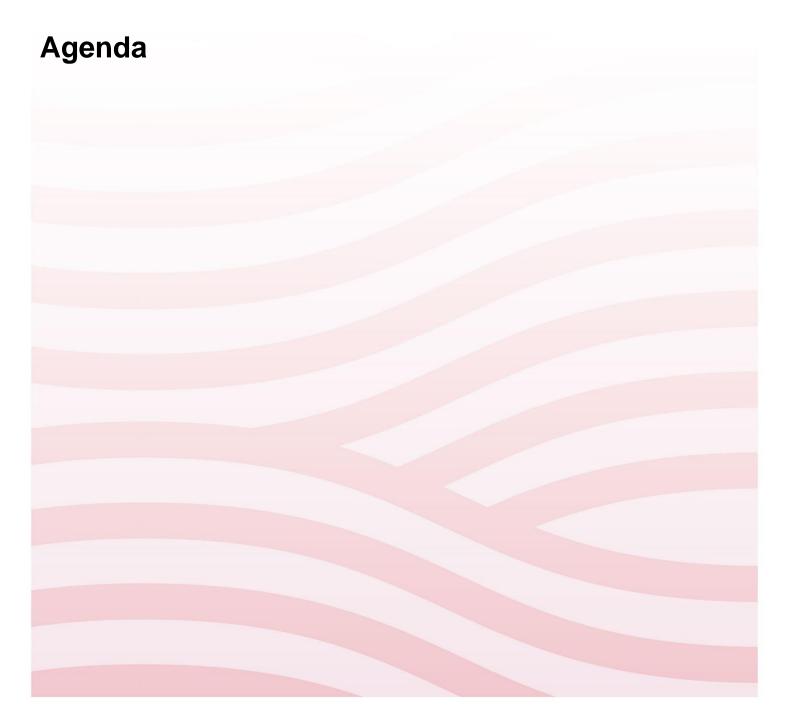


Woollahra Local Planning Panel (Electronic Meeting)

Thursday 20 June 2024 at the Conclusion of the Public Meeting



Woollahra Local Planning Panel (Electronic Meetings):

Woollahra Council will be holding Woollahra Local Planning Panel (Electronic Meetings) remotely using conferencing technology.

The Chair of the panel, members of the Panel and staff will be participating in meetings by an audio-visual link instead of attending in person.

In response to the Directive issued by the Minister for Planning & Public Spaces on 30 June 2020, the Woollahra Local Planning Panel was required to change the way applications are considered from 1 August 2020.

In this regard, the applications listed on this Agenda will not be considered at a public meeting but rather considered **electronically** by the Panel.

When considering applications electronically, the Panel will be provided with an assessment report, relevant attachments and submissions (including copies of any submissions made by members of the public).

Meetings held electronically by the Panel, are not public meetings, and therefore members of the public are **unable** to address the panel meeting.

Late correspondence may be submitted for consideration by the Panel. All late correspondence must be received by 12 noon on the day before the meeting. Late correspondence is to be emailed to records@woollahra.nsw.gov.au

The Woollahra Local Planning Panel (Electronic Agenda), including the assessment report on the development application, will be publically available on Council's website six (6) days prior to the meeting at: www.woollahra.nsw.gov.au/council/meetings and committees/agendas and minutes

Minutes of the Woollahra Local Planning Panel (Electronic Meeting) will be posted to Council's website once finalised.

If you have any questions in relation to the above mentioned changes, please contact Council's Governance department on (02) 9391 7001.

Woollahra Local Planning Panel Membership: 1 Chair, 2 Experts and 1 Community Representative

Quorum: 3 Panel members

Woollahra Municipal Council Notice of Meeting

12 June 2024

To: Woollahra Local Planning Panel Members

Chair

Experts

Community Representative

Dear Panel Members,

Woollahra Local Planning Panel (Electronic Meeting) - 20 June 2024

In accordance with the provisions of the Local Government Act 1993, I request your attendance at Council's Woollahra Local Planning Panel (Electronic Meeting) meeting to be held in the Council Chambers, 536 New South Head Road, Double Bay, on Thursday 20 June 2024 at at the Conclusion of the Public Meeting.

The applications listed on this Agenda will not be considered at a public meeting but rather considered **electronically** by the Panel.

