to prevent direct views into habitable rooms of adjoining dwellings. C5.8.9 also requires the trafficable area of the roof terraces must be set back so that there is no direct line of sight to neighbouring open space or windows of adjoining dwellings within a distance of 12m.

At a minimum, there is 15.5m separation between the southern edge of the roof terrace and balconies of each unit within 2A Wentworth Street. To the north, there is a minimum separation of 10.7m between the northern edge of the roof terrace and the front balcony to the dwelling at 4B Wentworth Street. This is depicted on the aerial photograph below.
Accordingly, the level of separation to 2A Wentworth Street meets the requirements of C5.8.6 but as is shown in the photographs below, there is still a pronounced level of overlooking between the roof terrace within the subject site and the balconies, bedrooms and living room of units within 2A Wentworth Street. Despite a more acute sightline to 4B Wentworth Street, the non-compliance with C5.8.6 to the north is also considered to be of concern.

The impacts to each property are summarised as follows:

- The increased setback of the balustrade of between 0.8m and 3.2m from the southern edge of the roof ensures that sightlines are suitably obstructed by the edge of the dwelling and there are is no unreasonable overlooking to Unit 11
- There is direct overlooking from the roof terrace to the main living room, balcony and main bedroom of Units 19 and 20 on Level 4. Existing planter boxes (unapproved) aid in screening some of the overlooking of Unit 19 (western unit). Nonetheless, the overlooking is still evident
- There is direct overlooking from the roof terrace to the main living room, balcony and main bedroom of the Penthouse
• Sightlines are available from the northern side of the roof terrace to the front balconies on the
ground and first floor of 4B Wentworth Street to the north. The northernmost corner of the
terrace affords views to Manly where none previously existed as well as more expansive
views of Sydney Harbour not obtained on lower levels. Accordingly, it is likely that people
will congregate in this area

Whilst it is acknowledged that the general outlook and positioning of the roof terrace is to take
advantage of the north/north easterly view of Sydney Harbour, the extent of overlooking to the
north and south is still significant and considered to be unreasonable.

The roof terrace measures 80m$^2$ and is the largest outdoor entertaining space on the subject site.
Due to its elevated nature, the views are relatively expansive and is likely to lead to regular use.
Furthermore, due to its elevated nature, noise is likely to transmit to adjoining properties. The level
of noise is likely to be significant and well in excess of any outdoor spaces on adjoining spaces
given these spaces are much smaller.

In Super Studio v Waverley Council (2004) NSWLEC 91, the Commissioner established a planning
principle in relation to privacy and stated that ‘the acceptability of an impact depends not only on
the extent of the impact but the reasonableness of, and necessity for, the development that causes
it’, and that ‘a roof terrace would be acceptable only if its impact were minor or negligible’.

The Commissioner found in this specific Land and Environment Court case that:

‘While there is some distance between the properties, which I stood in the relevant location
during the site visit, I could see the rear yard of No. 447 with complete clarity. In addition,
two bedroom windows of No 447 can also be seen from the roof terrace.

In my opinion, the combination of overlooking and the added potential for noise disturbance
makes the impact of the proposed roof terrace unacceptable.’

The applicant has provided evidence of roof terraces at 45 Wolseley Road, 64 Wunulla Road, 10
Wentworth Street, 623 New South Head Road and 593 New South Head Road (and an
understanding that there was a roof terrace within 2A Wentworth Street (objector’s building)).
However, the closest of these properties is 70m away and some other properties are more than
700m away. 2A Wentworth Street does not have a communal roof terrace and the other properties
have not objected based on overlooking nor is overlooking possible.

The planning principle established above in Super Studio v Waverley Council (2004) NSWLEC 91
establishes that where there is a roof terrace in an area where other roof terraces exist, the level of
sensitivity afforded to the assessment of the roof terrace is low. When a roof terrace exists where
there are no other roof terraces in the immediate vicinity, heightened sensitivity should be given. In
this instance, the surrounding properties, including the objectors’ properties do not have roof
terraces and therefore, heightened sensitivity should be applied. Furthermore, the roof terrace is in
addition to several other outdoor balconies that have pronounced views and an existing smaller roof
terrace adjacent to the staircase.

On the basis of the above, it is argued that despite compliance with the 12m setback requirement in
C5.8.6, the proposed roof terrace allows direct sightlines to habitable spaces and balconies of
adjoining properties and is therefore unreasonable. In addition, it is excessive in size and due to its
elevated nature and expansive views, will lead to regular use and the transmission of excessive
levels of noise to surrounding residences. It is unacceptable with regard to the relevant objectives
and controls of Section 5.8 of WRDCP 2003. This issue forms **Reason for Refusal 1**.
9.6 Woollahra Access DCP

The Woollahra Access DCP encourages, rather than requires, visitor access for older people or people with a disability for alterations and additions to Class 1 dwellings.

Access to the roof terrace for people with disabilities is unfeasible. In this regard, no objection is raised with regard to the Woollahra Access DCP.

9.7 Applicable Regulations

None applicable.

9.8 The Likely Impacts of the Proposal

All likely impacts have been addressed elsewhere in this report.

9.9 The Suitability of the Site

The subject site is unsuitable for the establishment of a roof terrace due to the proximity to adjoining properties and the elevated nature of the roof terrace.

9.10 Submissions

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

1. Michael Walker of 2A Wentworth Street, Point Piper
2. TM and AR Finnerty of 11/2A Wentworth Street, Point Piper
3. EC Kennedy of 19/2A Wentworth Street, Point Piper
4. Lola Saba of 20/2A Wentworth Street, Point Piper
5. Lillian Melick Penthouse/2A Wentworth Street, Point Piper
6. Justin Pelly and Karen Phin of 4B Wentworth Street, Point Piper

The submission raised the following issues:

- Excessive number of storeys

The number of storeys is remaining unchanged.

- Excessive height

Refer to Sections 9.4 and Reason for Refusal 3.

- Loss of view/lack of view sharing
- Loss of acoustic and visual privacy

Refer to Section 9.5 (views performance criteria and acoustic and visual privacy performance criteria)

- Glass balustrade is said to maintain views and limit overlooking, which is contradictory

This is acknowledged.
10. CONCLUSION

The reasons for refusal of the original application are discussed below

1. The proposal would exceed the maximum height development standard. The proposal would fail to satisfy Woollahra Local Environmental Plan 1995 - Part 3, Clause 12(1).

The proposal does not satisfy objectives (a) and (c) of Clause 12 of Woollahra LEP 1995. This remains as Reason for Refusal 1 and 2.

2. A State Environmental Planning Policy No. 1 objection has not been submitted to vary the height development standard prescribed by Woollahra Local Environmental Plan 1995.

A SEPP 1 objection was submitted with the Section 82A review but was not supported. This forms Reason for Refusal 3.

3. The proposal would have an unreasonable impact on existing views, would not promote the practice of view sharing and would have an unreasonable impact on the amenity of adjoining residents. The proposal would fail to satisfy Woollahra Local Environmental Plan 1995 - Part 1, Clause 2, Objective (2)(h)(iv) and Clause 12AA Objective (a) and Woollahra Residential Development Control Plan 2003 - Section 5.5, Objective O5.5.2 and Control C5.5.6.

This remains as Reason for Refusal 2.

4. The proposal would exceed the maximum floor space ratio control, would be excessive in scale and bulk and would have an unreasonable impact on views from adjoining property. The proposal would fail to satisfy Woollahra Residential Development Control Plan 2003 - Section 5.2, Objective O5.2.2 and O5.2.3 and Control C5.2.9.

With the deletion of the proposed gymnasium from the Section 82A plans, the scale and bulk of the building and the resulting floor space ratio is no longer of concern.

5. The proposal would exceed the maximum storey height control. The proposal would fail to satisfy Woollahra Residential Development Control Plan 2003 - Section 4.5, Control C4.5.7.2.

With the deletion of the proposed gymnasium from the Section 82A plans, the number of storeys is no longer of concern.

6. The proposal would fail to comply with the minimum side setback control resulting in a development that is excessive in scale and bulk. The proposal would fail to satisfy Woollahra Residential Development Control Plan 2003 - Section 5.2, Objective O5.2.3 and Control C5.2.5.

With the deletion of the proposed gymnasium from the Section 82A plans, the setbacks of this structure are no longer of concern. The setbacks of the balustrade were considered acceptable on scale and bulk reasoning.
7. The proposal would enable a direct line of sight into private living areas and dormitories of adjoining property and would have an unreasonable impact on the amenity of adjoining residents with regard to privacy. The proposal would fail to satisfy Woollahra Local Environmental Plan 1995 - Part 3, Clause 12AA(c) and Woollahra Residential Development Control Plan 2003 - Section 5.8, Objective O5.8.1 and Control C5.8.4, C5.8.6 and C5.8.9.

This remains as **Reason for Refusal 1**.

8. The proposed development is not in the public interest.

The proposal is not in the public interest no longer forms a reason for refusal.

11. **DISCLOSURE STATEMENTS**

Under Section 147 of the Environmental Planning and Assessment Act, 1979 there have been no disclosure statements regarding political donations or gifts made to any councillor or gifts made to any council employee submitted with this development application by either the applicant or any person who made a submission.

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

THAT Council, as the consent authority, having considered the application for review of its determination and the contents of objection under State Environmental Planning Policy No. 1 – Development Standards to the 9.5m maximum building height development standard under Clause 12 of Woollahra LEP 1995, resolve to maintain its refusal of development consent to Development Application No. 328/2009 for the enlargement of roof terrace on land at 4A Wentworth Street, Point Piper, for the following reasons:

1. **Loss of acoustic and visual privacy**

   The proposed roof terrace results in an unacceptable extent of overlooking to the dwelling house on the adjoining property to the north (4B Wentworth Street) and Units 19, 20 and the Penthouse to 2A Wentworth Street. This is contrary to objective (c) of Clause 12AA of Woollahra LEP 1995 and C5.8.6 of Section 5.8 of Woollahra RDCP 2003.

   The size of the roof terrace is excessive and due to its elevated nature and expansive views, will lead to regular use and the transmission of excessive levels of noise to surrounding residences. This is contrary to objective O5.8.1 of Section 5.8 of Woollahra RDCP 2003.

2. **Loss of views**

   The proposed glass balustrade will have an unacceptable interruption to the views afforded to Units 19 and 20 at 2A Wentworth Street and it results in an unreasonable level of view sharing between properties. Any temporary furniture would further erode the extent of view sharing.

   This is contrary to Clause 26(a) and (b) of SREP (Sydney Harbour Catchment) 2005, objectives (h)(iv) of Clause 1.2(2) and objective (a) of Clause 12AA of Woollahra LEP 1995 and C5.5.6 of Woollahra RDCP 2003.
3. **SEPP 1 Objection**

The SEPP 1 objection submitted by the applicant in relation to the non-compliance with the building height control in Clause 12 is not supported. There are unreasonable implications in terms of the impact upon the views and acoustic and visual privacy to adjoining properties, which is contrary to objectives (a) and (c) of Clause 12AA of Woollahra LEP 1995.

---

**Mr Simon Taylor**

**REVIEW OFFICER**

**Mr David Waghorn**

**TEAM LEADER**

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**ANNEXURES**

1. Original assessment report
### DEVELOPMENT APPLICATION ASSESSMENT REPORT

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#### PROPOSAL
Demolition of the existing dwelling-house and ancillary structures; construction of a new dwelling house and a detached double carport; landscaping works.

#### TYPE OF CONSENT:
Local Development

#### APPLICANT:
Ms S Lee

#### OWNER:
Ms S D Lee

#### DATE LODGED:
05/03/2010

#### AUTHOR:
Mr M Bolduan

### DOES THE APPLICATION INVOLVE A SEPP 1 OBJECTION?
NO

#### 1. RECOMMENDATION PRECIS

The proposal is recommended for refusal because it:

1. does not comply with the objectives of the relevant planning standards contained in the WLEP 1995 and the Watsons Bay Heritage Conservation Area DCP; and
2. is not an appropriate design for the site.

#### 2. PROPOSAL PRECIS

The proposal involves demolition of the existing dwelling-house; construction of a new dwelling house and a detached double carport; and landscaping works.
3. LOCALITY PLAN

4. DESCRIPTION OF PROPOSAL

The proposal involves:
- demolition of the existing dwelling-house;
- construction of a new part two, part three storey dwelling house with rear two storey pavilion;
- construction of a detached double carport on the Camp Street frontage;
- landscaping works.

5. SUMMARY

<table>
<thead>
<tr>
<th>Reasons for report</th>
<th>Issues</th>
<th>Submissions</th>
</tr>
</thead>
<tbody>
<tr>
<td>The DA has been referred to the DCC by the Manager of Development Control.</td>
<td>Breach of heritage objectives and controls</td>
<td>Sixteen objections were received.</td>
</tr>
<tr>
<td></td>
<td>Breach of excavation setback control</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Breach of floor space ratio control</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Breach of building height (storeys) control</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Breach of maximum external wall height control</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Breach of side setback control</td>
<td></td>
</tr>
</tbody>
</table>
6. **ESTIMATED COST OF WORKS**

Council adopted (DCC 6 June 2005) administrative changes for determining DA fees based on the estimated cost of work. The stated cost of the proposed work of $1,047,450 has been checked using this criteria and is considered to be accurate.

7. **DESCRIPTION OF SITE OF LOCALITY**

<table>
<thead>
<tr>
<th>THE SITE AND LOCALITY</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Physical features</strong></td>
<td>The subject site is located on the northern side of Pacific Street and the southern side of Camp Street. The site has a total area of 368.6m². The site has a southern (front) boundary of 9.975m in length, an eastern (side) boundary of 44.87m in length, a western (side) boundary of 37.675m in length and a northern (rear) boundary of 9.295m in length. The site has frontage to Camp Street to the rear.</td>
</tr>
<tr>
<td><strong>Topography</strong></td>
<td>The subject site exhibits a minor crossfall at the southern (front) boundary from the south-eastern corner towards the south-western corner of approximately 0.11m, varying from RL6.80 in the south-eastern corner to RL6.69 in the south-western corner. The subject site slopes downwards from the southern (front) boundary to the northern (rear) boundary by 4.69m, varying from RL6.65 on the southern boundary to RL1.63 on the northern boundary.</td>
</tr>
<tr>
<td><strong>Existing buildings and structures</strong></td>
<td>Located on the subject site is a one storey brick and weatherboard dwelling-house. A single hard stand car park exists at the rear boundary. The subject building is listed as a contributory item in the WBHCADCP.</td>
</tr>
<tr>
<td><strong>Environment</strong></td>
<td>The site is located in the Camp Cove Village Precinct of the Watsons Bay Heritage Conservation Area. The subject dwelling forms part of a group of eight, predominantly single storey, weatherboard cottages on the northern side of Pacific Street.</td>
</tr>
</tbody>
</table>
8. **PROPERTY HISTORY**

<table>
<thead>
<tr>
<th>PROPERTY HISTORY</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current use</strong></td>
<td>Dwelling-house</td>
</tr>
<tr>
<td><strong>Previous relevant applications</strong></td>
<td>None</td>
</tr>
<tr>
<td><strong>Pre-DA</strong></td>
<td>None</td>
</tr>
<tr>
<td><strong>Requests for additional information</strong></td>
<td>None</td>
</tr>
<tr>
<td><strong>Amended plans/Replacement Application</strong></td>
<td>None</td>
</tr>
<tr>
<td><strong>Land &amp; Environment Court appeal</strong></td>
<td>None</td>
</tr>
</tbody>
</table>
9. REFERRALS

9.1 The following table contains particulars of internal referrals.

<table>
<thead>
<tr>
<th>Referral Officer</th>
<th>Comment</th>
<th>Annexure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development Engineer</td>
<td>Council’s Development Engineer has determined that the proposal is satisfactory subject to various Conditions.</td>
<td>2</td>
</tr>
<tr>
<td>Landscaping Officer</td>
<td>Council’s Landscaping Officer has determined that the proposal is satisfactory subject to various Conditions.</td>
<td>3</td>
</tr>
<tr>
<td>Environmental Health Officer</td>
<td>Council’s Environmental Health Officer has determined that the proposal is satisfactory subject to various Conditions.</td>
<td>4</td>
</tr>
<tr>
<td>Heritage Officer</td>
<td>Council’s Heritage Officer has determined that the proposal is unsatisfactory.</td>
<td>5</td>
</tr>
</tbody>
</table>

9.2 The following table contains particulars of external referrals.

Not applicable.

ENVIRONMENTAL ASSESSMENT UNDER S.79C

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

10. STATE/REGIONAL INSTRUMENTS AND LEGISLATION

10.1 SEPPs

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed development. The development application was accompanied by BASIX Certificate No. 282972S 02 committing to environmental sustainability measures.

If it were proposed to grant a development consent in this matter, these requirements would have been imposed by standard condition prescribed by clause 97A of the Environmental Planning & Assessment Regulation 2000.

State Environmental Planning Policy No. 55

Under clause 7 (1) (a) of State Environmental Planning Policy No 55-Remediation of Land, consideration is required to be been given as to whether the land is contaminated. It is considered that the proposal does not require further consideration under clause 7 (1) (b) and (c) of SEPP 55.

10.2 REPs

The provisions of this instrument and the accompanying DCP require Council to consider the environmental impact that a development proposal will have upon Sydney Harbour and adjoining foreshore areas.
The subject development will not be visible from Sydney Harbour (Watsons Bay) and the adjoining foreshore area. The proposal is therefore considered to be satisfactory in respect to SREP (Sydney Harbour Catchment) 2005 and the accompanying DCP.

10.4 Other legislation

Not relevant.

11. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

11.1 Aims and objectives of WLEP 1995 and zone

The proposal is considered to be inconsistent with the following objectives under Clause 2 of the WLEP 1995:

\( (g) \) in relation to heritage conservation -

(i) to identify heritage items and heritage conservation areas and to provide measures for their conservation, protection and enhancement

(ii) to ensure that new development is undertaken in a manner that is sympathetic to and does not detract from the heritage significance of heritage items and their settings and of heritage conservation areas

(iii) to encourage the restoration or reconstruction of buildings or works which are heritage items or buildings and works that contribute to the character of heritage conservation areas.

The subject site is located in the Watsons Bay Heritage Conservation Area (WBHCA). The existing dwelling on the subject site is a contributory item within Precinct K (Camp Cove Village Precinct).

The proposal is unsatisfactory with regards to Clauses 27 and 28 - Heritage and conservation area provisions as:

- The proposed demolition of the existing dwelling does not satisfy the criteria for demolition of contributory items in Helou v Strathfield Municipal Council [2006] NSWLEC 66.
- The proposal does not conserve, protect and enhance the environmental heritage of the WBHCA.
- The proposed dwelling is unsympathetic to and detracts from the heritage significance of the WBHCA.
- The proposal does not encourage the restoration or reconstruction of buildings or works which contribute to the character of the WBHCA.

11.2 Statutory compliance table

<table>
<thead>
<tr>
<th>Site Area (368.6m²)</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site Area (m²)</td>
<td>368.6m²</td>
<td>368.6m²</td>
<td>350m²</td>
<td>Yes</td>
</tr>
<tr>
<td>Overall Height (metres)</td>
<td>7.4m</td>
<td>8.2m</td>
<td>8.2m</td>
<td>Yes</td>
</tr>
</tbody>
</table>
11.3 Site area requirements

The subject site has an area of 368.6m² which complies with Council’s minimum allotment size for dwelling-house development of 350m² under Clause 10 of the WLEP 1995.

11.4 Height

The overall height of the proposal is 8.2m which complies with Council’s 8.2m statutory height control stipulated under Clause 12 of WLEP 1995.

11.5 Other special clauses/development standards

Clause 18 Excavation:

The provisions of Clause 18 require Council, when considering a development application involving excavation, to have regard to how that excavation may temporarily or permanently affect:

(a) The amenity of the neighbourhood by way of noise, vibration, dust or other similar circumstances related to the excavation process.
(b) Public safety.
(c) Vehicle and pedestrian movements.
(d) The heritage significance of any heritage item that may be affected by the proposed excavation and its setting.
(e) Natural landforms and vegetation.
(f) Natural water run-off patterns.

The extent of excavation associated with the proposal relates to:

- The lower ground floor involves excavation to a depth of 0-2.5m over an area of approximately 111m²; a volume of approximately 133m³.
- The landscaping in the front yard involves minor excavation to a depth of 0.1m over an area of approximately 1.0m²; a volume of approximately 0.1m³.
- The landscaping in the rear yard (terraces and stairs) involves excavation to a depth of 0-0.3m over an area of approximately 42m²; a volume of approximately 6.0m³.
- The garage in the rear yard involves minor excavation to a depth of 0.2m over an area of approximately 15m²; a volume of approximately 3.0m³.
- The excavation associated with the footings for the dwelling, garage, rear terraces, rear external stairs, front fence, front pathway, front external stairs and garbage bin enclosure.

C5.2.16 WRDCP 2003 requires that the outer edge of excavation, piling and all sub-surface walls shall not be less than 1.5m from a front, side or rear boundary. The siting of the proposed excavation results in the following setback non-compliances:

- The excavation associated with the lower ground floor will extend to within 0.8m of the side boundaries; a maximum non-compliance of 0.7m.
- The excavation associated with the landscaping in the front yard will extend to within 1.3m of the side boundaries; a maximum non-compliance of 0.2m.
- The excavation associated with the garage will extend to within 0m of the rear boundary, 0.7m of the eastern side boundary and 0.8m of the western side boundary; non-compliances of 1.5m, 0.8m and 0.7m respectively.
• The excavation associated with the footings for the dwelling will extend to within 0.8m of the side boundaries; a maximum non-compliance of 0.7m.
• The excavation associated with the footings for the garage will extend to within 0m of the rear boundary, 0.7m of the eastern side boundary and 0.8m of the western side boundary; non-compliances of 1.5m, 0.8m and 0.7m respectively.
• The excavation associated with the footings for the front fence will extend to within 0m of the front boundary and 0m of the eastern side boundary; non-compliances of 1.5m.
• The excavation associated with the footings for the front pathway, front external stairs and garbage bin enclosure will extend to within 0m of the front boundary and 0m of the western side boundary; non-compliances of 1.5m.

Having regard to the above-mentioned heads of consideration, the following comments are made in relation to the impact of the proposed excavation upon the local environment:

(a) the amenity of the neighbourhood by way of noise, vibration, dust or other similar circumstances related to the excavation process

Council’s Development Engineer has recommended approval of the proposal subject to Conditions requiring the submission and approval of an erosion and sediment management plan, professional engineering plans, geotechnical and hydrogeological design, certification and monitoring, the preparation of dilapidation reports, installation of erosion and sediment controls, maintenance of environmental controls, compliance with the geotechnical/hydrogeological monitoring program, support of adjoining land and buildings, vibration monitoring and maintenance of erosion and sediment controls, the proposal is considered to be satisfactory with regard to these issues.

Refer to Annexure 2 for the comments by Council’s Development Engineer.

(b) Public safety.

(c) Vehicle and pedestrian movements.

Issues relating to public safety and pedestrian movements during the excavation phase are inter-related and could be addressed by a Condition requiring maintenance of vehicular and pedestrian safety and access during excavation.

(d) The heritage significance of any heritage item that may be affected by the proposed excavation and its setting.

The proposed excavation will not affect any heritage item or its setting.

(e) Natural landforms and vegetation.

Council's Trees and Landscapes Officer considers the amended proposal to be satisfactory in terms of excavation in the vicinity of significant trees subject to Conditions requiring tree preservation and planting of replacement trees.

Refer to Annexure 3 for tree preservation comments by Council’s Tree and Landscapes Officer.
(f) **Natural water runoff patterns**

Council’s Development Engineer has recommended approval of the proposal subject to Conditions requiring the stormwater discharge point to be directly to Council’s stormwater gully pit located in Camp Street, the parking bay to be raised to RL 1.91, a stormwater management plan, flood protection, erosion and sediment control instillation, maintenance of erosion and sediment controls and disposal of site water.

In the event that it were proposed to grant consent pursuant to the subject application, it would be recommended that the consent would be subject to the abovementioned Conditions. However, it is proposed to refuse the subject application, and no such Conditions are therefore required.

**Clause 19 HFSPA:**

Clause 19 (2) (a) requires the assessment of the visual impact of a proposed development upon Sydney Harbour. The proposal will not have any significant adverse visual impact upon Sydney Harbour and adjoining foreshore areas.

Clause 19 (2) (b) requires the assessment of the impact of a proposed development on the natural landform and topography. The proposal will not significantly affect the natural landform and topography.

**Clause 25 Water, wastewater and stormwater:**

Clause 25(1) and (2) of WLEP 1995 requires council to consider the provisions of adequate stormwater drainage and the provisions of adequate water and sewage services.

Council’s Development Engineer has recommended approval of the proposal subject to Conditions requiring the stormwater discharge point to be directly to Council’s stormwater gully pit located in Camp Street, the parking bay to be raised to RL 1.91, a stormwater management plan, flood protection, erosion and sediment control instillation, maintenance of erosion and sediment controls and disposal of site water.

In the event that it were proposed to grant consent pursuant to the subject application, it would be recommended that the consent would be subject to the abovementioned Conditions. However, it is proposed to refuse the subject application, and no such Conditions are therefore required.

**Clause 25D Acid Sulfate Soils:**

Clause 25D WLEP 1995 requires the consideration of acid sulphate affectation. The subject site is within Class 2 and Class 5 Acid Sulphate Soil areas.

Conditions for the management of acid sulphate soils have been proposed by Council’s Health officer. If it were proposed to grant a consent in this matter, these conditions would be imposed on the consent. However, it is proposed to refuse the subject application, and no such Conditions are therefore required.

**Clauses 27 and 28 Heritage and conservation area provisions:**

Clauses 27 and 28 of WLEP 1995 requires Council to take into consideration the likely effect of a development proposal upon the heritage significance of a heritage conservation area in its vicinity.
The subject site is located within the WBHCA. The existing dwelling on the subject site is listed as a contributory item and therefore a significant item within the meaning of the WBHCADCP. The dwelling is located in a row of similar dwelling houses on Pacific Street. No’s 1, 3, 5, 9, 11, 13, 15 and 17 are all listed as contributory items within Precinct K.

Council’s Heritage officer has stated as follows:

**Heritage status**

- The subject building is not a heritage item.
- The subject building is in the vicinity of heritage items at 31 Pacific St – building and grounds (former Marine Biology Station); 15, 17, 19, 21, 23, 25 Victoria St – Camp Cove Beach; 11 Cliff St (26 Marine Parade) – ‘Mandalay’ – house and fencing to Marine Pde; cottages at 12, 14, 15, 16, 17 Cliff Street; cottages and a house at 11, 13, 15, 17, 19 Cove Street; the Marine Parade promenade; Green Point Reserve and Sydney Harbour National Park.
- The subject building is within the Watsons Bay Heritage Conservation Area, and is considered a contributory item and a significant item.
- The subject building is within the Precinct K – Camp Cove Village Precinct.
- The subject building is listed as a contributory item in K4 - Significant Items under the Precinct K controls within the Watsons Bay HCA DCP and described as a ‘single storey 1920s weatherboard cottage’.
- The subject building is not listed on the State Heritage Register.
- The subject building is not a potential heritage item but is within the vicinity of a potential heritage items: Cliff St – cobbled sandstone road archaeology; 10-12 Pacific Street – ‘Caldale’ - house and grounds; 14 Pacific Street – ‘Boongaree’ – house and grounds; 8 Victoria Street – house and grounds.

**Significance of any heritage item in the vicinity**

**31 Pacific Street, Watsons Bay - Building and Grounds (Former Marine Biology Station)**

The former Marine Biological Station was constructed in 1881 as the first biological research station established in Australia and the Southern Hemisphere, to carry out biological investigations primary associated with marine biology, its original design was purpose built for this function. It is associated historically with marine biologist, explorer, anthropologist and humanitarian, Nicolai de Mikohn Malay, who lived in and used the station between 1881 and 1886.

The original building was designed by prominent Architect John Kirkpatrick; it is a good example of practical colonial architecture.

The building has also of historical significance for it long period of use as an army officer’s accommodation from 1899. The original building was substantially altered by 1905 to provide officer accommodation.4

**15, 17, 19, 21, 23 and 25 Victoria Street Watsons Bay, Camp Cove Beach**

The statement of significance from the heritage inventory sheet states:
Camp Cove beach has National Historic and Social significance as the site of the landing of the first white men to set foot on land in Port Jackson. The name Camp Cove was given to the beach at the time of the First Fleet Settlement in 1788 by Captain Arthur Phillip. The Camp Cove beach has social significance as part of the Sydney Harbour beaches which are an important element in the social and recreational structure of the local inhabitants.

11 Cliff St (26 Marine Parade) – ‘Mandalay’ – house and fencing to Marine Pde

The statement of significance from the heritage inventory sheet states:

‘This house is one of the most impressive older homes in this historic Watsons Bay and Camp Cove area. Although there have been major additions to the rear (Cliff Street) these do not appear to have affected the general integrity of the original building or its appearance from the harbourside. The residence has high historic significance as one of the earliest houses of this quality in the Watson's Bay area, and has high architectural significance for the contribution it makes to Marine Parade. It also has high social and historic significance as one of the few surviving examples of a prestigious mid nineteenth century residence, still intact on the harbour foreshore’.

Cottages at 12, 14, 15, 16, 17 Cliff Street

The statement of significance from the heritage inventory sheet for 12 Cliff Street states:

The northern area of the Watsons Bay Conservation Area is characterised by a group of small cottages and terraces. This cottage, number 12, remains relatively intact with respect to its original facades and design with only a dormer projection in the roof, new windows and roof tiles affecting its integrity. The verandah opens directly on to the street, and the cottage typifies the modest character and continuous use of this area of Watson's Bay. The relative scarcity of old cottages around much of the eastern suburbs and the integrity, with only a simple skillion addition at the rear, gives this small building high architectural significance. The small group of cottages, including this building, have high significance for their historical and social context as modest workman's or fisherman's cottages.

The statement of significance from the heritage inventory sheet for 14 Cliff Street states:

Although number 14 is the only one of this group to be constructed from stone, the integrity of the building has been lost due to the modifications which have completely altered the front of the building. It now has little architectural significance as one of the group, having retained only the scale of the original building, the front verandah having been enclosed and a tile roof replacing the earlier corrugated iron. The building has historic significance as part of the group of fisherman's houses, and its form and scale contributes to the unity of the group.

The statement of significance from the heritage inventory sheet for 15 Cliff Street states:

Although greatly modified with the addition of a 2 storey structure at the rear of the building, the original corrugated iron and weatherboard cottage remains intact and is well maintained. Its low scale preserves the character of the buildings at this end of Cliff Street and the building, although adversely affected by the modern two storey addition, has some architectural significance for its contribution to the scale and unity of the streetscape. This group of cottages have historical significance as dwellings for the workmen and fishermen of the local area and are rare surviving examples of this type of residence in the Woollahra area.

The statement of significance from the heritage inventory sheet for 16 Cliff Street states:
The northern portion of the Watsons Bay Conservation Area is characterised by a small group of cottages and terraces. This cottage which is the second in the group, remains relatively intact with only minor alterations. Although the lattice addition to the front detracts from the historic fabric of the building it is reversible and does not alter the significance of the structure. Some of these buildings may have served as homes for signalmen or fishermen. The cottage exemplifies the modest character and continuous use of the cottage as a home in Watson's Bay. The rarity of surviving fisherman's cottages in the eastern suburbs gives this small cottage and its neighbours high social and historical significance.

The statement of significance from the heritage inventory sheet for 17 Cliff Street states:

The northern end of the Watsons Bay Conservation Area is characterised by a group of small cottages and terraces. These cottages are a fine example of the modest character of the early residences and have high historical and social significance for their association with the early fishing community and continued use as dwellings in the Watson's Bay area. This small cottage has high historic and social significance due largely to the integrity of the group and the relative scarcity of this type of building surviving intact in the Woollahra area. The building features a dormer in the roof which does not detract from its significance as a relatively unaltered structure, but displays the simple evolution of the building.

Cottages and a house at 11, 13, 15, 17, 19 Cove Street

The statement of significance from the heritage inventory sheet for 11 Cove Street states:

The northern area of the Watsons Bay Conservation Area is characterised by groups of small cottages and terraces. This weatherboard cottage is in the middle of one of these groups and remains relatively intact with respect to its original floor plan and composition. Although modifications such as the terra-cotta tile roof, timber verandah railing and cast iron fencing are not entirely in keeping with the original character of the cottage, it nevertheless exemplifies the modest character and evolution of the cottage as a residence in this older area of Watson's Bay. The rarity of surviving fisherman's cottages around much of the eastern suburbs gives this small cottage and its neighbours high aesthetic, social and historical significance.

The statement of significance from the heritage inventory sheet for 13 Cove Street states:

The northern area of the Watsons Bay Conservation Area is characterised by a group of small cottages and terraces. This weatherboard house is in the middle of the group and remains largely intact with respect to its original floor plan and design. Although not typical of the modest one storey cottages of the vicinity, the simple character and modest Victorian Georgian style are in keeping with the nearby residences. The construction and location of the house with its verandah directly off the street frontage is reminiscent of the urban centres of old maritime villages. Its context within this historic area of Camp Cove and its modest design for this period in the Sydney area give this house high social and historical significance.

The statement of significance from the heritage inventory sheet for 15 Cove Street states:

The northern area of the Watsons Bay Conservation Area is characterised by a core group of small cottages and terraces. This low scale Victorian Georgian style weatherboard cottage is in the centre of the group and remains largely intact in both form and materials. The cottage exemplifies the modest character and continuous use of the area as a residential district in this area of Watson's Bay. The relative scarcity of surviving fisherman's or workmen's cottages in the eastern
suburbs gives this small cottage and its neighbours high historical, aesthetic and social significance. The building has high aesthetic significance both for its contribution to the streetscape of the immediate area, and as part of a grouping which has retained much of the quality of its form and fabric. An addition at the rear has not impacted on the unity of the streetscape and this group has high significance as probably the finest group of this type of residence in the Woollahra Area.

The statement of significance from the heritage inventory sheet for 17 Cove Street states:

The northern area of the Watsons Bay Conservation Area is characterised by a group of small cottages and terraces. This stone cottage remains relatively intact with respect to its original floor plan and design but has been extended to the rear. The house is located directly on the street boundary and is believed to date prior to the subdivision of the area. As one of the oldest surviving buildings in the Camp Cove area it is a highly significant example of stone construction dated prior to 1850. The cottage also exemplifies the modest character and continuous use of the area as a residential district in this area of Watson's Bay. The building with its simple hipped roof with twin dormers rarity of surviving fisherman's cottages around much of the eastern suburbs gives this small cottage and its neighbours high aesthetic and historical significance.

The statement of significance from the heritage inventory sheet for 19 Cove Street states:

The northern area of the Watsons Bay Conservation Area is characterised by a group of small cottages and terraces. This weatherboard cottage remains relatively intact with respect to its original floor plan and design but has been extended to the rear. The house is located directly on the street boundary and is believed to date prior to the subdivision of the area. As one of the oldest surviving buildings in the Camp Cove area it is a highly significant example. This cottage, although having lost much of its integrity with the replacement of materials by modern substitutes, still exemplifies by its scale and streetscape relationship, the modest character and continuous use of the area as a residential district in this area of Watson's Bay. The building is a surviving example of fisherman's cottages in the eastern suburbs, a fact which gives this small cottage and its neighbours high aesthetic and historical significance. Significance Updated: 19 Mar 04

The Marine Parade promenade

Marine Parade, a wide paved walkway, located on the shore of Watsons Bay, between Short and Salisbury Streets is significant as a roadway dating back to 1850s. Marine Parade is significant for the variety of early structures which forms the perimeter of the promenade and for its association with early residents of the area. It is also seen as an important element in the recreational areas of the district and has social significance for the important part it has played in the lives of the local residents and visitors to Watsons Bay, as well as for the facilities such as beach restaurants which are well known throughout Sydney and frequented by locals and visitors.

Green Point Reserve

The site at Greens Point has high historic significance as the first landfall of Governor Arthur Phillip in 1788. It has historic and social significance for its association with Edward Laing, surgeon in the NSW Corp, and original grantee in 1793 of land at Camp Cove, after whom Laing's Point was named. Although nothing remains of the Battery, Greens Point has historic and social significance as a key point in Harbour defence, dating from the late 1870s onwards. The Point has historic and social significance for its long association with the Australian Military in NSW.
Sydney Harbour National Park/ HMAS Watson

Full LEP description - South Head Artillery Barracks group comprising: officers' quarters (asset 25); former officers' mess (Cliff House quarters); former sergeants' mess (officers' quarters); former stable/carriage shed (garden store) (asset 29); gun carriage coach house and annex (garage/store) (asset 37); former guard house (asset 26); former artillery barracks (officers' quarters) (asset 33); sandstone drainage moat and rifle post wall (adjoining asset 28); 80 pounder battery and five connected gun emplacements (1871/2) (north of asset 25); World War 1 and World War 2 artillery fortifications on seaward cliffs; War Memorial Chapel of St. George the Martyr; Aboriginal rock carving seaward side of Chapel (spotlight mounted within)

Significance of subject property to the heritage conservation area

It is clear from the listings above that there is a strong character and history relating to the residential development in the immediate area of Camp Cove (including the subject site). The exploration and discovery of Sydney Harbour (it is believed that Governor Phillip and company spent the night here before entering Sydney Harbour proper on 11 January 1788), followed by the establishment of a fishing village as early as 1788, make this small section of Watsons Bay an important component of understanding Sydney’s history. The area is visited on a daily basis by tourists from all over the world.