When considering applications electronically, the Panel will be provided with an assessment report, relevant attachments and submissions (including copies of any submissions made by members of the public). Meetings held electronically by the Panel, are not public meetings, and therefore members of the public are **unable** to address the panel meeting.

Members of the public are however invited to submit late correspondence for consideration by the Panel by emailing records@woollahra.nsw.gov.au by **12 noon on the day prior to the meeting**. If you have any difficulties accessing the meeting please contact (02) 9391 7001.

Regards,

Craig Swift-McNair General Manager

Woollahra Local Planning Panel (Electronic Meeting)

Agenda

Item	Subject	Page
1 2 3 4	Opening Acknowledgement of Country (Gadigal People and Birrabirragal People) Leave of Absence and Apologies Disclosures of Interest	
	Items to be Decided by the Panel	
D1	DA210/2023/1 - 22 Boronia Road Bellevue Hill - 24/100332*See Recommendation Page 70	7
D2	DA278/2023/1 - 79 Bellevue Road Bellevue Hill - 24/100720* *See Recommendation Page 276	235
D3	DA41/2024/1 - 361-441 Glenmore Road Paddington - 24/100935*See Recommendation Page 366	353
D4	DA301/2023/1 - 464 Oxford Street Paddington - 24/100069* *See Recommendation Page 454	431

LOCAL PLANNING PANEL DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No. D1

FILE No. DA210/2023/1

ADDRESS 22 Boronia Road BELLEVUE HILL

COUNCIL WARD Bellevue Hill Ward

SITE AREA 696.8m²

ZONING R3 Medium Density Residential

PROPOSAL Demolition of existing dwelling, and construction of a new residential

flat building containing four units and basement parking, swimming

pool, and associated landscaping.

TYPE OF CONSENT Local development

COST OF WORKS \$3,920,000.00

DATE LODGED 14/06/2023

APPLICANT Ms H Whitney

OWNER Ms H Whitney

AUTHOR Mr M D'Alessio

TEAM LEADER Mr M Moratelli

SUBMISSIONS 1

RECOMMENDATION Conditional approval

1. REASON FOR REPORT TO LOCAL PLANNING PANEL (LPP)

The application is to be determined by the Woollahra Local Planning Panel (LPP) as it falls under the categories of:

- Departure from development standards
 - (a) Development that contravenes a development standard imposed by an environmental planning instrument by more than 10%
- Sensitive development
 - (a) Development to which State Environmental Planning Policy No 65 Design Quality of Residential Apartment applies

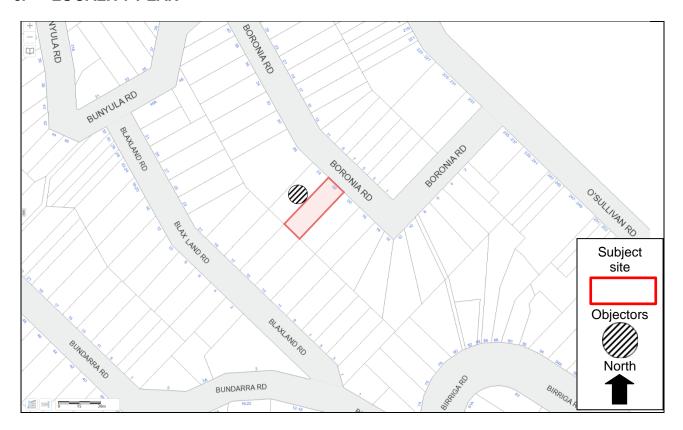
2. REASONS FOR RECOMMENDATION

The application has been assessed within the framework of the matters for consideration under section 4.15 of the Environmental Planning and Assessment Act 1979 and is recommended for approval because:

- It is considered to be satisfactory with all relevant planning policies including the objectives of WLEP 2014 and WDCP 2015
- It will not have adverse effects on the local built and natural environment nor any adverse social and economic impacts in the locality such that refusal is warranted

- All likely impacts to adjoining properties including submissions made have been addressed in the report, or are considered to be satisfactory.
- The site is suitable for the proposed development
- The proposal is in the public interest

3. LOCALITY PLAN



4. PROPOSAL

The proposal, seeks approval for the demolition of the existing dwelling, and construction of a new residential flat building containing four units and basement parking, swimming pool, and associated landscaping, involves the following works:

Basement Floor Level

- The basement floor level is at RL 18.65 AHD and is accessed by vehicle from a driveway ramp off Boronia Road and internally from the communal staircase and lift.
- The level comprises (8) eight car parking spaces (including four (4) spaces for residents and four (4) spaces for visitors), vehicle turntable, storage including four (4) bicycle parking spaces, waste facilities and an electrical/communication room.