The Watsons Bay Heritage Conservation Study 1997 describes the Watsons Bay Village (the 1855 subdivision, including the subject property) as ‘significant as a highly intact … fishing village … typified by simple forms of predominantly one-storey height’.

The subject property is clearly identified as a contributory building within the Watsons Bay Heritage Conservation Area DCP 2003 and individually listed as a ‘single storey 1920’s weatherboard cottage’.

History and description of subject property

The existing dwelling represents the original dwelling for the site.

The date of construction of the dwelling is 1924 as evidenced by the original plans on Council’s property files. The subject property was once part of the 1854, 141 lot subdivision of a former farm.

The existing dwelling is a free-standing one-storey weatherboard and fibro cottage. It was built in 1924 and then altered at the rear in 1950 by the addition of an 8 feet deep skillion along the rear elevation. Some changes, mainly enlarging and upgrading, have been made to the kitchen area and the bathroom area. The front porch has been infilled to create a sunroom off the living room. The walls are rough-cast render over fibro. There are timber windows and doors, skirtings and architraves and other decorative joinery, all of a modest nature. The ceilings are fibro paneling. There is original or early timber flooring throughout. The skillion addition is generally in a poorer condition than the main structure.

When viewed from Pacific Street, the house is set down from the road by several metres, and the large triangular gable is immediately apparent. The house stands high off the sloping land and at the rear of the building is raised one storey above ground level and accessed via timber steps and a landing.

Entry is from the side, via a narrow passage, and the neighbour at no. 9 has a large two-storey residence which dominates the side boundary.
There is a long basically rectangular garden to the rear of the cottage that is well-landscaped with trees, shrubs and garden beds. The property slopes down to the rear of the site by several metres. To the rear of the property is Camp Street, at which there is a timber gates and fence and a hard-standing area close to the boundary.

To all intents and purposes the house is substantially intact, having had no major alterations. Original fabric is generally preserved and in good condition. The original façade and principal building form remain relatively intact. There is no apparent structural damage, termite infestation or rot.

**Significance of subject property**

The subject dwelling is considered a contributory item within the conservation area through its ability to demonstrate the scale, form, materials and character of residential development associated with the growth of the fishing village of Watsons Bay, during the inter-war period of the early twentieth century.

The subject property is clearly identified as a contributory building within the Watsons Bay Heritage Conservation Area DCP 2003 and listed as a ‘single storey 1920’s weatherboard cottage’.

The earlier Watsons Bay Heritage Conservation Study of 1997 includes a Streetscape Study which lists the subject building as having a ‘neutral’ contribution to the streetscape. It is believed that this grading is due to the subject building’s lowered level within the streetscape, the interior floor level being approximately 4m below street level. It is also understood that this neutral listing is to be read within the context of contribution to the streetscape only, and not particularly to the precinct or heritage conservation area. Notwithstanding this lowered elevation within the streetscape, the subject building is an original, unaltered structure containing all the features, materials, scale and form that are classified as contributory within the Watsons Bay Heritage Conservation Study of 1997, and the Watsons Bay Heritage Conservation Area DCP 2003. Further, the five categories provided in the 1997 Study seem to indicate that a neutral listing is the middle option, with no specific emphasis either way. If one was to reduce the categories to contributory or non-contributory ie to two categories, it is clear from the status of the subject property as contributory in the Watsons Bay HCA DCP 2003 (a more recent and resolved document), that this decision has subsequently been made by Council and thus also the greater community at large, and that the subject building is definitely contributory.

**Statement of significance of subject property**

The subject building contributes historically to the conservation area because it is part of the growth of the historic fishing village of Watsons Bay, which developed from 1788 into the twentieth century. The distinguished topography of the peninsula, which culminates in a small fishing outpost so close to South Head makes the settlement unique. Thus it is part of a small but rare and intact area, reflecting and embodying the growth and development of Sydney.

The subject building has local aesthetic significance by virtue of its representative characteristics: its timber and fibro construction on a masonry base, its timber joinery, its gabled roof form, its modest scale in the streetscape, its landscaped surrounds and backdrop, its similarity to and commonality with its immediate and adjacent neighbours within the precinct, and by the age of its physical fabric resting in situ on the subject property.
The subject building has local social significance due to the high community esteem held for the significance of the fishing village and other historic Watsons Bay icons within the Watsons Bay area. The important history of the area generates strong emotion within local residents groups, and the immediate neighbourhood displays symbols of its fishing village origins with pride. The subject building is a modest but integral part of this neighbourhood and social sentiment.

The relative scarcity of surviving fisherman's or workmen's cottages in the eastern suburbs gives the subject property local historic, aesthetic and social significance. The intact nature of the precinct makes each original building important. The subject property makes a positive contribution to this intact and highly significant conservation area.

Assessment of demolition of subject building

Assessment is made against the following controls and planning principles:

Woollahra LEP 1995 Part 1 clause 2(1)(g) and 2(2)(g); Part 4 clause 27 and 28
Clause 2(1)(g): The proposal to demolish the subject building does not conserve the environmental heritage of Woollahra.
Clause 2(2)(g)(i): The proposal is contrary to the conservation of the Watsons Bay Heritage Conservation Area
Clause 2(2)(g)(ii): The proposal is contrary to the restoration of the subject building which contributes to the character of the heritage conservation area.

Watsons Bay Heritage Conservation Area Development Control Plan (WBHCA DCP)
Precinct K - Camp Cove Village precinct
K4 – Significant Items
• 11 Pacific Street is identified as a significant contributory item within the Camp Cove village precinct.

Control 14 - Significant items (ie. heritage and contributory items) are to be retained.
• The proposed demolition of the dwelling is contrary to Control C14 of the Precinct K controls within the Watsons Bay Heritage Conservation Area DCP


Commissioner Tim Moore within his judgment has stated that;

44. A contributory item in a conservation area is a building that is not individually listed as a heritage item, but by virtue of age, scale, materials, details, design style or intactness is consistent with the conservation area, and therefore reinforces its heritage significance.

45. The demolition of a building which contributes to a conservation area will impact on the area’s heritage significance even if its replacement building "fits" into the conservation area. Although the replacement building may be a satisfactory streetscape or urban design outcome, this does not address heritage impacts as the original heritage element has been removed. Despite this, it is open to the consent authority still to permit the demolition of a contributory element, for example, if the replacement has other planning benefits that the original does not.

The following questions should be addressed in assessing whether the demolition should be permitted (46):
1. What is the heritage significance of the conservation area?

Watsons Bay was the first landing point in Sydney Harbour, the third permanent European settlement in Sydney, a strategic defense site and important in its role as a marine village. It conveys a strong sense of its maritime heritage in its built and landscape features that evidence historic themes (maritime village, navigation, defense of the heads, and recreation).

The subject part of the early subdivision has mostly retained its historic townscape character, with low-scaled one and two-storey detached houses sited on relatively small allotments. Buildings and groups of buildings that contribute to the character of the precinct date from two key periods (1850’s – 1870’s and 1910’s – 1930’s) and include most of the timber weatherboard cottages in Watsons Bay (the largest concentration in Woollahra LGA). Pacific Street is a key contributory group.

2. What contribution does the individual building make to the significance of the conservation area?

The starting point for these questions is the Statement of Significance of the conservation area. This may be in the relevant LEP or in the heritage study that led to its designation. If the contributory value of the building is not evident from these sources, expert opinion should be sought.

The subject building is a contributory and thus significant item. It is significant for its historic, aesthetic and social contributions to the significant local theme of 'maritime village'.

The subject building contributes historically to the understanding of the place as a historic fishing village in the Colonial, Victorian, Edwardian and Inter-War periods.

The subject building contributes aesthetically to the streetscape and the precinct’s visual characteristics by virtue of its timber construction on a masonry base, its gabled roof form, its modest scale in the streetscape, its landscaped surrounds and backdrop, its similarity to its immediate and adjacent neighbours within the precinct, and by the age of its physical fabric resting in situ on the subject property.

The subject building contributes socially to the coherent nature of the immediate area. Community sentiment is high, and the neighbourhood displays symbols of its fishing village origins with pride. The subject building is a modest but integral part of this neighbourhood and sentiment.

3. Is the building structurally unsafe?

Although lack of structural safety will give weight to permitting demolition, there is still a need to consider the extent of the contribution the building makes to the heritage significance of the conservation area.

The subject building is not structurally unsafe.

4. If the building is or can be rendered structurally safe, is there any scope for extending or altering it to achieve the development aspirations of the applicant in a way that would have a lesser effect on the integrity of the conservation area than demolition?

If the answer is yes, the cost of the necessary remediation/rectification works should be considered.

---

1. Watsons Bay Heritage Conservation Area Development Control Plan, Precinct K – Camp Cove Village precinct introductory paragraphs, p. 69
There is scope to extend or alter the building by creating a larger footprint to the rear and/or a set back second storey. A great degree of the existing fabric could easily be retained. The existing building would require maintenance and upgrading, for example, timber maintenance and kitchen and bathroom upgrading.

5. Are these costs so high that they impose an unacceptable burden on the owner of the building? Is the cost of altering or extending or incorporating the contributory building into a development of the site (that is within the reasonable expectations for the use of the site under the applicable statutes and controls) so unreasonable that demolition should be permitted?

If these costs are reasonable, then remediation/rectification (whether accompanied by alteration and/or extension or not) should be preferred to demolition and rebuilding.

A reasonable proposal to upgrade and extend the existing building through additions and alterations would not occur unreasonable costs.

6. Is the replacement of such quality that it will fit into the conservation area?

If the replacement does not fit, the building should be retained until a proposal of suitable quality is approved.

Part 6 of the planning principle has not been discussed as Parts 1-5 have provided sufficient information to answer the overall question, that is, the building cannot be justified for demolition.

Conclusion

The application is not acceptable as it does not comply with all the provisions of the relevant statutory and policy documents and NSW government legislation planning principles as shown in the above assessment and would have an unsatisfactory heritage impact.

Recommendation

Refusal of application.

In light of the above recommendation, it is considered that the development application will have a negative effect upon the heritage significance of the Watsons Bay Heritage Conservation Area. It is therefore proposed to refuse the development application.

12. DRAFT AMENDMENTS TO STATUTORY CONTROLS

None relevant.
13. **DEVELOPMENT CONTROL PLANS**

13.1 **Compliance table Watsons Bay Development Control Plan**

<table>
<thead>
<tr>
<th>Site Area (368.6m²)</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Floor Space Ratio (m²)</td>
<td>0.27:1 (100m²)</td>
<td>0.72:1 (267m²)</td>
<td>0.62:1 (228m²)</td>
<td>No</td>
</tr>
<tr>
<td>Built upon area (%)</td>
<td>0.27:1 (100m²)</td>
<td>50% (186.5m²)</td>
<td>75% (276.5m²)</td>
<td>Yes</td>
</tr>
<tr>
<td>Building Alignments – rear</td>
<td>Alignment with adjacent houses</td>
<td>Alignment with adjacent houses</td>
<td>Alignment with adjacent houses</td>
<td>Yes</td>
</tr>
<tr>
<td>Sunlight to private open space of adjacent properties (Hours)</td>
<td>&gt;2 hours between 9am and 3pm on 21 June</td>
<td>&gt;2 hours between 9am and 3pm on 21 June</td>
<td>Minimum 2 hours between 9am and 3pm on 21 June</td>
<td>Yes</td>
</tr>
<tr>
<td>Excavation, piling and subsurface walls (metres)</td>
<td>0.4m</td>
<td>0m</td>
<td>1.5 from front, side or rear boundary</td>
<td>No</td>
</tr>
<tr>
<td>Building Height (metres)</td>
<td>Consistent with neighbouring significant buildings</td>
<td>Consistent with neighbouring significant buildings</td>
<td>Consistent with neighbouring significant buildings</td>
<td>Yes</td>
</tr>
<tr>
<td>Building Height (storeys)</td>
<td>1</td>
<td>2/3</td>
<td>2</td>
<td>No</td>
</tr>
<tr>
<td>Dimensions of 2 Storey Buildings (metres)</td>
<td>Maximum external wall height &lt;6.7m overall height &lt;8.2m</td>
<td>Maximum external wall height &gt;6.7m overall height &lt;8.2m</td>
<td>Maximum external wall height 6.7m overall height 8.2m</td>
<td>No</td>
</tr>
<tr>
<td>Side boundary setbacks (new buildings – residential) (metres)</td>
<td>0.4m</td>
<td>0.8m</td>
<td>&gt;1.2m</td>
<td>No*</td>
</tr>
<tr>
<td>Setback from significant trees (new building/als &amp; adds) (metres)</td>
<td>2.5m</td>
<td>3.0m</td>
<td>&gt;3.0m</td>
<td>Yes</td>
</tr>
<tr>
<td>Ceiling heights (metres)</td>
<td>Unknown</td>
<td>2.2m</td>
<td>Habitable rooms minimum 2.7</td>
<td>No</td>
</tr>
<tr>
<td>Private open space/dwelling, including dwelling house (m²)</td>
<td>&gt; 35m² and minimum dimension 3m; principal area &gt; 16m² min dimension</td>
<td>&gt; 35m² and minimum dimension 3m; principal area &gt; 16m² min dimension</td>
<td>Minimum 35m² and minimum dimension 3m; principal area min 16m² min dimension</td>
<td>Yes</td>
</tr>
<tr>
<td>Soft Landscaping (%)</td>
<td>&gt;75% of required private open space (95m²); 100% deep soil landscaped area</td>
<td>75% of required private open space (95m²); 100% deep soil landscaped area (95m²)</td>
<td>75% of required private open space (95m²); 40% deep soil landscaped area (38m²)</td>
<td>Yes</td>
</tr>
<tr>
<td>Area at ground level comprising soft porous landscaping – dwelling houses</td>
<td>&gt;½ unbuilt upon area</td>
<td>&gt;½ unbuilt upon area</td>
<td>½ unbuilt upon area</td>
<td>Yes</td>
</tr>
<tr>
<td>Front fences (metres)</td>
<td>Unknown</td>
<td>1.2m</td>
<td>Max 1.2m above footpath level Max 1.8m where upper portion is &lt;50% solid</td>
<td>Yes</td>
</tr>
<tr>
<td>Side and rear fences and walls (metres)</td>
<td>Unknown</td>
<td>1.8m</td>
<td>Max 1.8m level sites</td>
<td>Yes</td>
</tr>
</tbody>
</table>
### Site Area (368.6m²)

<table>
<thead>
<tr>
<th>Site Area (368.6m²)</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carparking location</td>
<td>Behind the front wall of the dwelling</td>
<td>Behind the front wall of the dwelling</td>
<td>Behind the front wall of the dwelling</td>
<td>Yes</td>
</tr>
<tr>
<td>Solar access – windows to north facing habitable rooms of subject building and neighbouring properties (Hours)</td>
<td>N/A</td>
<td>N/A</td>
<td>Minimum of 3 hours of sun between 9am and 3pm on 21 June</td>
<td>Yes</td>
</tr>
<tr>
<td>Windows of habitable rooms of adjacent dwellings (metres)</td>
<td>Fixed obscure glazing</td>
<td>Fixed obscure glazing</td>
<td>Within 9 – min sill height 1.7; or – fixed obscure glazing below 1.7</td>
<td>Yes</td>
</tr>
</tbody>
</table>

*Existing non-compliance*

### Part 3 - Precinct specific controls

The subject property falls within the Camp Cove Village Precinct.

The subject dwelling is listed as a contributory item in Clause K.4. It is therefore a significant item within the meaning of the WBHCADCP.

**K.4 Significant Items to be Retained**

The controls of this section are as follows:

*C14 Significant items are to be retained.*

*C15 Change to significant items is limited to sympathetic alterations and additions consistent with the controls in Clause 4.6.*

As explained in *Clauses 27 and 28 Heritage and Conservation Area Provisions* above, the proposed demolition of the existing dwelling does not satisfy the criteria for demolition of contributory items in *Helou v Strathfield Municipal Council* [2006] NSWLEC 66. The proposed demolition of the existing dwelling, which is a significant item, on the subject site is therefore in breach of C14 and C15 K.4.

**K5 New Building**

The bulk, scale, form and alignment of the proposed dwelling will have an adverse impact on the amenity of the locality and will have a negative impact on the heritage significance of the WBHCA. Furthermore, the proposal is inconsistent with the following requirements:

*C19 All new buildings and structures, including any carport or garage, are to be set back from the side boundaries by at least 1.2m to retain the detached dwelling character of the precinct and respect the historic development pattern.*

The proposed new dwelling will extend to within 0.8m of the eastern side boundary and 0.9m of the western side boundary. This is a breach of C19.

*C22 Established building forms are to be followed, ie, simple rectilinear plan with traditional pitched roofs and verandahs facing the street.*
The proposed new dwelling has a skillion roof and does not have a verandah facing the street. The proposal therefore breaches C22.

**C24 The character of new buildings is to respect the character of the significant nineteenth to mid-twentieth century housing.**

The proposed new dwelling does not respect the character of the significant nineteenth to mid-twentieth century housing, which has features such as a traditional pitched roof and verandah facing the street, timber and fibro construction on a masonry base, timber joinery, modest scale in the streetscape, landscaped surrounds and backdrop, similarity to and commonality with immediate and adjacent neighbours within the precinct and the age of physical fabric resting in situ on the subject property. The proposal therefore breaches C24.

**Part 4 – General Controls**

4.2 Topography and vegetation

Council’s Trees and Landscapes officer has recommended approval of the proposal subject to various conditions for the preservation of trees and related matters. If it were proposed to grant a development consent in this matter, these conditions would be imposed on the consent.

4.3 Townscape

The bulk, scale, form and alignment of the proposed dwelling will have an adverse impact on the amenity of the townscape. Furthermore, the proposal is inconsistent with the following requirements:

**O3 To ensure that the character of each precinct and streetscape is retained.**

For the reasons set out under Part 3 - Precinct specific controls above, the bulk, scale, form and alignment of the proposed dwelling will have an adverse impact on the amenity of the precinct and streetscape. The proposal does not therefore comply with O3.

**C7 The height of new development is to be no greater than two storeys.**

The proposed dwelling is part three storeys and therefore breaches C7.

**C11 All significant buildings that contribute to the significance of the area are to be retained and conserved.**

Council’s Heritage officer has stated that the subject dwelling is considered a contributory item within the conservation area through its ability to demonstrate the scale, form, materials and character of residential development associated with the growth of the fishing village of Watsons Bay, during the inter-war period of the early twentieth century.

As explained in Clauses 27 and 28 Heritage and conservation area provisions above, the proposed demolition of the existing dwelling does not satisfy the criteria for demolition of contributory items in *Helou v Strathfield Municipal Council* [2006] NSWLEC 66.

The proposed demolition of the existing dwelling therefore breaches C11.
4.6 Built form

The proposal is inconsistent with the following requirements:

4.6.1 General Controls

C1 Floor Space Ratio 4.6.1 requires that the dwelling have a maximum floor space ratio of 0.62:1 (228m$^2$).

The proposed dwelling has a floor space ratio of 0.72:1 (267m$^2$). This is a breach of C1 Floor Space Ratio 4.6.1.

C9 Siting and Alignment 4.6.1 The outer edge of excavation, piling and all sub-surface walls shall not be less than 1.5m from a front, side or rear boundary.

The proposed new dwelling will involve excavation for the garage which will extend to within 0m of the rear boundary, 0.7m of the eastern side boundary and 0.8m of the western side boundary; non-compliances of 1.5m, 0.8m and 0.7m respectively. This is a breach of C9 Siting and Alignment 4.6.1.

C1 Building Height 4.6.1 The height of buildings is not to exceed two storeys.

The proposed dwelling will be part two storeys and part three storeys. This is a breach of C1 Building Height 4.6.1.

C2 Building Height 4.6.1 The external wall of a dwelling have a maximum height of 6.7m.

The proposed western external wall of the dwelling will have a maximum height of 7.5m and the proposed eastern external wall of the dwelling will have a maximum height of 7.7m. This is a breach of C2 Building Height 4.6.1.

4.6.2 Significant Items

O1 To ensure that heritage items and contributory items are retained and appropriately managed.

The existing dwelling, which is a contributory item, will not be retained and appropriately managed, as it is proposed to demolish the dwelling. The proposed demolition of the existing dwelling does not satisfy the criteria for demolition of contributory items in Helou v Strathfield Municipal Council [2006] NSWLEC 66.

O2 To ensure that new development respects the significance of heritage items and contributory items.

The new development will not respect the significance of the existing dwelling, which is a contributory item, as it is proposed to demolish the dwelling. The proposed demolition of the existing dwelling does not satisfy the criteria for demolition of contributory items in Helou v Strathfield Municipal Council [2006] NSWLEC 66.

O3 To ensure that the contributory single-storey dwellings/cottages throughout the area, particularly the weatherboard cottages, are retained as significant items that also enhance the character and village scale of Watsons Bay.
The new development will not retain the contributory single-storey dwelling, being a weatherboard cottage. The proposed demolition of the existing dwelling does not satisfy the criteria for demolition of contributory items in *Helou v Strathfield Municipal Council* [2006] NSWLEC 66.

O4 To ensure that new development respects the scale and character of significant single-storey dwellings/cottages.

The proposal will not respect the scale and character of the existing dwelling, which is a significant single-storey dwelling, with features such as a traditional pitched roof and verandah facing the street, timber and fibro construction on a masonry base, timber joinery, modest scale in the streetscape, landscaped surrounds and backdrop, similarity to and commonality with immediate and adjacent neighbours within the precinct and the age of physical fabric resting in situ on the subject property.

O5 To ensure that significant external and internal fabric and spaces within significant items are retained and appropriately conserved.

The significant external and internal fabric and spaces within the existing dwelling, which is a significant item, will not be retained and appropriately conserved. The proposed demolition of the existing dwelling does not satisfy the criteria for demolition of contributory items in *Helou v Strathfield Municipal Council* [2006] NSWLEC 66.

C3 All contributory buildings are to be retained unless overwhelming physical constraints (such as structural integrity, extensive damaged fabric and fire safety requirements) preclude this option.

Council’s Heritage officer and the applicant’s own Heritage Impact Statement have confirmed that the existing dwelling is not structurally unsound. Furthermore, the proposed demolition of the existing dwelling does not satisfy the criteria for demolition of contributory items in *Helou v Strathfield Municipal Council* [2006] NSWLEC 66. The proposed demolition of the existing dwelling therefore breaches C3 4.6.2.

4.6.3 New Buildings and Non-Contributory Buildings

O3 New buildings and additions respect the scale, character and setting of any significant items in their vicinity.

C1 New buildings and additions are to be designed to respect the character, scale, form, massing, materials, details, orientation and setbacks of adjacent and surrounding significant items.

The proposed new dwelling does not respect the character of the group of significant nineteenth to mid-twentieth century houses on the north side of Pacific Street, which has features such as traditional pitched roofs and verandahs facing the street. The proposal therefore breaches Objective O3 and C1 4.6.3.

4.6.3.1 New Buildings and Alterations and Additions to Non-Contributory Buildings

Building Siting and Alignment

Objective O3 Building Siting and Alignment To ensure that the siting and floor levels of new buildings are similar to the levels and siting of significant items within the streetscape.
The proposed new dwelling breaches the above objective because the floor levels of the proposed dwelling will result from significant excavation and will be two or three storeys, whereas most other significant items in the streetscape are single storey, or at most two storeys. The proposal therefore breaches Objective O3.

**Building Height**

*C2 Building Height 4.6.3.1 Two storey buildings are to be setback at least 1.5m from side boundaries.*

The proposed new dwelling will extend to within 0.8m of the eastern side boundary and 0.9m of the western side boundary. This is a breach of C2 Building Height 4.6.3.1.

**Building Form**

The objectives of this section are as follows:

*O1 To retain the identified village character of the area.*
*O2 To maintain visual consistency of building forms to ensure that new buildings do not dominate.*
*O3 To retain the character of the roofscape of Watsons Bay, particularly when viewed from the harbour.*

The controls of this section are as follows:

*C1 New buildings and additions are to respect the predominant form and massing of existing development within the streetscape, in particular, adjacent or nearby significant items.*

*C2 The designs of new buildings and additions are to respect the simple rectangular footprints and traditional pitched roof forms of existing dwellings in the area.*

*C3 Roof forms are to be designed to present a traditional appearance (ie sloping with hipped, gabled or skillion form), when viewed from the harbour.*

The proposed new dwelling does not respect the character of the group of the nineteenth to mid-twentieth century houses on the north side of Pacific Street, which has features as a traditional pitched roof and verandah facing the street, timber and fibro construction on a masonry base, timber joinery, modest scale in the streetscape, landscaped surrounds and backdrop, similarity to and commonality with immediate and adjacent neighbours within the precinct and the age of physical fabric resting in situ on the subject property.

The proposal does not therefore comply with the abovementioned objectives and controls.

**Building Character**

The objectives of this section are as follows:

*O1 To ensure that the character of new buildings and additions enhances the streetscape and is in harmony with adjacent significant items and minimizes the visual impact upon the immediate area and the streetscape.*

*O2 To ensure that the designs of new buildings and additions respond to the character and style of adjacent and surrounding significant items.*
O3 To promote sympathetic contemporary design that responds to the historic character of the area.

The control of this section is as follows:

C1 The character of new buildings and additions is to be consistent with the character of nearby and surrounding significant items and the character of the streetscape in which they are located.

The proposed new dwelling does not respect the character of the group of the nineteenth to mid-twentieth century houses on the north side of Pacific Street, which has features as a traditional pitched roof and verandah facing the street, timber and fibro construction on a masonry base, timber joinery, modest scale in the streetscape, landscaped surrounds and backdrop, similarity to and commonality with immediate and adjacent neighbours within the precinct and the age of physical fabric resting in situ on the subject property.

The proposal does not therefore comply with the abovementioned objectives and controls.

Acoustic and visual privacy

The proposal complies with the objectives and controls of Section 4.13 WBHCADCP.

13.2 DCP for off-street car parking provision and servicing facilities

The proposal is considered to be satisfactory with regards to the provisions of this DCP.

13.3 Woollahra Access DCP

The proposal is considered to be satisfactory with regards to the provisions of this DCP.

13.4 Other DCPs, codes and policies

None relevant.

14. APPLICABLE REGULATIONS

None relevant.

15. THE LIKELY IMPACTS OF THE PROPOSAL

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

16. THE SUITABILITY OF THE SITE

The site is unsuitable for the proposed development.

17. SUBMISSIONS

The proposal was advertised and notified in accordance with Council’s Advertising and Notifications DCP. submissions were received from:
The objections raised the following issues:

- The demolition of the existing dwelling does not satisfy the criteria for demolition of contributory items in *Helou v Strathfield Municipal Council* [2006] NSWLEC 66.
- The proposed new dwelling is out of keeping with the houses along the northern side of Pacific Street.
- The choice of building materials for the proposed new dwelling is inappropriate.
- The proposed new dwelling is out of keeping with the Camp Cove Precinct.
- The front, side and rear setbacks are deficient.
- The roof is inconsistent with others in the area.
- The palm tree in the rear yard should be retained.
- The *Angophora costata* is inappropriate for the rear yard.
- The proposed rear terrace will create noise pollution.
- The proposal is excessively bulky.
- The proposal will create a sense of enclosure for neighbours.
- The proposal will cause loss of solar access for neighbours.
- The building will breach the limit on number of stories.
- The building height will be excessive.
- The proposed roof terrace will overlook neighbouring properties.
- The proposal will breach the excavation setback control.

The abovementioned concerns are addressed by the refusal of the application.

18. **CONCLUSION - THE PUBLIC INTEREST**

The proposal is unacceptable against the relevant considerations under s79C.

19. **DISCLOSURE STATEMENTS**

Under S.147 of the Environmental Planning and Assessment Act, 1979 there have been no disclosure statements regarding political donations or gifts made to any councillor or gifts made to any council employee submitted with this development application by either the applicant or any person who made a submission.
20. **RECOMMENDATION: Pursuant to Section 80(1) of the Environmental Planning and Assessment Act, 1979**

THAT Council, as the consent authority, refuse development consent to Development Application No. 80/2010 for demolition of the existing dwelling-house and ancillary structures, construction of a new dwelling house and a detached double carport, landscaping works on land at 11 Pacific Street Watsons Bay, for the following reasons:

1. Due to the demolition of the existing contributory building on the subject site (in breach of the criteria set out in *Helou v Strathfield Municipal Council*) and the excessive bulk and scale, form and alignment of the proposed dwelling, the proposal will detract from the heritage significance of the Watsons Bay Heritage Conservation Area. In this regard, the proposal is inconsistent with the following requirements:

   - Objective 2(g)(i) of the WLEP 1995
   - Objective 2(g)(ii) of the WLEP 1995
   - Objective 2(g)(iii) of the WLEP 1995
   - Clauses 27 and 28 of the WLEP 1995
   - Part 3 Precinct K – C14, C15, C19, C22, C24 of WBHCA
   - Part 4.3 Townscape – O3, C7, C11
   - Part 4.6.1 (Floor Space Ratio) – C1
   - Part 4.6.1 (Siting and Alignment) – C9
   - Part 4.6.1 (Building Height) – C1, C2
   - Part 4.6.2 (Significant Items) – O1, O2, O3, O4, O5, C3
   - Part 4.6.3 (New Buildings and Non-Contributory Buildings) – O3, C1
   - Part 4.6.3.1 (New Buildings and Alterations and Additions to Non-Contributory Buildings) – Building Siting and Alignment – O3
   - Part 4.6.3.1 (New Buildings and Alterations and Additions to Non-Contributory Buildings) – Building Height – C2
   - Part 4.6.3.1 (New Buildings and Alterations and Additions to Non-Contributory Buildings) – Building Form – O1, O2, O3, C1, C2, C3
   - Part 4.6.3.1 (New Buildings and Alterations and Additions to Non-Contributory Buildings) – Building Character - O1, O2, O3, C1

Mr M Bolduan        Ms E Smith
ASSESSMENT OFFICER      TEAM LEADER

ANNEXURES

1. Plans and elevations
2. Development Engineer Referral Response
3. Landscaping Officer Referral Response
4. Environmental Health Officer Referral Response
5. Heritage Officer Referral Response
# SECTION 96 APPLICATION ASSESSMENT REPORT

<table>
<thead>
<tr>
<th>ITEM No.</th>
<th>D7</th>
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<tbody>
<tr>
<td>FILE No.</td>
<td>DA 183/2006/3</td>
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<tr>
<td>ADDRESS:</td>
<td>20 Glendon Road DOUBLE BAY</td>
</tr>
<tr>
<td>EXISTING CONSENT:</td>
<td>Demolition of existing and erection of a new dwelling, with swimming pool, carport and balconies.</td>
</tr>
<tr>
<td>TYPE OF CONSENT:</td>
<td>Local</td>
</tr>
<tr>
<td>DATE OF CONSENT:</td>
<td>30 January 2007</td>
</tr>
<tr>
<td>ZONING:</td>
<td>Residential 2(b)</td>
</tr>
<tr>
<td>PROPOSED MODIFICATION:</td>
<td>Modifications to the hardstand including the construction of a double carport</td>
</tr>
<tr>
<td>DATE S96 LODGED:</td>
<td>20/10/2009</td>
</tr>
<tr>
<td>CONSENT AUTHORITY:</td>
<td>Council</td>
</tr>
<tr>
<td>APPLICANT:</td>
<td>Mrs E Younger</td>
</tr>
<tr>
<td>OWNER:</td>
<td>Mr D &amp; Mrs E S Younger</td>
</tr>
<tr>
<td>AUTHOR:</td>
<td>Ms S Court</td>
</tr>
</tbody>
</table>

## LOCALITY PLAN

![Locality Plan Diagram]

Subject Site

Objectors

North

Locality Plan
1. SUMMARY

Reason for report

The application was called to the Development Control Committee by Councillor Boskovitz for the following reasons:

1. To allow the applicant the opportunity to speak to the application.
2. Necessity for the built form.

Issues

- Carport structure forward of front building line
- Impact on street tree

Objections

No objections

Recommendation

The application is recommended for refusal because it does not comply with the controls prescribed by the Woollahra RDCP 2003.

2. DESCRIPTION OF APPROVED PROPOSAL

The original development involved the demolition of the existing single storey dwelling with rear single storey brick extension and single carport structure to the north side of the dwelling and the construction of a new 2 storey 4 bedroom dwelling with double carport on the street frontage and a swimming pool and spa in the rear yard.

The application was approved by Council’s Application Assessment Panel on 30 January 2007 and included Condition 2 which stated the following:

2. Carport structure and vehicle crossover

Consent is not granted for the proposed double carport structure, including the fencing. The existing vehicle crossover must be retained and a single car hard-standing space only may be located on the front setback. The car space in front of the dwelling must remain uncovered at all times.

The plans are to be amended accordingly prior to issue of the Construction Certificate.

This Condition has been imposed to comply with Objectives 4.4.2 and 4.4.3, Criteria 4.4.5, 4.4.6.4 and 4.4.6.7 and Objective 5.9.3 of the WRDCP, 2003.

Condition 2 was imposed for the following reasons:

- Non-compliance with C 4.4.5 – Location of the carport structure forward of the front building line and proposed width of 43%
- Non-compliance with C 4.4.6.4 – Impacts on the Lophostemon confertus (Brush Box) tree on the Council owned verge
3. DESCRIPTION OF PROPOSED MODIFICATION

The proposal seeks to delete Condition 2, allowing for the addition of a double handstand car parking area with a carport structure above.

4. DESCRIPTION OF SITE AND LOCALITY

<table>
<thead>
<tr>
<th>THE SITE AND LOCALITY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Physical features</strong></td>
</tr>
<tr>
<td><strong>Topography</strong></td>
</tr>
<tr>
<td><strong>Existing buildings and structures</strong></td>
</tr>
<tr>
<td><strong>Environment</strong></td>
</tr>
</tbody>
</table>

5. PROPERTY HISTORY

There is no other development history pertaining to the subject application.

6. REFERRALS

6.1 The following table contains particulars of internal referrals.

<table>
<thead>
<tr>
<th>INTERNAL REFERRALS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Referral Officer</strong></td>
</tr>
<tr>
<td>Landscaping Officer</td>
</tr>
<tr>
<td>Development Engineer</td>
</tr>
</tbody>
</table>
6.2 Internal Referrals

It is not possible to satisfy the requirements of both referral departments concurrently. Whilst Council’s Technical Services department stipulates that the proposal is satisfactory subject to conditions (in particular the widening of the driveway to 3.5m (not including the wings in accordance with RF2A)), Council’s tree officer has stated that widening the driveway crossing to the requirements stipulated by Council’s engineer will negatively impact on the health of the root system of the Brush Box tree located on the Council owned verge. Conversely, allowing for a narrower driveway entrance would not comply with AS 2890 and Council’s standard drawing RF2A. As such, the proposal is recommended for refusal.

6.3 The following table contains particulars of external referrals.

No external referrals were required.

ASSESSMENT UNDER S96

7.1 S96 (2) Other modifications

The proposed development results in a change to the impacts of the development and in particular its impact on the streetscape and as such the application is assessed under the provisions of s.96 (2)

7.2 Substantially the same development

The proposal seeks to modify aspects of the original approval and is relative to the scope of these approved works. Accordingly, the proposal would be substantially the same development, thus satisfying the relevant criteria prescribed by the Act.

ENVIRONMENTAL ASSESSMENT UNDER S.79C

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

8. RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION

8.1 SEPPs

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

Not applicable

State Environmental Planning Policy No. 55

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

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 in relation to this application.

8.3 Section 94 contribution

Not applicable

8.4 Other relevant legislation

None relevant

9. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

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

The proposal is permissible within the Residential 2(b) zone, however is considered to be unsatisfactory with the following objectives:

(2)(d)(i) to protect and enhance the natural landscapes throughout the area of Woollahra
(2)(d)(iii) to control or minimise the impact of future development upon natural features such as significant trees or strands of trees, ridgelines or land within view of any waterway

In this regard, the widening of the driveway crossover to 3.5m (not including wings in accordance with RF2A) will have an adverse impact on the health and stability of the Brush Box tree located on the Council owned verge. As such, the proposal is recommended for refusal.

9.2 Statutory compliance table

<table>
<thead>
<tr>
<th></th>
<th>Approved Development</th>
<th>Proposed Modification</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall Height</td>
<td>8.3</td>
<td>Works to 2.5m</td>
<td>9.5m</td>
<td>YES</td>
</tr>
</tbody>
</table>

9.3 Height

The proposed works comply with Council’s statutory height control.

9.4 Other special clauses/development standards

Clause 18 Excavation: The proposed excavation is limited to footings for the carport and minor excavation works for the slab and driveway. These works are considered to be minor and acceptable in terms of Clause 18.