Ground Floor Level

- The ground floor level is at RL 21.70 AHD and includes the common entry walkway and lobby, and Unit 1 (3 bedrooms).
- Unit 1 contains open planned living, kitchen and dining area, three bedrooms, ensuite, bathroom, a private balcony, laundry and storage. A private courtyard with terrace, lawn and firepit is provided in the front setback for this unit.

• Lift and stair access is provided to the upper and lower levels.

First Floor Level

- The first floor level is at RL 25.00 AHD and includes Unit 2 (3 bedrooms), and the first-floor level of Unit 4.
- Unit 2 contains three bedrooms, ensuites, bathroom, an open plan kitchen, dining and living area, laundry, storage space and front elevation balcony.
- Unit 4 at this level includes an open plan living, dining and kitchen area, laundry, water closet. Externally this unit has a private garden, outdoor dining and BBQ area, and a swimming pool to the rear.
- Lift and stair access is provided to the upper and lower levels.

Second Floor Level

- The second floor level is at RL 28.30 AHD and includes Unit 3 (3 bedrooms) and the upper level of Unit 4 (3 bedrooms).
- Unit 3 at this level includes three bedrooms, ensuite, open plan kitchen, living and dining area, bathroom, laundry, water closet, storage and front elevation balconies.
- Unit 4 at this level includes three bedrooms, an ensuite, a bathroom and the roof of the pergola
- Lift and stair access is provided to the lower levels.

Roof Level

 The Roof Level is at RL 32.40 AHD and includes six skylights, the lift overrun, solar panels and a void

5. ISSUES

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

Clause	Development Standard	Departure from Control	Conclusion
Clause	Minimum Lot Size	3.2m ² or 0.46% departure from the 700m ²	Catiofootony
4.1		standard	Satisfactory
Clause	Height of Buildings	2.74m or 28.8% departure from the 9.5m	Catiafaatan
4.3	_	standard	Satisfactory

5.2. Primary Issues

Issue	Conclusion	Section
Departures from the Minimum Lot Size control under Clause 4.1 and the 9.5m Height of Buildings control under Clause 4.3 of the Woollahra Local Environmental Plan 2014.	The departures are supported by Clause 4.6 Variation requests which are considered well founded.	14

5.3. Summary of Submission

Issue	Conclusion	Section
Objection to exceedance of the maximum building height under Clause 4.3 of the Woollahra DCP 2015.	The 2.74m or 28.8% departure from the 9.5m maximum height of buildings standard under Clause 4.3 of the Woollahra LEP 2014 is supported by a Clause 4.6 Variation request that is well founded and demonstrates that the variation is consistent with the objectives of the zone and development standard and that there are sufficient environmental planning grounds, including: • Variation is not inconsistent with the underlying objectives of the standard, the R3 Medium Density Residential zone or the desired future charter of the Double Bay residential precinct. • The design of the RFB presents as a three-storey form	14
	 (below the height standard) the elements above the height standard are limited. The proposal is substantively compliant with all controls in terms of FSR, building envelope, access to sunlight, view sharing, amenity impacts, deep soil landscape area and private open space. 	
	The elements above the height standard do not result in adverse impacts or appear inconsistent with surrounding development such that it constitutes an over-development of the site to warrant refusal or design modifications.	
Overdevelopment of the site in terms of proposed void area located between the basement level car parking and the first floor level of Unit 4.	The proposed void area does not represent an overdevelopment of the site. The void arises from the siting of the proposed development relative to the slopping topography of the site and the proposed provision of on-site parking to a single basement level which is supported by Council's Traffic Engineer and accords with the relevant on-site parking provisions contained in the Woollahra DCP 2015.	15
	Basement level car parking is required under O2 and C5 of Part B3.6 of the Woollahra DCP 2015 for all denvelopment involving three or more dwellings to ensure that on-site parking does not detract from the streetscape character and amenity.	
Objection to informal path located in the northwest side setback area and submission for additional screen planting between proposed barbeque and north west boundary.	The location of the informal path and proposed rear barbeque accord with the relevant building envelope provisions under O1, O6, O7 and C2 B3.2.3 and external control provisions contained under O3 and C7 of Part B3.5.4, O6, C12, C13 and C14 of Part B3.7.1 of Part B3.7.4 of the Woollahra DCP 2015.	15