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

9. DRAFT AMENDMENTS TO STATUTORY CONTROLS

None applicable to this application

10. DEVELOPMENT CONTROL PLANS

10.1 Numeric Compliance table - Woollahra Residential Development Control Plan 2003

<table>
<thead>
<tr>
<th>Site Area (322.5m²)</th>
<th>Approved Development</th>
<th>Proposed Modification</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ancillary Development (Carport)</td>
<td>N/A</td>
<td>2.4m</td>
<td>3.6m</td>
<td>YES</td>
</tr>
<tr>
<td>Maximum Height</td>
<td>N/A</td>
<td>0.3m</td>
<td>1.5m</td>
<td>NO</td>
</tr>
<tr>
<td>Side Setback (north)</td>
<td>N/A</td>
<td>2.4m</td>
<td>3.6m</td>
<td>YES</td>
</tr>
<tr>
<td>Setback from Significant Mature Trees</td>
<td>&gt; 3.0m</td>
<td>&lt; 3.0m</td>
<td>3.0m</td>
<td>NO</td>
</tr>
<tr>
<td>Deep Soil Landscaping – Front Setback</td>
<td>45% (30m²)</td>
<td>45% (30m²)</td>
<td>40% (26.6m²)</td>
<td>YES</td>
</tr>
<tr>
<td>Location of Garages and Car Parking Structures</td>
<td>Infront of front setback</td>
<td>Infront of front setback</td>
<td>Behind Front Setback</td>
<td>NO</td>
</tr>
<tr>
<td>Garage Frontage Width</td>
<td>N/A</td>
<td>43% (5.1m)</td>
<td>40% (4.8m)</td>
<td>NO</td>
</tr>
<tr>
<td>Car Parking Spaces – Dwellings</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>YES</td>
</tr>
</tbody>
</table>

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

The subject site falls within the Manning Road precinct.

Car parking structures

Control 4.4.5 specifies that all car parking structures are to be provided behind the front building line. Furthermore, the control states that car parking structures and driveways are to be designed so as not to dominate the street by keeping their width to a maximum 40% of the site frontage. The proposed works would result in a new double carport structure built forward of the front building line with a non-compliant width of 5.1m (43%).

The applicant has stated that a number of dwellings along Glendon Road, including the two adjoining properties, feature double carport structures forward of the front building line and as such the street is characterised by car parking structures forward of the front building line. However, it should be noted that the only car parking structures to be approved forward of the front building line on Glendon Road under the current WRDCP 2003 are at 5 and 23 Glendon Road, both of which replaced existing carport structures forward of the front building line. The following commentary demonstrates the history of double carport structures along Glendon Road:

- **5 Glendon Road**

  DA 54/2005/1 originally sought approval for a double carport to replace the existing single storey carport forward of the front building line. Revised plans resulted in a single replacement carport forward of the building line being proposed. DA 54/2005/1 was approved by DCC 6th February 2006.
DA 54/2005/2 sought approval for internal and external modifications including replacement of the approved single carport with a double carport. DA54/2005/2 was approved by DCC on 18th June 2007 under the WRDCP 2003, with Condition 46 which required the proposed double carport to be replaced with a single carport and single uncovered hard standing area.

It is noted that in both cases the officer recommended a single carport. DCC approved that which is pictured below.

![Photo 1: No 5 Glendon Road](image1)

- **13 Glendon Road**

DA 1060/2002/1 sought approval for the demolition of the existing carport, located at street frontage, and the construction of 2 new carports (north and south sides of site), including new driveway crossing. The DA was approved on 17th March 2003 under previous the WRDCP 1999.

![Photo 2: No 13 Glendon Road](image2)

- **23 Glendon Road**

DA 677/2006/1 originally sought consent substantial alterations and additions to the existing residence, a swimming pool, new single carport and air-conditioners. The originally proposed carport was forward of the front building line, and would have been in addition to the existing carport also forward of the front building line on the northern part of the site. Revised plans resulted in the deletion of the existing carport structure, therefore only
resulting in the replacement of the existing single structure with a lightweight structure. The DA was approved on 17th May 2007 under **WRDCP 2003**

![Photo 3: No 23 Glendon Road](image3)

- **28 Glendon Road**

DA 344/2003/1 sought alterations & additions to the existing dwelling including a first floor addition and a double carport. The DA was approved on 16th September 2003 under the previous **WRDCP 1999**, subject to Condition 9 which required the carport width to be reduced from 5.5m to 5.1m or 41% of the frontage width.

![Photo 4: No 28 Glendon Road](image4)

- **32 Glendon Road**

DA 91/2004 sought approval for the demolition of existing dwelling and construction of a new two storey dwelling with single carport forward of building line. The proposed carport complied with the minimum frontage width controls and was approved on 5th July 2004 under previous **WRDCP 1999**.
In dealing with recent DAs for car parking structures forward of the building line Council staff has been consistent in applying Control C 4.4.5 of the WRDCP 2003 within the Glendon Road streetscape, as illustrated by the following DAs:

- **10 Glendon Rd:**
  1. DA 516/2008/1 - New flat roofed carport structure - application withdrawn following advice from Council officers that the DA could not be supported (on the basis on non-compliance with C4.4.5)
  2. DA 87/2009/1 - Construct a carport roof over the existing approved hardstand area – refused 13/05/2009.

- **15 Glendon Rd- DA 29/2009/1- Construction of carport on existing hardstand with existing driveway- Refused AAP 10/03/2009

- **27 Glendon Rd- DA 460/2007 Demolition of existing building and construction of new dwelling, including carport (double)- Refused 25/10/2007

Included following reason for refusal:

8. *The location and design of the proposed carport detracts from the streetscape and fails to comply with C4.4.5 of the RDCP 2003.*

An appeal was lodged on 2nd October 2007 against Council’s refusal. Through the appeal process, the design of the proposed development was amended resulting in the deletion of the proposed carport and the construction of a double garage, behind the front setback. The appeal for the proposed development, in its revised design, was upheld on 10/3/2008.

It is considered that the approval of any car parking structure forward of the front building line would be contrary to the WRDCP and would not aid towards the achievement of the desired future precinct objectives 4.4.2 and 4.4.3.

Accordingly, the subject application is recommended for refusal based on non-compliance with criteria C 4.4.5. Refer to *Reason for Refusal 1.*
Streetscape performance criteria (Part 5.1)

Control C 5.1.2 stipulates that the design and location of garages, parking structures and driveways is to conform to the desired future character objectives and performance criteria for the locality. As discussed above, the proposal is not acceptable in this regard.

The addition of a car parking structure forward of the front building line would be contrary to the desired future character objectives for the Manning Road Precinct and would be detrimental to the desired future character of the Glendon Road streetscape. Refer to Reason for Refusal 1.

Building size and location performance criteria (Part 5.2)

Control C 5.2.1 states that where significant mature trees are to be retained, buildings are located at least 3.0m from the base of the tree to minimise root damage.

On the Council owned verge in front of the subject site is a Lophostemon confertus (Brush Box) tree. The application was referred to Council’s Tree Officer who commented that the proposal was unsatisfactory due to the conditions imposed by Council’s Technical Services Officer. As discussed under section 6.2 of this report, it is not possible to satisfy the requirements of both technical services and trees and landscaping.

Moreover, it is considered that a car parked in the southern space has the potential to drive over the roots to access the space which undermines the conditions recommended by Council’s Technical Services Officer. Refer to Reason for Refusal 2.

Control C 5.2.5 specifies that development is to be setback a minimum of 1.5m from side boundaries. With a northern side setback of 0.3m the proposed development is non-compliant.

The objectives of Council’s setback controls include relating new development to existing boundary lines along the frontage, protect the visual and aural privacy of adjoining residents, provide side access to the rear of properties, avoid the encroachment of buildings on adjoining properties, enable opportunities for screen planting and protect significant vegetation.

Considering the proposed carport structure would uphold the abovementioned objectives, no objection is raised against the non-compliance in this instance.

Open space and landscaping performance criteria (Part 5.3)

The proposal would maintain an adequate level of deep soil landscaping to the front setback.

Car parking and driveways performance criteria (Part 5.9)

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

As discussed under ‘desired future precinct character objectives and performance criteria’, it is considered that the proposed carport structure would dominate and detract from the local streetscape and would be contrary to the desired future character of the Manning Street precinct. Refer to Reason for Refusal 1.

Council’s Development Engineer has determined that the proposed double carport could comply with the relevant requirements for access for the 85 percentile vehicle, subject to conditions. Were approval to be recommended, these would form conditions of consent.
11.2 DCP for off-street car parking provision and servicing facilities

The proposal is satisfactory with regard to Council’s DCP for off-street car parking.

11.3 Other DCPs, codes and policies

There are no other DCPs, codes or policies relevant to the application.

12. APPLICABLE REGULATIONS

None relevant to the application

13. THE LIKELY IMPACTS OF THE MODIFIED DEVELOPMENT

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

14. SUBMISSIONS

The proposal was advertised and notified in accordance with Council’s Advertising and Notifications DCP. No submissions were received.

15. CONCLUSION - THE PUBLIC INTEREST

The proposal is unacceptable against the relevant considerations under s79C and would not be in the public interest.

16. DISCLOSURE STATEMENTS

Under S.147 of the Environmental Planning and Assessment Act, 1979 there have been no disclosure statements regarding political donations or gifts made to any councillor or gifts made to any council employee submitted with this development application by either the applicant or any person who made a submission.

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

THAT Council, as the consent authority, refuse to modify development consent to Development Application No. 183/2006 for the demolition of the existing and erection of a new dwelling, with swimming pool, carport and balconies on land at 20 Glendon Road Double Bay, for the following reasons:


The proposal fails to comply with Control 4.4.5 (Location of garages), C 5.1.2 (contrary to desired future character) and O 5.9.3 (car parking does not dominate the appearance of the dwelling). The proposed double carport structure would be built forward of the front building line and would have a negative impact on the character of the streetscape.

2. Street Tree

The construction of a 3.5m wide driveway to accommodate two on-site car parking spaces (not including wings in accordance with RF2A) will result in the severance of significant roots for the Lophostemon Confertus (Brush Box) street tree resulting in its likely decline.
Ms S Court
ASSESSMENT OFFICER

Mr D Waghorn
TEAM LEADER

ANNEXURES
1. Plans and elevation
2. Landscaping officer referral
3. Development engineer referral
1. **PREAMBLE**

At its meeting on 19 April 2010, Council’s Development Control Committee resolved:

> THAT Council, defer Development Application No. 314/2006 Part 4 for alterations and additions; new swimming pool and landscaping works on land at 120 Hopetoun Avenue Vaucluse, to a future Development Control Committee meeting in order for the scheduled meeting between Council staff, adjoining property owners and potential new future owner of 120 Hopetoun Avenue which is to be held on 22 April 2010 be conducted prior to the determination of this S96 application.

2. **MEETING OUTCOME AND LEGAL ADVICE**

On 22 April 2010 a meeting was carried out between Council staff, adjoining property owners and the potential new future owner of 120 Hopetoun Avenue (the subject site). Council resolved to seek legal advice on the following issues:

1. Whether Council is correct with regards to the assessment of the subject section 96 application, in terms of the assessment not extending to the stormwater management of the site.
2. Whether the recommendation to impose Condition 69 on DA 314/2006/4 (which requires the surcharge opening at the northern end of the existing front boundary wall to be sealed) potentially introduces the stormwater issue for assessment.

3. Whether the meeting conducted on 22 April 2010 has bearing on Council's ability to finalise/determine the section 96 applications.

On 07 May 2010, Council’s Solicitor, Peter Rigg of Norton Rose Solicitors provided the following advice:

Advice

We have examined the description of the proposed s.96 modification and the relevant case law including the recent decision of Justice Craig of Cavasinni Constructions Pty Ltd v Fairfield City Council [2010] NSWLEC 65 and 1643 Pittwater Road Pty Ltd v Pittwater Council [2004] NSWLEC 686 (McClellan CJ) and conclude as follows:

1. The matter of stormwater control for the site is of ‘no relevance’ in the legal sense as discussed in the Cavasinni case to the works and modifications the subject matter of the current amended s.96 Applications. Further, the general matter of stormwater management does not arise from the subject matter of the current amended s.96 Applications.

We consider that it could not be said that any of the proposed modification works call up under s.79C (1) of the Act any stormwater management issue other than the imposition of the proposed Condition 69.

2. No condition of a s.96 consent could be said to fairly and reasonably relate in s.80A (1) sense to the proposed modifications other than the proposed Condition 69. In this regard it is acknowledged that a s.96 modification may be granted subject to conditions (see 1643 Pittwater Road Pty Ltd v Pittwater Council) but the discretion to impose conditions is not unlimited, the conditions or conditions must be defined by the matters raised for consideration by the s.96 Application. That is to say matters relevant under s.79C (1) of the Act relevant to the aspects of the development to which the application relates. As was observed by McCellan CJ in the Pittwater case ‘an application to change the colour of a building could not provide a basis to reconsider the provision of car parking for the development’. Similarly, the works proposed by the current s.96 Applications do not entitle a reconsideration of the subject site’s general drainage.

3. Condition 69 as proposed is considered valid. It does not entitle the whole matter of drainage nor open up Clause 25 (2) of Woollahra LEP 1995 for reconsideration.

On the matter of the meeting conducted on 22 April 2010 we observe that:

1. No matters rising from this meeting have any bearing on Council’s ability to finalise/determine the s.96 applications.

2. The author of this advice has made some progress in his discussions with the resident parties towards acknowledgement that some improvement in the disposal of drainage is in the interest of all concerned. These discussions are ongoing and in no way relate to the manner in which Council should determine the current s.96 Applications.

A copy of the legal advice is attached in Annexure 1.
3. **ASSESSMENT**

This assessment is to be read in conjunction with the assessment report presented to the Development Control Committee at its meeting of 19 April 2010. The full report is attached in Annexure 2.

On the basis of the legal advice provided to Council on 07 May 2010 and for the reasons contained within the assessment report presented to the Development Control Committee on 19 April 2010 the application is recommended for conditional approval.

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

A. THAT Council, as the consent authority, modify development consent to Development Application No. 314/2006 Part 4 for alterations and additions, new swimming pool and landscaping works on land at 120 Hopetoun Avenue Vaucluse, in the following manner:

The insertion of the following conditions:

67. **Approved Amended (s96) Plans and supporting documents**

Those acting upon or under this amended consent must carry out all work and maintain the use and works in accordance with the approved plans and supporting documents listed in the original consent, as amended by the amended approved plans and supporting documents as submitted by the Applicant and to which is affixed a Council stamp “Approved Section 96 Plans” listed below otherwise than modified by further condition(s). Where the plans relate to amendments, 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>
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<tr>
<td>2.02 Rev 6, 3.02 Rev 6</td>
<td>Architectural Plans</td>
<td>ArchitectsInk</td>
<td>03.09.09</td>
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<td>3.03 Rev 6, 4.03 Rev 6, 4.05 Rev 6</td>
<td>Architectural Plans</td>
<td>ArchitectsInk</td>
<td>03.09.09</td>
</tr>
</tbody>
</table>

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

Standard Condition: A6

68. **Development Consent is not granted in relation to these matters**

This approval does not give consent for any works which encroach beyond the boundaries of the subject site.

Furthermore, any additional works on Council’s infrastructure or any proposed modifications to the previously approved works on Council’s infrastructure are to be applied for separately under S138 of the Roads Act.
69. No approval is granted to discharge stormwater to Hopetoun Avenue

The surcharge opening at the northern end of the existing front boundary wall (which is to be retained as part of the subject application) shall be sealed. No further openings shall be made within the front boundary wall to allow for stormwater discharge. Furthermore no stormwater from the subject site shall be discharged onto Hopetoun Avenue, or the Council verge adjacent to Hopetoun Avenue.

The deletion of the following conditions:

2. Garage

In accordance with C4.13.4 of Section 4.13 of Woollahra RDCP 2003 and to reduce the dominance of the garage within the Hopetoun Avenue streetscape and to improve the visibility of the dwelling house from the street, the overall height of the garage is to be reduced by 1.0m to 3.7m (RL29.28). Details are to be included in the application for a Construction Certificate.

3. Front fence

In accordance with C4.13.5.5 of Section 4.13 of Woollahra RDCP 2003 and to achieve a more appropriate and consistent fence height, the front fence is to be limited to a maximum height of 1.5m. Details are to be included in the application for a Construction Certificate.

B. THAT, as the unauthorised works are considered to be satisfactory with regard to the relevant objectives and controls of Woollahra Local Environmental Plan 1995 and Woollahra Residential Control Plan 2003, Council take no action to require the entry structure to be removed

C. THAT this matter be referred to the Manager – Compliance to take appropriate action under Part 6 of the Environmental Planning and Assessment Act 1979 in accordance with Council’s Enforcement Policy for failure to obtain Council’s consent prior to carrying out the unauthorised works.

Ms E Smith          Mr N Economou
ACTING TEAM LEADER      ACTING DEVELOPMENT
CONTROL MANAGER

ANNEXURES

1. Legal advice prepared by Peter Rigg of Norton Rose Solicitors, dated 07 May 2010.
2. DA 314/2006/4 Assessment Report presented to the Development Control Committee on 19 April 2010 (including annexures).
SECTION 96 APPLICATION ASSESSMENT REPORT

<table>
<thead>
<tr>
<th>ITEM No.</th>
<th>D9</th>
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</thead>
<tbody>
<tr>
<td>FILE No.</td>
<td>DA 314/2006/5</td>
</tr>
<tr>
<td>ADDRESS:</td>
<td>120 Hopetoun Avenue, Vaucluse</td>
</tr>
<tr>
<td>EXISTING CONSENT:</td>
<td>Alterations and additions; new swimming pool and landscaping works</td>
</tr>
<tr>
<td>TYPE OF CONSENT:</td>
<td>Local Development</td>
</tr>
<tr>
<td>DATE OF CONSENT:</td>
<td>19/11/2006</td>
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<tr>
<td>ZONING:</td>
<td>Residential 2(a)</td>
</tr>
<tr>
<td>PROPOSED MODIFICATION:</td>
<td>External modifications including landscaping modifications</td>
</tr>
<tr>
<td>DATE S96 LODGED:</td>
<td>19/11/2009 (original plans) 16/03/2010 (amended plans)</td>
</tr>
<tr>
<td>CONSENT AUTHORITY:</td>
<td>Council</td>
</tr>
<tr>
<td>APPLICANT:</td>
<td>Mr B J Grant</td>
</tr>
<tr>
<td>OWNER:</td>
<td>Mr B J Grant</td>
</tr>
<tr>
<td>AUTHOR:</td>
<td>Ms E Smith</td>
</tr>
</tbody>
</table>

1. PREAMBLE

At its meeting on 19 April 2010, Council’s Development Control Committee resolved:

THAT Council, defer Development Application No. 314/2006 Part 5 for alterations and additions; new swimming pool and landscaping works on land at 120 Hopetoun Avenue Vaucluse, to a future Development Control Committee meeting in order for the scheduled meeting between Council staff, adjoining property owners and potential new future owner of 120 Hopetoun Avenue which is to be held on 22 April 2010 be conducted prior to the determination of this S96 application.

2. MEETING OUTCOME AND LEGAL ADVICE

On 22 April 2010 a meeting was carried out between Council staff, adjoining property owners and the potential new future owner of 120 Hopetoun Avenue (the subject site). Council resolved to seek legal advice on the following issues:

1. Whether Council is correct with regards to the assessment of the subject section 96 application, in terms of the assessment not extending to the stormwater management of the site.
2. Whether the recommendation to impose Condition 69 on DA 314/2006/4 (which requires the surcharge opening at the northern end of the existing front boundary wall to be sealed) potentially introduces the stormwater issue for assessment.

3. Whether the meeting conducted on 22 April 2010 has bearing on Council's ability to finalise/determine the section 96 applications.

On 07 May 2010, Council’s Solicitor, Peter Rigg of Norton Rose Solicitors provided the following advice:

Advice

We have examined the description of the proposed s.96 modification and the relevant case law including the recent decision of Justice Craig of Cavasinni Constructions Pty Ltd v Fairfield City Council [2010] NSWLEC 65 and 1643 Pittwater Road Pty Ltd v Pittwater Council [2004] NSWLEC 686 (McClellan CJ) and conclude as follows:

1. The matter of stormwater control for the site is of ‘no relevance’ in the legal sense as discussed in the Cavasinni case to the works and modifications the subject matter of the current amended s.96 Applications. Further, the general matter of stormwater management does not arise from the subject matter of the current amended s.96 Applications.

   We consider that it could not be said that any of the proposed modification works call up under s.79C (1) of the Act any stormwater management issue other than the imposition of the proposed Condition 69.

2. No condition of a s.96 consent could be said to fairly and reasonably relate in s.80A (1) sense to the proposed modifications other than the proposed Condition 69. In this regard it is acknowledged that a s.96 modification may be granted subject to conditions (see 1643 Pittwater Road Pty Ltd v Pittwater Council) but the discretion to impose conditions is not unlimited, the conditions or conditions must be defined by the matters raised for consideration by the s.96 Application. That is to say matters relevant under s.79C (1) of the Act relevant to the aspects of the development to which the application relates. As was observed by McCellan CJ in the Pittwater case ‘an application to change the colour of a building could not provide a basis to reconsider the provision of car parking for the development’. Similarly, the works proposed by the current s.96 Applications do not entitle a reconsideration of the subject site’s general drainage.

3. Condition 69 as proposed is considered valid. It does not entitle the whole matter of drainage nor open up Clause 25 (2) of Woollahra LEP 1995 for reconsideration.

On the matter of the meeting conducted on 22 April 2010 we observe that:

1. No matters rising from this meeting have any bearing on Council’s ability to finalise/determine the s.96 applications.

2. The author of this advice has made some progress in his discussions with the resident parties towards acknowledgement that some improvement in the disposal of drainage is in the interest of all concerned. These discussions are ongoing and in no way relate to the manner in which Council should determine the current s.96 Applications.

A copy of the legal advice is attached in Annexure 1.
3. ASSESSMENT

This assessment is to be read in conjunction with the DA 314/2006/5 assessment report presented to the Development Control Committee at its meeting of 19 April 2010. The full report is attached in Annexure 2.

On the basis of the legal advice provided to Council on 07 May 2010 and for the reasons contained within the assessment report presented to the Development Control Committee on 19 April 2010 the application is recommended for conditional approval.

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

A. THAT Council, as the consent authority, modify development consent to Development Application No. 314/2006 Part 5 for alterations and additions; new swimming pool and landscaping works on land at 120 Hopetoun Avenue, Vaucluse, in the following manner:

The insertion of the following conditions:

62. Approved Amended (s96) Plans and supporting documents

Those acting upon or under this amended consent must carry out all work and maintain the use and works in accordance with the approved plans and supporting documents listed in the original consent, as amended by the amended approved plans and supporting documents as submitted by the Applicant and to which is affixed a Council stamp “Approved Section 96 Plans” listed below otherwise than modified by further condition(s). Where the plans relate to amendments, alterations or additions only those works shown in colour or highlighted are approved. **No approval is given for any alterations to the ground levels at the subject site.**

<table>
<thead>
<tr>
<th>Reference</th>
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<tr>
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<td>Landscape Plan</td>
<td>Bay Street Gardens</td>
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Note: These plans and supporting documentation may be subject to conditions modifying the development imposed under section 80A(1)(g) of the Act (refer to conditions which must be satisfied prior to the issue of any Construction Certificate.)

Standard Condition: A6

63. Louvre screen to the BBQ

The louvre screen to the southern elevation must screen the BBQ from the neighbouring property to the north. The RL of the bottom of the screen may be reduced by up to 500mm to ensure that this occurs.

64. Modification of details of Landscaping

To ensure an adequate level of landscaping is provided and maintained within the subject site and to retain the residential amenity of the neighbouring properties, landscape plan, reference: Sheet No. 1 of 1, prepared by Bay Street Gardens, dated 09/11/2009 must be amended and submitted for approval prior to the issue of the final occupation certificate. The amended landscape plan must detail the following amendments:
a) The removal of the 15 Cupressocyparis leylandii ‘Leightons Green’ plantings located adjacent to the rear south western boundary of the subject site. The 15 trees shall be replaced with 15 Photinia Robusta trees or 15 Pittosporum Screen Master trees, which have a minimum mature height of 5m and are therefore covered by the Woollahra Council Tree Preservation Order. The container size of the trees at the time of planting shall be a minimum of 75 litres.

b) The remaining 22 Cupressocyparis leylandii ‘Leightons Green’ trees located in the rear yard adjacent to the north and south side boundaries shall be removed and replaced with 22 Acmena smithii ‘Minor Lillypilly’ (small growing form). These trees generally have a maximum mature height of 2-3m.

c) A Banksia Sp. canopy tree shall be planted immediately adjacent to the plant equipment located between the south western edge of the swimming pool and the rear boundary of the site. The container size of the tree at the time of planting shall be a minimum of 100 litres. Furthermore the species of Banksia shall have a minimum mature height of 6m.

65. Trees which must be removed

The owner or principal contractor must remove the 37 Cupressocyparis leylandii ‘Leightons Green’ trees which are planted in the rear yard adjacent to the northern and southern side boundaries and the western rear boundary prior to the issue of the final occupation certificate.

66. Replacement trees which must be planted

The owner or principal contractor must install all approved amenity landscaping (screen planting etc) prior to the issue of the final occupation certificate. The 15 Photinia Robusta trees or 15 Pittosporum Screen Master trees, the 2 cheese trees and the Banksia canopy tree located adjacent to the rear south western boundary of the subject site are to be maintained in a healthy and vigorous condition until they attain a height of 5 metres or a spread of 3 metres, whereby they will be protected by Council’s Tree Preservation Order. If any of the replacement plants are found to be faulty, damaged, dying or dead before they attain a size whereby they are protected by Council’s Tree Preservation Order, they must be replaced with another plant of the same species.

The insertion of the following Advisings:

1. The use of the BBQ

The use of the BBQ area shall not give rise to the emission of ‘air pollution’ into the surrounding environment as defined under the Protection of the Environment Operations Act 1997 and Regulation thereunder.

2. Emissions resulting from the use of the BBQ

All fumes, odours and the like from the use of the BBQ area shall be of a nature as not to cause danger or a nuisance to occupants in the building, occupants of neighbouring buildings or members of the public.

B. THAT, as the unauthorised works are considered to be satisfactory with regard to the relevant objectives and controls of Woollahra Local Environmental Plan 1995 and Woollahra Residential Control Plan 2003, Council take no action to require the BBQ to be removed.
C. THAT this matter be referred to the Manager – Compliance to take appropriate action under Part 6 of the Environmental Planning and Assessment Act 1979 in accordance with Council’s Policy Enforcement Policy to require the unauthorised landscaping to be removed and the replacement landscaping to be installed.

Ms E Smith  
ACTING TEAM LEADER

Mr N Economou  
ACTING DEVELOPMENT CONTROL MANAGER

ANNEXURES

1. Legal advice prepared by Peter Rigg of Norton Rose Solicitors, dated 07 May 2010.

2. DA 314/2006/5 Assessment Report presented to the Development Control Committee on 19 April 2010 (including annexures).
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B. **THAT**, as the unauthorised works are considered to be satisfactory with regard to the relevant objectives and controls of Woollahra Local Environmental Plan 1995 and Woollahra Residential Control Plan 2003, Council take no action to require the BBQ to be removed.
C. THAT this matter be referred to the Manager – Compliance to take appropriate action under Part 6 of the Environmental Planning and Assessment Act 1979 in accordance with Council’s Policy Enforcement Policy to require the unauthorised landscaping to be removed and the replacement landscaping to be installed.

Ms E Smith
ACTING TEAM LEADER

Mr N Economou
ACTING DEVELOPMENT CONTROL MANAGER

ANNEXURES

1. Legal advice prepared by Peter Rigg of Norton Rose Solicitors, dated 07 May 2010.

2. DA 314/2006/5 Assessment Report presented to the Development Control Committee on 19 April 2010 (including annexures).
SECTION 96 APPLICATION ASSESSMENT REPORT

ITEM No. D10
FILE No. DA 281/2008/2
ADDRESS: 9 Military Road, Watsons Bay
EXISTING CONSENT: Demolition of the existing residential flat building, and the construction of a new three (3) unit apartment building with underground carparking, landscaping and siteworks.
TYPE OF CONSENT: Local
DATE OF CONSENT: 29/06/2009
PROPOSED MODIFICATION: Reinstatement of roof terrace (the deletion of Condition C1, part f).
DATE S96 LODGED: 11/03/2010
CONSENT AUTHORITY Council
APPLICANT: Mr R Stathakis
OWNER: Lauvan Pty Ltd
AUTHOR: Ms E Smith

LOCALITY PLAN

Subject Site
Objectors
North
Locality Plan
1. SUMMARY

Reason for report

The Section 96 application proposes the reinstatement of a roof terrace (which is required to be deleted by Condition C1, part f). It is before the Development Control Committee as Condition C1, part f, was imposed by the Development Control Committee on 29 June 2009. Condition C1, part f, reads as follows:

f: To ensure a satisfactory level of privacy is maintained to the neighbouring properties, the roof top terrace and planter boxes shall be deleted. The roof shall comprise of a pebble finish in a recessive colour, with a maximum parapet height at RL 22.43. The access to the roof shall be for maintenance only and the entire roof top area shall be non trafficable.

Issues

- Visual and acoustic privacy
- View loss
- Sunlight access
- Visual impact
- Objector’s concerns

Objections

Letters of objection were received from seven neighbouring properties. The issues raised are addressed within section 18 of the report.

Recommendation

The application is recommended for conditional approval because it:

1. is substantially the same development as that for which consent was originally granted; and
2. is satisfactory with all relevant provisions of environmental planning instruments and policies that do not derogate (detract) from the existing use rights provisions; and
3. is consistent with the planning principles, in relation to the environmental assessment of proposals on land with existing use rights, established in the Fodor Investments v Hornsby Shire Council Land & Environment Court judgement and in light of the Land and Environment Court judgment in the Stromness P/L v Woollahra Municipal Council handed down on 26 October 2006; and
4. is an appropriate design for the subject site; and
5. will not have adverse effects upon the amenity of adjoining properties or the surrounding locality such that refusal is justified.

2. DESCRIPTION OF APPROVED PROPOSAL

The approved proposal involves the following:

- The demolition of the existing residential flat building.
- The construction of a new three (3) unit apartment building with underground carparking.
- Landscaping and siteworks.
3. DESCRIPTION OF PROPOSED MODIFICATION

The application proposes the reinstatement of a roof terrace (which is required to be deleted by Condition C1, part f).

The proposed roof terrace incorporates the following amendments from the roof terrace that was deleted by Condition C1, part f:

- The deletion of a timber extension to the rear of the terrace, to reduce the size of the terrace and increase separation and sightline distances. The area of the roof terrace has been reduced from approximately 129m² to approximately 110.6m²; a 18.4m² reduction.
- The deletion of the rooftop staircase housing by providing a doorway to the external stairs from level 3. Drainage is provided to these stairs.
- The replacement of planting with pebble finish in a recessive colour to reduce the bulk of the planter boxes and to comply with Condition C.1, part f.

The proposed plans and elevations are attached as Annexure 1.

4. DESCRIPTION OF SITE AND LOCALITY

<table>
<thead>
<tr>
<th>THE SITE AND LOCALITY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Physical features</strong></td>
</tr>
<tr>
<td>The subject site is located on the eastern side of Military Road. The site is irregular in shape, with a front (western) boundary measuring 15.765m in length, a splayed rear (eastern) boundary measuring 17.345m in length, a northern (side) boundary measuring 36.54m in length, and a southern side boundary measuring 48.14m in length; a total area of 617.7m².</td>
</tr>
<tr>
<td><strong>Topography</strong></td>
</tr>
<tr>
<td>The topography of the site is such that the land slopes from the rear (eastern boundary) towards the front of the site; a fall of approximately 3m.</td>
</tr>
<tr>
<td><strong>Existing buildings and structures</strong></td>
</tr>
<tr>
<td>Currently occupying the site is a two/three storey red face brick Inter-War residential flat building which contains 9 x 1 bedroom dwellings. The Heritage Impact Statement submitted with the original application identifies the date of construction as 1940.</td>
</tr>
<tr>
<td><strong>Environment</strong></td>
</tr>
<tr>
<td>No. 3 Military Road is located to the south of the site and comprises of a three storey mixed use building.</td>
</tr>
<tr>
<td>No. 7 Military Road is located to the south of the site and comprises of a two level residential flat building, which is raised above an above ground covered car parking and service area. No. 7 is located on a battle axe allotment.</td>
</tr>
<tr>
<td>No. 11 Military Road is located to the north of the site and comprises of a three storey residential dwelling.</td>
</tr>
<tr>
<td>No. 17 Military Road is located to the north of the site. The building at 17 Military Road is the former town hall, which is designated as a heritage item within the Woollahra Local Environmental Plan 1995.</td>
</tr>
<tr>
<td>To the east of the site are a number of dwellings which front Gap Road. These dwelling-houses are of varying age and architectural styles.</td>
</tr>
</tbody>
</table>

5. PROPERTY HISTORY

The Section 82A review of DA 281/2008/1 was referred to the Development Control Committee on 01 June 2009 for the demolition of the existing residential flat building, and the construction of a new three (3) unit apartment building with underground carparking and a roof terrace.

The staff recommendation was to conditionally approve the proposal. No conditions were recommended requiring the deletion of the roof terrace. The Development Control Committee resolved:

_ THAT the matter be referred to a site inspection meeting to be held on Wednesday 3 June 2009._
Furthermore:

*In accordance with Council’s meeting procedures and policy this matter has been called to full Council by Councillor Shoebridge for the following reasons: demolition of substantial contributory item in Heritage Conservation Area and substantial loss of housing stock in the municipality and should be voted on by full Council.*

At the site inspection carried out on 03 June 2009, the Councillors present submitted the following recommendation for consideration by Full Council:

*THAT the Council, as a consent authority refuse Development Application No. 281/2008 for review of DA refusal for demolition of existing residential flat building and construction of new 3 unit apartment building with underground carparking, landscaping and siteworks on land at 9 Military Road Watsons Bay, for the following reasons:*  
  • Excessive bulk and scale to rear provides a sense enclosure  
  • Roof terrace and stairs to roof terrace is inappropriate for privacy reasons  
  • Reduction of apartments from 9 to 3 when government is urging increase in dwelling numbers  
  • Excessive excavation  
  • Impact on streetscape in that it detracts from the Woollahra Heritage Area and on Watsons Bay Town Hall  
  • Adverse impact on amenities adjacent to property due to reduction in separation distances between the subject proposal and adjoining properties  
  • Impact on 11 Military Road, 7 & 7A Gap Road & 6 Gap Road

On 11 June 2009, the applicant submitted amended plans (DA.02 D, DA.03 C, DA.04 D, DA.06 D, DA.07 D, drawn by Zoltan Kovacs Architect dated, 03/09).

The covering letter accompanying the amended plans stated:

*Please note that we are lodging amended plans which address issues concerning the street facade of the development as late correspondence to be tabled at the council meeting to be held on 15 June 2009. The concerns were raised at the DCC site inspection with particular regard to D.5.4 Building Character C38 and we consider them valid.*

*The following amendments were made:*  
  • the width of the front terrace was reduced by 200mm to enable greater articulation  
  • two vertical bay surrounds were added to the facade which project 200 mm forward (they are in the same plane as the original wall plane)  
  • the balcony balustrades were fragmented to reduce the horizontality of the openings  
  • timber slats and weatherboards were introduced between the bays to a) provide a further reference to the cultural history of Watsons Bay and b) to tie in the elevation with the sides  
  • a horizontal moulding was added to the ground floor eaves which continues over into the entrance awning to provide a visual reference to the awnings of the commercial area (this feature also helps to highlight the singularity of the Town Hall)  
  • the extent of sandstone cladding was increased on the ground floor as a reference to the sandstone heritage item at No. 25 and the side walls were returned to the front to provide a more solid base which ties in with the vertical bay above  
  • two louvred openings were reintroduced to the north elevation for improved visual presentation looking down Military Road towards the south
the south corner of the front elevation was splayed back for increased articulation

The amendments shown on the elevations & section anticipate that Council will require the deletion of the roof terrace, but the roof plan has not been amended yet as we have no way of knowing what condition council will impose. In case the roof terrace is not deleted, the parapet height would simply revert to RL 23.03, but we would still delete the stair access in light of the objections as roof access can be accommodated by an open extension of the fire escape.

At its meeting of 15 June 2009, Full Council resolved:

THAT consideration of the matter be deferred and referred back to the Development Control Committee on 22 June 2009 for consideration and determination with a staff recommendation on the amended plans.

Following an assessment of the amended plans the staff recommendation was to conditionally approve the proposal. In response to the applicant’s deletion of the roof terrace from the elevations condition C.1, part f was added to the recommendation which stated:

f. To ensure a satisfactory level of privacy is maintained to the neighbouring properties, the roof top terrace and planter boxes shall be deleted. The roof shall comprise of a pebble finish layer, with a maximum parapet height at RL 22.43. The access to the roof shall be for maintenance only, the access shall be provided from the level 3 stairwell, a door to the roof access stairwell shall be inserted to the level 3 stairwell landing, no housing shall be provided to the roof access stairwell.