Issue	Conclusion	Section
Objection to excavation volume	The volume of proposed excavation is acceptable in terms of achieving compliance with the applicable objectives and controls of Part B3.4 of the Woollahra DCP 2015.	15
Objection relating to inadequate or insufficient information: The submitted horizontal shadow diagrams do not depict any shadows cast by the proposed development	The proposal is supported by both horizontal shadow diagrams (Shadow Diagram Drawing DA9100 Rev A) and views from the sun (Solar Access Drawing DA9200 A). Horizontal Shadow Diagram Drawing DA9100 Rev A	15
at 9am	does depict shadows cast by the proposed development at 9am.	

PROPERTY DETAILS AND REFERRALS

6. SITE AND LOCALITY

Physical features

The subject site is located on the south-western side of Boronia Road, between Bunyula and Birriga Roads and is known as No. 22 Boronia Road, described as Lot 10 Section G in DP8103.

The site is a rectangular parcel of land, with a northern eastern frontage to Boronia Road of 15.24 metres, a southern boundary of 45.72 metres, a western boundary of 15.24 metres, and a north-western boundary of 45.72 metres, providing a total site area of 696.8m².

Topography

The site is relatively flat along the street frontage, with a shallow east to north fall of 0.19m along Boronia Road (RL 20.35 AHD to RL 20.19 AHD). The site also has a steep south west to north east fall of 6.38m, through the centre of the site (RL 26.59 AHD to RL 20.21 AHD)

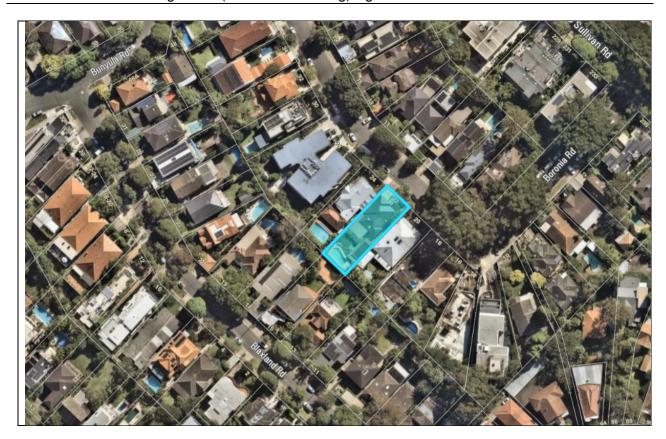
Existing buildings and structures

The site currently contains a single storey rendered dwelling with a pitched tiled roof above a basement garage level A two-storey rendered outbuilding comprising a storage level and a studio is constructed behind the dwelling as well as a swimming pool to the rear yard.

Surrounding Environment

The site is located in the Bellevue Hill South Residential precinct. The Bellevue Hill South North Precinct of the Woollahra Development Control Plan 2015 provides the following precinct character statement:

- The Bellevue Hill South precinct is sited along the ridgeline and plateau of Bellevue Hill. The precinct contains a wide range of housing types and styles. As with many of the residential areas across the municipality, the built fabric is set within a landscaped setting.
- Land within this precinct is zoned R3 Medium Density Residential, but the form and scale of buildings vary from the Inter-War flat buildings and more recent flat buildings to low density dwelling houses and semi-detached dwellings.
- The street pattern in this part of Bellevue Hill responds to the nature of the landform, curvilinear in hillside areas, and rectilinear in flat areas. Distant views to the city skyline and the harbour are available from some parts of the precinct.
- The precinct contains a number of street types in an identifiable hierarchy, and the precinct is generally divided into two sections based on the road hierarchy.
- The main roads include Birriga Road, Old South Head Road, Victoria Road and Bellevue Road.
- Development along these roads is characterised by Inter-War and contemporary residential flat buildings, interspersed with semi-detached and detached dwelling houses. The housing stock includes original dwellings from the early 20th century and Inter-War period with more substantial contemporary dwelling houses.
- Development along the local roads contains a mix of dwelling houses, semi-detached houses, multidwelling housing and residential flat buildings. Development on the sloping sites steps down the hillside. The precinct contains a diverse mix of building styles from early 20th century buildings to welldesigned contemporary buildings.