At the Development Control Committee meeting on the 22 June 2009, the Development Control Committee resolved:

THAT the Council, as a consent authority refuse Development Application No. 281/2008 for review of DA refusal for demolition of existing residential flat building and construction of new 3 unit apartment building with underground carparking, landscaping and siteworks on land at 9 Military Road Watsons Bay, subject to the following reasons:

- Excessive bulk and scale to rear provides a sense enclosure
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- Impact on streetscape in that it detracts from the Woollahra Heritage Area and on Watsons Bay Town Hall
- Adverse impact on amenities adjacent to property due to reduction in separation distances between the subject proposal and adjoining properties
- Impact on 11 Military Road, 7 & 7A Gap Road & 6 Gap Road
- Due to the height, bulk, scale and demolition of the existing contributory building at 9 Military Road, the proposal will detract from the heritage significance of the Watsons Bay Heritage Conservation Area and the adjoining heritage item at 17 Military Road (Town Hall Building). In this regard, the proposal is inconsistent with the following requirements:
  - Object 5 (a) of the Environmental Planning & Assessment Act 1979
  - Objective (a) of the Residential 2(a) zone under WLEP 1995
  - Objective 2(1)(g), 2(2)(g)(ii) & (iii) of WLEP 1995
• Clauses 27 & 28 of WLEP 1995
• Part 2 – 2.5.2 O1, O2 & O4 of Watsons Bay HCA DCP
• Part 3, Precinct D - C24, C25 of Watsons Bay HCA DCP
• Part 4.6.2 (Significant Items) – C3 of Watsons Bay HCA DCP

• Due to the excessive height, lack of privacy screening measures and inadequate separation distances (setbacks) from the northern, eastern and southern boundaries, the proposal will result in additional loss of visual and acoustic privacy impacts upon 3, 7 & 11 Military Road. In this regard, the proposal is inconsistent with the following requirements:
  • Object 5 (a) of the Environmental Planning & Assessment Act 1979
  • The third planning principle established in the Fodor Investments v Hornsby Shire Council Land & Environment Court case
  • The loss of visual privacy planning principle established in the Meriton Properties Management P/L v Sydney City Council Land & Environment Court case
  • Part 3, Precinct D C37 of Watsons Bay HCA DCP

• Due to the extent and siting of excavation, the proposal has the potential to have an adverse impact on the stability and amenity of adjoining properties. In this regard, the proposal is inconsistent with the following requirements:
  • Object 5 (a) of the Environmental Planning & Assessment Act 1979
  • The third planning principle established in the Fodor Investments v Hornsby Shire Council Land & Environment Court case and
  • Clause 18 of WLEP 1995
  • Part 4.6 (Siting and Alignment) – C7 of Watsons Bay HCA DCP

In accordance with Council’s meeting procedures and policy the matter was referred to full Council as the resolution was a substantial departure from the staff recommendation.

At its meeting of 29 June 2009, Full Council resolved:

That the staff recommendation for approval of the application submitted to the Development Control Committee meeting on 22 June 2009 be adopted subject to condition C.1 (f) being amended to read as follows:

f. To ensure a satisfactory level of privacy is maintained to the neighbouring properties, the roof top terrace and planter boxes shall be deleted. The roof shall comprise of a pebble finish in a recessive colour, with a maximum parapet height at RL 22.43. The access to the roof shall be for maintenance only and the entire roof top area shall be non trafficable.

6. REFERRALS

No internal or external referrals.
ASSESSMENT UNDER S96

7. Assessment Under S96

7.1 S96 (2) Other modifications

The proposed modification would have some form of impact on the amenity of adjoining property owners and the environment. The degree and merits of the impact will be discussed under the relevant heads of consideration below. Accordingly, the proposal falls under the ambit of Section 96(2).

7.2 S96AA Modification of a consent granted by the Court

Not applicable.

7.3 Substantially the same development

The consent as proposed to be modified is considered to be substantially the same development as that for which consent was originally granted. This opinion is based on the fact that the scope of the modifications is relatively limited when compared to the scope of the approved development for a replacement residential flat building, and the subject modifications do not significantly alter the building envelope of the approved residential flat building.

In accordance with Section 96 (2) (a), the consent as proposed to be modified is substantially the same development as that for which consent was originally granted.

7.4 S96 (2) (b) Consultation with Minister, public authority or approval body

Not applicable.

7.5 Threatened species

Not applicable.

EXISTING USE RIGHTS/SECTION 79C ASSESSMENT

8. Does the existing use satisfy the definition of ‘existing use’ under the Act?

Section 106 provides:

"106 Definition of “existing use”

In this Division, existing use means:

(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:
(i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and
(ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."

This necessarily requires the following questions to be answered.

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?
2. Was the use of the building, work or land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?
3. Has the use of the building, work or land been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Adequate information was submitted with the original DA to establish that the residential flat building on this land benefits from existing use rights, protected under Division 10 of Part 4 of the Act. There is no evidence that the current use has been abandoned. In light of the above, there is no reason to question the validity of existing use rights pertaining to the subject site.

What is “the land on which the existing use was carried out” for the purposes of cl 42(2)(b) of the Environmental Planning and Assessment Regulation 2000 (“the EP&A Regulation”)?

Meagher JA in Steedman v Baulkham Hills Shire Council [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: “that if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Having regard to the above case law, it is considered that, as the residential flat building is the sole use of the subject land, the existing use rights apply to the whole of the site.

The judgement in Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71, sets out the planning principles which should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The four principles adopted by the court in this case will have general application in dealing with DAs that rely on existing use rights.

The four principles are:

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

Note that this principle was clarified in the Stromness case. The following is a quote from the Chief Judge.

In Stromness Pty Ltd v Woollahra Municipal Council [2006] NSWLEC 587 the planning principles in Fodor were considered and confirmed by Pain J at pars 83-89. Principle 2 was specifically supported in paragraph 87 and principles 1, 3 and 4 were specifically supported in paragraph 89. Her Honour states in para 89 that care must be exercised in the application of the principles to ensure that there is not a de facto application of standards in environmental planning instruments as that is prohibited by s 108(3) of the Environmental Planning and Assessment Act.

The consideration of the bulk and scale of the proposal must be made without any reference to Council's building envelope controls including the height and boundary setback controls as to do so would be unlawful in light of the above-mentioned case law. Indicative compliance tables are attached in Annexure 2.

**Height:**
- The original proposal included a maximum parapet height of RL 23.03 and a roof top stair housing with a maximum height of RL 24.5.
- **Condition C.1, part f,** required the deletion of the roof top terrace and a maximum parapet height of RL 22.43.
- The subject proposal has removed the need for the roof top stair housing by providing a doorway to a set of external stairs from level 3. As there is to be no stair enclosure drainage is provided to these stairs.
- The subject proposal includes the reinstatement of the parapet to a maximum height of RL 23.03 and a safety glass balustrade also with a maximum height of RL 23.03.
- The rear section of the roof (where the roof terrace has been reduced in area) would retain a parapet with a maximum height of RL 22.43.
- The height and creation of the roof terrace would not unreasonably impact upon the residential amenity of the neighbouring properties, including loss of views, sunlight access or visual and acoustic privacy. This is discussed in greater detail below.
- The height of the existing residential flat building is RL 24.08, the main parapet of the proposed residential flat building is 1.05m lower than the ridgeline of the existing building. Therefore, when viewed from a distance, the proposed building presents less bulk and mass to Military Road than the existing building. It is acknowledged that the main front parapet is 0.95m higher than the existing eaves level and unlike the existing hipped roof the proposed parapet wall is not recessive. However, the height of the main parapet (RL 23.03) is comparable with the height of the adjoining buildings. This ensures that the height of the proposed building would not appear excessive in the streetscape. The height of the adjoining buildings (as annotated on the survey) are as follows:
  - 3 Military Road – RL 23.9
  - 11 Military Road – RL 22.34
  - 7 Military Road – RL 23.7
- The maximum height of the main front parapet of the proposal above street level is approximately 10.6 m. The proposed height is compatible with the height of the adjoining properties.
Number of storeys:
No change.

Front alignment:
No change.

Site coverage and Building footprint:
No change.

Rear alignment:
No change.

Side alignment:
No change.

Floor space ratio:
No change.

Impact upon Heritage Conservation Area and adjacent Heritage Items:

The original section 82A review (which included a roof terrace) was reviewed by Council’s Heritage Officer. It was determined that the replacement residential flat building would successfully fit into the conservation area. Specifically, no objection was raised with regards to the proposed roof terrace.

The subject application was reviewed by the Development Application Review Committee on 17 March 2010, where it was determined that the original Heritage Officer’s referral response is still applicable.

The heritage impacts are discussed in greater detail within section 13 of the report.

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

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

The consideration of the relevance of the existing building within its context must be made without any reference to Council's building envelope controls including the height and boundary setbacks as to do so would be unlawful in light of the above-mentioned case law.

The following comparison is made between the existing building and the approved residential flat building as proposed to be modified:

- The essential difference between the approved and proposed developments is the insertion of a roof terrace. The proposal results in a minor increase to the height, bulk and scale of the building. The height, bulk and scale of the building as proposed to be modified are comparable to that of the existing building. Furthermore, as discussed previously the proposal reflects the height, scale and bulk of the adjoining properties. This ensures that the proposal is compatible with the context of development in the vicinity of the site and provides a satisfactory streetscape outcome.
• The proposed residential flat building will have a main front parapet height of RL 23.03. The main front parapet height is 1.05m lower that the ridgeline of the existing residential flat building (RL 24.08).

• The proposal will not significantly increase the bulk and mass of the subject building as presented to the street. The scale of the proposal would not appear out of character with the adjoining buildings and the proposal would not result in any unreasonable impacts upon the amenity of the adjoining properties.

• The proposed modification would not result in any significant adverse impact upon the amenity of adjoining properties in terms of views, privacy, overshadowing or visual impact/sense of enclosure. These issues are discussed in greater detail below under the section 3. What are the impacts on adjoining land?

3. What are the impacts on adjoining land?

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

Potential residential amenity impacts considered involve overshadowing, visual impact/sense of enclosure, loss of privacy and loss of views. These issues are discussed as follows:

Overshadowing

The amended proposal has deleted the planters and landscaping to the roof of the building to remove any overshadowing impacts which could occur as a result of the rooftop landscaping.

Shadow diagrams were provided with the Section 82A review application which depicted the proposed level of overshadowing to the private open space and windows to the neighbouring properties from the proposal with a roof terrace and a maximum parapet height of 23.03.

The owners of units 2 unit 3, No. 3 Military Road and units 1 and 3, No.7 Military Road have objected to the proposal on the grounds of loss of solar access.

The approved building results in minor overshadowing to No. 3 and No. 7 Military Road. The overshadowing is caused by the rear section of the building. The reinstatement of the roof terrace would not result in any additional overshadowing for the following reasons:

• The location of the proposed roof terrace to the front and centre of the roof would ensure that there is no additional overshadowing to neighbouring properties.

• The proposal retains the approved parapet wall height to the rear section of the building. This ensures that the proposal would not result in any increased overshadowing impacts.

Views Loss

Private views

The amended proposal has deleted the roof top stair housing, planters and landscaping to reduce view loss impacts.

A view loss analysis has been carried out for No’s. 2, 3, 6, 7 and 7a Gap Road.
The LEC in Tenacity Consulting Pty Ltd V Warringah Council has adopted a four-step assessment of view affectation. The steps are as follows:

1. The assessment of the views affected
2. Consideration from what part of the property the views are obtained
3. The extent of the impact; and
4. The reasonableness of the proposal that is causing the impact.

1. **The assessment of the views affected**

   Views potentially affected by the proposal are of Sydney Harbour and the western foreshore.

2. **Consideration from what part of the property the views are obtained**

   **2 Gap Road**
   2 Gap Road is a three storey semi-detached dwelling-house with a living area located at first floor level. The available views of Sydney Harbour would not be affected by the proposal.

   **3 Gap Road**
   3 Gap Road is a three storey semi-detached dwelling-house with a living area located at first floor level. The available views of Sydney Harbour would not be affected by the proposal.

   **6 Gap Road**
   6 Gap Road is a two storey dwelling-house with the primary living areas on the first floor level. Filtered views of Sydney Harbour through vegetation could potentially be affected by the proposal from the master bedroom. However, the proposed building is 1.05m lower than the existing building and as a result the proposed building increases the level of water views afforded to No. 6 when compared to the existing situation.

   **7 Gap Road**
   7 Gap Road is a two storey semi-detached dwelling-house with the primary living areas on the first floor level. Filtered views of Sydney Harbour through vegetation could potentially be affected by the proposal from the living areas and balcony from a sitting and standing position.

   **7a Gap Road**
   7a Gap Road is a two storey semi-detached dwelling-house with the primary living areas on the first floor level. The available views of Sydney Harbour would not be affected by the proposal.

3. **The extent of the impact**

   **6 Gap Road**
   The originally proposed roof terrace stairwell housing would have resulted in a minor reduction to the views of Sydney Harbour available from the master bedroom. The subject application includes the deletion of the stairwell housing.

   The proposal incorporates the deletion of the existing hipped roof and chimney, and the insertion of a flat roof with a main parapet wall which is 1.05m lower than the existing ridge. As a result the proposed building increases the level of water views when compared to the existing building.
The proposed roof is 1.05m lower than the existing ridge.

Furthermore the impact upon views has to be considered for the property as a whole. No. 6 Gap Road benefits from extensive views of Sydney Harbour, including the Harbour Bridge and CBD from the main living area and rear balcony. These views would not be impacted by the proposed development.

No.6: Main living area and rear balcony

The proposed roof is 1.05m lower than the existing ridge.

7 Gap Road
The originally proposed roof terrace stairwell housing would have resulted in a minor reduction to the views of Sydney Harbour available from the main living areas and rear terrace. The subject application includes the deletion of the stairwell housing.

A very small area of filtered views of Sydney Harbour through vegetation could potentially be affected by the proposal from the living areas and balcony from a sitting and standing position.
Quantitatively and qualitatively any potential view loss would be negligible as No. 7 Gap Road would retain extensive views of Sydney Harbour from the main living areas and rear terrace. The retained views include the Harbour Bridge and CBD and significant water views. These iconic views would not be impacted by the proposed development.

7a Gap Road
The originally proposed roof terrace stairwell housing would have resulted in a minor reduction to the views of Sydney Harbour available from the main living areas and rear terrace. The subject application includes the deletion of the stairwell housing. This ensures that the available views of Sydney Harbour would not be affected by the proposal.

4. The reasonableness of the proposal that is causing the impact

The extent of view loss from the neighbouring properties is considered to be none-negligible (see above).
The deletion of the proposed stairwell (RL 24.5) ensures that the maximum height of the proposal (RL 23.03) is 1.05m lower than the ridgeline of the existing building (RL 24.08). The deletion of the existing hipped roof will increases the level of water views afforded to No. 6 Gap Road.

However, to ensure the use of the roof terrace (i.e. the siting of furniture, sunshades and the like) does not result in any unreasonable impacts in terms of view loss, condition C1, part g, has been included as part of the recommendation, which requires any furniture, sunshades or the like with a height above RL 23.03 (the height of the front parapet wall) are to be removed from the roof terrace when they are not in use.

As such, the extent of the view loss to private properties is considered to be acceptable.

**Public views.**

Concern has been raised that the proposal would unreasonably impact the public views from the Harbour and the ridge of the Gap Walk. The deletion of the proposed stairwell (RL 24.5) ensures that the maximum height of the proposal (RL 23.03) is 1.05m lower than the ridgeline of the existing building (RL 24.08). The proposal is not considered to result in any unsatisfactory impacts upon any public views.

**Visual and Acoustic Privacy**

The owners of the following properties have raised concerns regarding the proposed roof terrace resulting in a loss of privacy: No. 2/3 Military Road, No. 3/3 Military Road, 1/7 Military Road, 3/7 Military Road, 17 Military Road and 3 Gap Road.

The originally proposed rear timber deck area to the roof terrace (proposed under the Section 82A review) has been deleted, thus reducing the overall useable area of the proposed roof terrace.

In considering the issue of whether the proposal maintains adequate visual privacy to the adjacent properties, the following case law (Meriton Properties Management P/L v Sydney City Council), has been referred to:

*When visual privacy is referred to in the context of residential design, it means the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space. Most planning instruments and development control plans acknowledge the need for privacy, but leave it to be assessed qualitatively. Numerical guidelines for the separation of dwellings exist in the Australia-wide guideline, AMCORD; as well as in the New South Wales-specific Residential Flat Design Code attached to SEPP 65. AMCORD recommends a separation of 9 m between habitable rooms. The Residential Flat Design Code recommends increasing separation between buildings as they get taller. For buildings up to three storeys, it suggests 12 m between habitable rooms and balconies, 9 m between a habitable and non-habitable room and 6 m between non-habitable rooms.*

*Generalised numerical guidelines such as above, need to be applied with a great deal of judgment, taking into consideration density, separation, use and design. The following principles may assist:*

*• The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities, there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities, it is more difficult to protect privacy.*
Privacy can be achieved by separation. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development, it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the objective should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)

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

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

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

Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable.

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

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

Having regard to the above, the following consideration has been given to the proposal in terms of its impact upon the privacy of adjoining properties:

- The proposal has been designed to include large un-trafficable areas to the sides and rear of the roof. This ensures that the useable area of the roof terrace is restricted to the front and central section of the roof. The design provides a sufficient separation distance, and a physical barrier between the useable area of the roof terrace and the neighbouring properties.
- Access to the roof terrace is only provided to one dwelling (unit 3). The roof terrace therefore does not form a communal area of open space. The level of activity associated with roof terrace for a single dwelling is considered to be acceptable given the context of the site, the proposed separation distances to neighbouring properties and the design of the roof terrace.
- Consideration has been given to the planning principle set out in Meriton Properties Management P/L v Sydney City Council, which states that ‘overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time’. The roof terrace is not directly accessed from a living area, but is instead accessed from a stairwell located adjacent to the passageway to the unit 3. The fact that the roof terrace is accessed by a stairwell, not directly accessed from a living area, is likely to reduce the times and frequency that the roof terrace will be used.
- The utilisation of the roof as an area of private open space improves the residential amenity afforded to unit 3.
- Condition 1.7 of the original consent restricted noise emissions from the subject site. This condition has been amended to ensure that the roof top water feature would not unreasonably impact upon the acoustic privacy afforded to the neighbouring properties.
Impact on 3 Military Road:

- Sight line diagrams (see below) have been provided with the application, which depict the views which will be available from the proposed roof terrace. These identify that the useable area of the roof terrace is separated from the southern edge of the roof by a section of un-trafficable roof. This provides a physical barrier which would restrict the users of the roof terrace from walking to the southern edge of the roof, thus preventing views to be available to the north facing side windows and private open space of No. 3 Military Road. However, the un-trafficable area of roof to the southern side of the roof terrace tapers to the south western corner, which would enable the occupiers of the subject building to stand directly adjacent to the southern edge of the roof in this location. To ensure that an adequate level of visual privacy is retained **Condition C1, part h**, has been included as part of the recommendation, which requires the useable area of the roof to be setback a minimum of 3m from the southern side boundary of the site. This ensures that there would be no direct sightlines to the windows or private open space of No. 3 Military Road.

- Subject to **condition C.1, part h**, the location of the roof terrace within the central section of the roof provides a physical barrier and a sufficient separation distance (9m-13.6m), between the roof terrace and No. 3 Military Road. This ensures that the proposal retains an adequate level of acoustic and visual privacy to the neighbouring property.

![Diagram 1 - Sightlines to No. 3](image)
Impact on 7 Military Road

- Sight line diagrams (see below) have been provided with the application, which depict the separation distances between the proposed roof terrace and No. 7 Military Road. This identifies that there would be a minimum separation distance of 15m between the roof terrace and the north and west facing windows to No. 7 Military Road. The proposed roof terrace would not result in an unreasonable loss of privacy to the private open space or windows to No. 7 Military Road due to the combination of the following factors:
  
  - Taking into consideration the existing density of development 15m is a sufficient separation distance between the roof terrace and the building at No. 7 Military Road to ensure an adequate level of privacy is retained.
  