7. RELEVANT PROPERTY HISTORY

Current use

Dwelling house

Requests for Additional Information and Replacement Applications

- 27/06/2023 Stop the clock request (RFI) for 1. Vehicular access and parking arrangement, 2.
 Revised stormwater plans, 3. Revised geotechnical report and structural report, 4. Aboriginal heritage impact assessment and 5. Vehicle access and parking provision swept path analysis.
- 29/08/2023 The applicant submitted a response to the above including:
 - Revised architectural drawings
 - Traffic response to RFI
 - Structural response and revised geotechnical report and structural report
 - Stormwater response and revised stormwater plans
 - Aboriginal Heritage Due Diligence Assessment submitted.

8. REFERRALS

Referral	Summary of Referral Response	Annexure
Trees and	Satisfactory, subject to recommended conditions.	3
Landscaping		
Heritage	Satisfactory, subject to recommended conditions.	4
Traffic Engineer	Satisfactory, subject to recommended conditions.	5
Development Engineer	Satisfactory, subject to recommended conditions.	6

ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 include the following:

1. The provisions of any environmental planning instrument

- 2. The provisions of any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)
- 3. The provisions of any development control plan
- 4. The provisions of any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4
- 5. The provisions of the regulations (to the extent that they prescribe matters for the purposes of this paragraph)
- 6. The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality
- 7. The suitability of the site for the development
- 8. Any submissions made in accordance with this Act or the regulations
- 9. The public interest

9. ADVERTISING AND NOTIFICATION

9.1. Submissions

The application was advertised and notified from 5 July 2023 to 20 July 2023 in accordance with the Woollahra Community Participation Plan. One (1) submission was received from:

1. Mr Con Hairis on behalf of Mr and Mrs Zouroudis of No.24 Boronia Road, Bellevue Hill

The issues raised in the submission have been summarised in Section 5.3 of this report and considered throughout the report.

9.2. Revised plans and supporting documentation

The revised plans and supporting documentation noted in Section 4 were not renotified to surrounding residents and previous objectors under the Woollahra Community Participation Plan because they were considered to have no greater cumulative environmental or amenity impact.

9.3. Statutory Declaration

The applicant has completed the statutory declaration dated 24 July 2023 declaring that the site notice for DA210/2023/1 was erected and maintained during the notification period in accordance with the Woollahra Community Participation Plan.

10. STATE ENVIRONMENTAL PLANNING POLICY 65: DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT

SEPP 65: Design Quality of Residential Flat Development applies to all new residential flat buildings (or substantial redevelopment) where it comprises three or more storeys and four or more self-contained dwellings. In this instance, the proposed is for a new four storey residential flat building consisting of 12 apartments, basement parking and associated landscaping works.

10.1. Clause 2: Aims and Objectives

The aim of the SEPP is to improve the design quality of residential apartment development:

- a) To ensure that it contributes to the sustainable development of New South Wales:
 - (i) By providing sustainable housing in social and environmental terms, and
 - (ii) By being a long-term asset to its neighbourhood, and
 - (iii) By achieving the urban planning policies for its regional and local contexts

- b) To achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and
- c) To better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and
- d) To maximise amenity, safety and security for the benefit of its occupants and the wider community, and
- e) To minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions
- f) To contribute to the provision of a variety of dwelling types to meet population growth
- g) To support housing affordability
- h) To facilitate the timely and efficient assessment of applications for development to which this Policy applies

The development is supported by a design verification statement prepared by a qualified Architect Mark Shapiro Reg No. 9789, dated 23 May 2023 as required by the EPA Regulations Clause 50(1A) & Clause 50(1B).

The proposal is acceptable with regard to the above stated aims of Clause 2.

10.2. Design Quality Principles

Clause 30(2) of SEPP 65 requires the assessment of the application against the design quality principles in Schedule 1. This assessment has been undertaken by Council's Assessment Officer.

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.

Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

The design is an appropriate response to the context and complements the desired future character of the location. The proposed residential flat building is responsive to the surrounding residential context.