  - The views from the roof terrace to windows to the northern and western elevations of No. 7 Military Road would be at an oblique angle.
  
  - The physical separation provided by the un-trafficable section of roof would restrict the users of the roof terrace from walking to the southern edge of the roof. The un-trafficable section of roof therefore restricts views down to the lower level windows and private open space of No. 7 Military Road.

- For the reasons set out above the proposed roof terrace retains an adequate level of acoustic privacy to the neighbouring property.
Impact on 11 Military Road

- Sight line diagrams (see below) have been provided with the application, which depict the separation distance between the proposed roof terrace and No.11 Military Road. This identifies that there would be approximately 6m between the useable area of the roof terrace and the southern elevation of No. 11 Military Road. However, the physical separation provided by the un-trafficable area of roof would restrict the users of the roof terrace from walking to the northern edge of the roof. The un-trafficable area of roof therefore restricts views down to the south facing windows and private open space of No. 11 Military Road.

- For the reasons set out above the proposed roof terrace retains an adequate level of acoustic privacy to the neighbouring property.

Impact on properties to the rear (Gap Road)

- Sight line diagrams (see above) have been provided with the application, which show that the separation distance between the useable area of the roof terrace and the rear boundary of the subject site is between 16-26m. This is a sufficient separation distance to ensure that the proposed roof terrace would not result in any unreasonable impacts in terms of loss of visual or acoustic privacy.
The consideration of visual privacy requires an understanding of the adjacent context, the elevated position of the properties to the rear of the site (which front Gap Road) in relation to the subject site, further reduces the impact of the proposal in terms of loss of privacy.

For the reasons set out above the proposed roof terrace retains an adequate level of acoustic privacy to the neighbouring property.

**Adverse visual impact/sense of enclosure**

The proposal would increase the approved parapet height to the front section of the subject building from RL 22.43 to RL 23.03, an increase of 0.6m.

It is considered that the proposed increase to the parapet height will not result in any significant adverse impacts to the amenity of adjoining properties in terms of visual impact/sense of enclosure due to the following:

**The adjoining property to the south (No. 3 Military Road)**

- The 6m wide access handle to No. 7 Military Road separates the subject site from No. 3 Military Road. This provides a sufficient separation distance to ensure that the proposal would not result in any adverse visual impacts.
- The external wall height to the southern side elevation of the subject building is only 0.45m-1.1m above the existing eaves height. Furthermore the proposal includes the removal of the existing pitched roof which reduces the overall height of the building.
- The southern elevation at ground, first and second floor levels is adequately modulated through the incorporation of balconies, setbacks, windows and varying materials.

**The adjoining property to the north (11 Military Road)**

- The external wall height to the northern side elevation of the subject building is only 0.5m-1m above the existing eaves height. Given that No. 11’s principal windows and private open spaces (balconies) are orientated to the west. The increase to the wall height would not result in any unreasonable visual impacts or sense of enclosure.
- The northern side elevation is adequately articulated with varying external materials (cement render and external timber slats over fixed boarding), recesses and windows and is adequately setback from the southern side elevation of No. 11 (3.2m).

**The adjoining properties to the south east (7 Military Road)**

- There is a sufficient separation distance between the subject building and No. 7 Military Road (over 6m) to ensure that the proposal would not result in any unreasonable visual impacts or a sense of enclosure.
- The southern side elevation at ground, first and second floor levels is adequately modulated through the incorporation of balconies, setbacks, windows and varying materials.

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

*Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.*
The amenity of the unit 3 would be improved through the provision of additional private open space.

The subject proposal has removed the need for the roof top stair housing by providing a doorway to a set of external stairs from level 3. As there is to be no stair enclosure drainage is provided to these stairs to protect the amenity of the subject building. The applicant has confirmed that the landing at the bottom of the roof access stairs in Unit 3 will have a continuous grated stainless steel perimeter drain of at least 100 mm in width. The drain will be connected to the external stormwater drainage system by a suspended drain pipe enclosed in fire rated boxing and concealed in the ceiling space of Unit 2. The landing will have adequate falls to the perimeter drain to facilitate fast surface run-off and to prevent ponding. To ensure that the adequate provision has been made for stormwater drainage the drainage system detailed above is included as a recommended condition (condition C.1, part i).

9. Objects of the Environmental Planning and Assessment Act

The relevant object under Clause 5 is to encourage:

(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.

The proposal would improve the amenity of the unit 3 through the provision of additional private open space, and maintain an adequate level of residential amenity to the neighbouring properties by ensuring the retention of an adequate level of solar access, views and privacy. Accordingly, the proposal is considered to be consistent with the above-mentioned object of the Act.

10. STATE/REGIONAL INSTRUMENTS AND LEGISLATION

10.1 SEPPs

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed development. The original development application was accompanied by BASIX Certificate 194096M committing to environmental sustainability measures.

These requirements have been imposed by standard condition prescribed by clause 97A of the Environmental Planning & Assessment Regulation 2000.

10.2 REPs

SREP (Sydney Harbour Catchment) 2005

The provisions of Clauses 25 and 26 of this instrument and the accompanying DCP for SREP (Sydney Harbour Catchment) 2005 requires Council to consider the visual impact that a development proposal will have upon Sydney Harbour and adjoining foreshore areas and the likely impact upon available views to and from Sydney Harbour.
The proposal will not have any significant adverse visual impact upon Sydney Harbour and adjoining foreshore areas. Furthermore the proposal would not unreasonably impact upon any public or private views of Sydney Harbour. This issue is discussed above.

11. Additional Section 94 contribution

None applicable.

12. Other legislation

None applicable.

13. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

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

The proposal is consistent with the aims and objectives of the LEP and the relevant objectives of the 2(a) zone, subject to conditions.

Specifically, the proposal is considered to be consistent with the following objectives under Clause 2 of the LEP:

(g) in relation to heritage conservation -

(ii) to ensure that new development is undertaken in a manner that is sympathetic to and does not detract from the heritage significance of heritage items and their settings and of heritage conservation areas

In this regard, the proposal is considered to be satisfactory for the following reasons:

• Council's Heritage Officer considers the proposal to be satisfactory in terms of its impact on the heritage conservation area.
• The subject proposal is compatible with the Military Road Streetscape.
• Council’s Heritage Officer considers the proposal to be satisfactory in relation to the impact of the proposal upon No. 17 Military Road.
• The height, bulk and scale of the proposed three storey residential flat building are sympathetic to the heritage significance of the Watsons Bay HCA and the adjacent Heritage Item.

(h) in relation to the area's foreshores and the harbour foreshore scenic protection area -

(iv) to consider the impact of development on the views of Sydney Harbour enjoyed by existing residents and promote the practice of view sharing

The proposal will not result in any unreasonable loss of public or private views (discussed above).

(k) in relation to urban design -

(iii) to require that design and siting of new development enhance the attributes of its site and improve the quality of the public environment.
The height, bulk and scale of the proposal would be comparable to the existing built development to the eastern side of Military Road (discussed above).

13.2 Other special clauses/development standards

Clause 19 HFSPA

Clause 19 of Woollahra LEP 1995 requires Council to take into consideration the impact of a development upon Sydney Harbour and adjoining foreshore areas. The proposal will not have any significant adverse visual impact upon Sydney Harbour and adjoining foreshore areas.

Clause 25 Water, wastewater and stormwater

Clause 25 of Woollahra LEP 1995 requires Council to take into consideration the provision of adequate stormwater drainage and the provision of adequate water and sewerage services. The proposal is considered to be satisfactory in terms of the provision of adequate stormwater drainage and the provision of adequate water and sewerage service, subject to condition imposed on the original consent.

Development in the vicinity of heritage items and Heritage conservation areas

Clause 27 of Woollahra LEP 1995 requires Council to take into consideration the likely effect of a development proposal upon the heritage significance of any heritage item in its vicinity. The heritage listed Town Hall building (17 Military Road) is located in the vicinity of the subject site.

The provisions of Clause 28 require Council to consider the impact of a development proposal upon the heritage significance of a heritage conservation area. The subject site is located within the Watsons Bay Heritage Conservation Area.

For the reasons discussed under Part 13.1 – Aims and Objectives of WLEP 1995 (above), the proposal will not adversely impact upon the heritage significance of the existing building, the Watsons Bay HCA or the adjacent Heritage Item.

14. DRAFT AMENDMENTS TO STATUTORY CONTROLS

None relevant.

15. DEVELOPMENT CONTROL PLANS

15.1 Watsons Bay Development Control Plan

Part 2 - Management Policy

For the reasons set out in section 13.1 the proposal generally accords with the objectives of the Management Policy.

Part 3 – Precinct Control

The subject site is located within the Commercial and Residential Flat Building Precinct. The amended proposal is consistent with the objectives and performance criteria of the Commercial and Residential Flat Building Precinct. Specifically:
C1  New development is not to alter the existing scale relationships between the high natural ridge of Gap Park on the eastern side and the lower scaled buildings below.

The overall height of the proposed building is lower than the ridgeline of the existing building and as such the proposal maintains the existing scale of built form.

C23  Roofs are to remain uncluttered by intrusive structures/services in order not to detract from the significant views from Gap Park towards the harbour.

The proposal incorporates a roof terrace. The proposal has deleted the rooftop staircase housing. The proposal would not detract from the significant views from Gap Park towards the harbour for the following reasons:

- **Condition C1, part g,** has been included as part of the recommendation, which places restrictions on the use of furniture and sunshades upon the roof.
- The proposed materials (pebble roof finish, water feature and paving) will ensure the roof has a positive visual impact when viewed from both the public and private domain.

For the reasons discussed under Part 8 and Part 13.1 (above), the height, bulk and scale of the proposal will not have an adverse impact on the amenity of the locality and will adequately maintain the heritage significance of the Watsons Bay HCA.

C36  New buildings on the east side of Military Road are to be subservient in form and height to those of the former town hall in order to retain its visual prominence in the streetscape.

The subject building’s overall height would be lower than the existing building, and the proposed building maintains a three storey presentation to Military Road.

C37  The location and mix of uses are to ensure adequate residential amenity in terms of sunlight access and visual and acoustic privacy.

For the reasons discussed above, the proposal will maintain an adequate level of residential amenity to the subject site and the neighbouring properties.

**Part 4 - General Controls**

The proposal generally accords with the objectives and performance criteria set out under Part 4.

**Views and vistas**

For the reasons set out under Part 8, the proposal would not result in any unreasonable impacts in terms of public or private view loss. The proposal is considered to be consistent with the following performance criteria:

C2  New development is to be designed (including bulk and heights of proposed buildings and vegetation) and located to minimise impact on existing views and vistas.

For the reasons discussed above, the extent of view loss is negligible and considered to be acceptable in this instance.

**Built form**

The proposal is considered to be consistent with the requirements of section 4.6.
Stormwater management

The proposal is considered to be satisfactory in terms of the provision of adequate stormwater drainage and the provision of adequate water and sewerage service, subject to conditions imposed upon the original consent.

Acoustic and visual privacy

For the reasons discussed above, the proposal will maintain an adequate level of visual and acoustic privacy to the adjoining properties.

15.2 Woollahra Access DCP

The provisions of Council's Access DCP require the provision of adequate access to the development by all people in the community including people with disabilities. The proposal is considered to be satisfactory with regard to the provisions of this policy.

15.4 Other DCPs, codes and policies

None relevant.

16. APPLICABLE REGULATIONS

None relevant.

17. THE LIKELY IMPACTS OF THE MODIFIED DEVELOPMENT

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

18. SUBMISSIONS

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

RW and CM Slater,
3 Gap Road,
Watsons Bay

Joan bar
2/3 Military Road,
Watsons Bay
Carolyn Daniel,
3/3 Military Road,
Watsons Bay

Ms J McIntyre
1/7 Military Road,
Watsons Bay
Scott Macarthur,
3/7 Military Road,
Watsons Bay

Mr P Vukoman,
7/7 Military Road,
Watsons Bay

Ms Hofer,
17 Military Road,
Watsons Bay

The objections raised the following issues:

- **Sunlight Access**
  - This is addressed within section 8 of the report - *impacts upon adjoining land.*

- **Excavation works and stability of neighbouring properties**
  - The subject modification comprises of the reinstatement of roof terrace (Deletion of Condition C1(f)). The subject modification will not result in any additional excavation or undermine the stability of neighbouring properties.

- **Acoustic and visual privacy**
  - This is addressed within section 8 of the report - *impacts upon adjoining land.*

- **Streetscape**
  - This is addressed within the section 8 of the report.

- **FSR**
  - The proposal would not increase the approved FSR.

- **Overdevelopment**
  - This is addressed within section 8 of the report

- **Bulk and scale**
  - This is addressed within section 8 of the report

- **Height**
  - This is addressed within section 8 of the report

- **Views**
  - This is addressed within section 8 of the report - *impacts upon adjoining land.*
• **Landscaping**
  - This is addressed within section 8 of the report - *impacts upon adjoining land.*

• **Impact upon the Heritage Conservation Area and adjoining Heritage Items**
  - This is addressed within sections 8, 13.2 and 13.2 of the report.

• **Side setbacks**
  - This is addressed within section 8 of the report

• **Front setback**
  - This is addressed within section 8 of the report

• **Rear setback**
  - This is addressed within section 8 of the report

19. **CONCLUSION - THE PUBLIC INTEREST**

The proposal is acceptable against the relevant considerations under S96 and S79C.

20. **DISCLOSURE STATEMENTS**

Under S.147 of the Environmental Planning and Assessment Act, 1979 there have been no disclosure statements regarding political donations or gifts made to any councillor or gifts made to any council employee submitted with this development application by either the applicant or any person who made a submission.

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

THAT Council, as the consent authority, modify development consent to Development Application No. 281/2008 part 2 for the demolition of the existing residential flat building, and the construction of a new three (3) unit apartment building with underground carparking, landscaping and siteworks on land at 9 Military Road Watsons Bay, in the following manner:

**The addition of the following condition:**

**A.6 Approved Amended (s96) Plans and supporting documents**

Those acting upon or under this amended consent must carry out all work and maintain the use and works in accordance with the approved plans and supporting documents listed in the original consent, as amended by the amended approved plans and supporting documents as submitted by the Applicant and to which is affixed a Council stamp “Approved Section 96 Plans” listed below otherwise than modified by further condition(s). Where the plans relate to amendments, alterations or additions only those works shown in colour or highlighted are approved.
The modification of the following conditions:

C.1 Modification of details of the development (s80A(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. Pumps are only permitted to remove water that enter the carpark from the driveway surface and water reuse. The pumping of subsurface or groundwater is not permitted.

b. The basement carpark is to be tanked to prevent the entry of groundwater.

c. To ensure the proposed excavation works do not encroach upon the 2.5m tree protection zone of the Coastal She Oak located on the adjoining property 7 Military Road Watsons Bay adjacent to the southern boundary of the subject site, the southern side wall to the visitor car parking space of the car park floor plan level shall be set back a minimum of 2.5m from the Coastal She Oak tree (measured from the centre of the tree). The visitor carparking space may extended to the north to provide a 3m wide car parking space. Furthermore at ground floor level the southern side wall to bedroom 2 shall be setback a minimum of 2.5m from the Coastal She Oak tree (measured from the centre of the tree). No excavations for the proposed car park and ground floor plan shall occur within the Coastal She-oak critical root zone.

d. To ensure a satisfactory level of visual privacy is maintained to the neighbouring properties, the level 2 windows to bedrooms 3 and 4 and the level 3 windows to bedrooms 3 and 4 to the northern elevation shall be glazed with translucent glass and fixed shut to a height of 1.7m.

e. As no details have been provided for any side or rear fence no approval is provided for the construction of any side or rear boundary fences.

f. Deleted.

g. To ensure a satisfactory visual impact when viewed from the public domain and to protect the amenity of the neighbouring properties, any furniture, sunshades or the like which exceed a height of RL 23.03 (the height of the front parapet wall) are to be removed from the roof terrace when they are not in use.

h. To ensure a satisfactory level of visual privacy is maintained to the neighbouring properties, the useable area of the roof terrace shall be setback a minimum of 3m from the southern side boundary of the site.

i. To protect the subject building from stormwater damage, the landing at the bottom of the roof access stairs in Unit 3 shall have a continuous grated stainless steel perimeter drain of at least 100 mm in width. The drain shall be connected to the external stormwater drainage system by a suspended drain pipe enclosed in fire rated boxing and concealed in the ceiling space of Unit 2. The landing shall have adequate falls to the perimeter drain to facilitate fast surface run-off and to prevent ponding.
I.7 Noise from mechanical plant and equipment and roof top water feature

Noise from the operation of mechanical plant and equipment and roof top water feature must not exceed background noise when measured at the nearest lot boundary of the site. Where noise sensitive receivers are located within the site, noise from the operation of mechanical plant and equipment and the roof top water feature must not exceed background noise when measured at the nearest strata, stratum or community title boundary.

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

Note: Words in this condition have the same meaning as in the:

Ms E Smith          Mr N Economou
SENIOR ASSESSMENT OFFICER      TEAM LEADER

ANNEXURES

1. Plans and elevations
2. Indicative compliance tables
3. S82A Heritage referrals
Item No: D11  Delegated to Committee
Subject: Register of Current Land and Environment Court Matters and Register of Court Proceedings for Building Control, Environmental Control & Health Control
Author: Patrick Robinson, Manager – Development Control
        Timothy Tuxford, Manager – Compliance

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 a copy of the current registers.

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 of Court Proceedings for Building Control, Environmental Control and Health Control be received and noted.

Patrick Robinson
Manager Development Control

Timothy Tuxford
Manager Compliance
Council, at its meeting of 13 October 2008 resolved that Councillors be furnished with a monthly report of all development applications granted consent with a SEPP 1 objection.

The attached register is produced in accordance with that resolution.

Recommendation:

THAT the attached register of SEPP 1 Objections be received and noted.

Patrick Robinson
Manager Development Control
POLITICAL DONATIONS DECISION MAKING FLOWCHART
FOR THE INFORMATION OF COUNCILLORS

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 7.23)

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 7.17(b))

No

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 7.23)

Yes

Do you believe the political contribution creates a significant non-pecuniary conflict of interest for you? (Code of Conduct Cl 7.24)

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 7.17(b))

No

Consider appropriate action required. This could include limiting involvement by:
1. participating in discussion but not in decision making (vote),
2. participating in decision making (vote) but not in the discussion
3. not participating in the discussion or decision making (vote)
4. removing the source of the conflict

No or

Action
Participate in debate and vote on the matter

Is the matter before the meeting a Planning Matter?

Yes

Staff to record decision process (motions/amendments) and Division of votes for the determinative resolution or recommendation in the meeting minutes

No

Staff to record decision process (motions/amendments) and determinative resolution or recommendation in the meeting minutes