The proposed development is consistent with the Bellevue Hill South residential precinct character as expressed in the Woollahra DCP 2015.

Accordingly, the proposal is satisfactory in terms of Principle 1: Context and neighbourhood character of SEPP 65

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.

Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

The proposal satisfies the aims and objectives prescribed by this Part, it is considered to be of good design in terms of built form (height, bulk, scale and number of storeys), within the context of the locality, including:

- Provision of a compliant FSR under Part 4.4 of the Woollahra LEP 2014.
- Fundamental compliance with building envelope controls under Part B3.2 of the Woollahra DCP 2015.

The built form and scale of this development contributes to the character of the streetscape. The proposed residential flat building is well considered in terms of minimising breaches to the relevant height and building envelope controls applicable to the site. The height, bulk, scale and form of the proposal is considered to be compatible with and sympathetic to the existing surrounding developments, thereby making a positive contribution to the precinct character and streetscape.

Accordingly, the proposal is satisfactory in terms of Principle 2: Built form and scale of SEPP 65.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

The proposed density in terms of dwelling count will increase to 4 apartments from the existing single dwelling house.

The design of the proposal achieves a high level of amenity for residents and each apartment including as set out throughout this report.

The proposal exceeds the minimum standards in terms of provision of private open space. The proposal is suitably refined in terms of minimising adverse amenity impacts to adjoining neighbours in terms of the extant, configuration and locations of proposed private open space.

A high level of amenity is maintained to the surrounding buildings, in terms of solar access, ventilation, visual privacy and landscaped area.

The proposal is satisfactory in terms of Principle 3 Density of SEPP 65.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes.

Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

The design verification statement includes:

- 100% of the apartments are provided with natural ventilation. 60% of the units are required to be naturally ventilated.
- 100% of apartments are provided with good 3hr solar access which achieves the control of min. 70% units with minimum 2 hours solar access.
- Sustainable Transport: Bicycle parking facilities are located in the basement and encourage the public to travel sustainably
- Materials have been selected for durability and longevity
- Thermally massive concrete walls and slabs allow for passive heating in winter
- The concrete structure also provides for flexibility and adaptability as the internal partition will be non-loadbearing and constructed from lightweight material.
- A deep soil zone is proposed to the front and rear boundaries, as well as smaller deep soil zones on both side setbacks. The rear deep soil zone is intended to retain most of the existing planting as to reduce excavation and not disturb the existing vegetation.
- All proposed plants are to be native species.
- Landscaped areas are to be irrigated by water collected through a central rainwater tank
- Low VOC materials are proposed for internal finishes

This assessment is satisfied that the design has been thoroughly resolved to maximise its efficiency and quality in terms of sustainability.

The design verification statement in support of the proposal outlines sustainable design elements including: passive solar design, thermally efficient envelope, provision of solar panels, integrated landscaping, water sensitive urban design and the minimisation of mechanical and electrical services.

The proposal is satisfactory in terms of Principle 4: Sustainability of SEPP 65.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.

Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.

The proposal is satisfactory in terms of Principle 5: Landscape of SEPP 65.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.

The proposal is suitably refined in terms of minimising adverse amenity impacts to adjoining neighbours in terms of the extant, configuration and locations of proposed private open space

The design verification statement includes:

- The apartments have efficient floor plans and generous room sizes and ceiling heights that exceed the requirements of the ADG. Every unit has access to private outdoor space and includes compliant storage.
- All apartments have direct access to a balcony, terrace, or lawn area that has good solar access and an outlook to the street with a view, or to the garden.
- Visual and acoustic privacy is provided to all bedrooms with recessed balconies and privacy screens on side boundaries

The proposal is satisfactory in terms of Principle 6: Amenity of SEPP 65.

Principle 7: Safety

Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

The proposal is satisfactory in terms of Principle 7: Safety of SEPP 65.

Principle 8: Housing diversity and social interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.

Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.

Whilst all four of the proposed units are three bedroom units, the proposal contributes to housing diversity in the wider municipality, which is characterised by single dwelling houses. The proposal is satisfactory in terms of Principle 8: Housing diversity and social interaction of SEPP 65.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of a well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

The proposal is satisfactory in terms of Principle 9: Aesthetics of SEPP 65.

10.3. Apartment Design Guide

Part 3A: Site Analysis

Objective 3A-1 specifies that: Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.

The proposal is supported by sufficient documentation explaining how the design of the proposed development has responded to the site analysis.

The submitted supporting documentation is adequate in terms the documentation requirements specified in the Site Analysis Checklist, as outlined in Appendix 1 of the Apartment Design Guide.

Part 3B: Orientation

	Proposed	Control	Meets
3B-1 Building types and layouts respond to the streetscape	Building faces the Street and Provide Direct Access	Face the Street and Provide Direct Access	Yes
3B-2 Overshadowing of neighbouring properties is minimised	<20% reduction	Where < 3 hours, Not to be Reduced by > 20%	Yes

Objective 3B-1 specifies that: Building types and layouts respond to the streetscape and site while optimising solar access within the development.

Objective 3B-2 specifies that: Overshadowing of neighbouring properties is minimised during midwinter.

Proposed layout maximises northern orientation, balanced with:

- responding to streetscape character
- promoting amenity for the proposed development and neighbouring properties
- providing for significant views
- retaining trees and locating open spaces
- responding to contextual constraints

In accordance with Objective 3B-1, building layout respond to the streetscape and the site, optimising solar access within the development. In accordance with design guidance, rear dwellings are also orientated towards the north.

In accordance with Objective 3B-1, proposed living areas, private open space and communal open space receive solar access in accordance with sections 3D Communal and public open space and 4A Solar and daylight access.

In accordance with Objective 3B-2, Overshadowing of neighbouring properties is minimised during midwinter, including as follows:

Overshadowing is minimised by reducing the bulk at the rear, or west, creating minimal impacts
to the rear garden of No 20 Boronia Road. The proposal, for the most part, sits well below the
maximum allowable height, and hence minimises overshadowing to neighbours.

The proposal satisfies the relevant objectives or design guidance prescribed by this Part.

Part 3C: Public Domain Interface

	Proposed	Control	Meets
3C-1 Terraces, Balconies And Courtyard Apartments	Direct Street Entry where appropriate	Direct Street Entry where appropriate	Yes
3C-1 Upper Level Balconies And Windows	Overlook the Street	Overlook the Street	Yes
3C-1 Maximum Height of Solid Fences/Walls	0.6m	1.0m	Yes
3C-2 Location of Mailboxes	Mail boxes have been integrated side entry at the pedestrian entrance on Boronia Road.	Lobbies, perpendicular to the street alignment or integrated into front fences where individual street entries are provided	Yes
3C-2 Substations, Pump Rooms, Garbage Storage Areas Etc.	Basement level	Substations, pump rooms, garbage storage areas and other service requirements should be located in basement car parks or out of view	Yes
3C-2 Building Entry and Ground Floor for Accessibility Purposes	The entrance is located on grade with the existing footpath	Ramping for accessibility should be minimised by building entry location and setting ground floor levels in relation to footpath levels	Yes
3C-2 Building Materials	Durable	Durable and Graffiti Resistant	Yes

Objective 3C-1 specifies that: *Transition between private and public domain is achieved without compromising safety and security.*

Objective 3C-2 specifies that: Amenity of the public domain is retained and enhanced.

The proposal satisfies the relevant objectives and design guidance prescribed by this Part.

Part 3D: Communal and Public Open Space

	Proposed	Control	Meets
DC 1. 3D-1 -Minimum Communal Open Space	Nil	25% of the Site 139.36m ²	No
DC 2. 3D-1 Minimum Solar Access to the Principal Useable Portion of Communal Space	N/A	50% for 2 Hours Between 9am and 3pm on June 21 115.4m ²	Yes

Objective 3D-1 specifies that: An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping.

Design criteria 1 and 2 of O3D-1 specify:

- 1. Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)
- 2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am

The design verification statement in support of the proposal includes:

- Balconies are provided to all apartments to compensate non-compliance where the development is unable to achieve the design criteria due to site limitations. Communal open space is considered unnecessary due to the generous private open space provided
- Each apartment has either oversized balconies, or areas of deep soil lawn

Numerical non-compliance with design criteria 1 and 2 of O3D-1 is not determinative, in accordance with the design guidance, the site has good proximity to public open space and facilities, and does not have a large number of apartments.

The proposal is satisfactory with the relevant objectives, design criteria and design guidance prescribed by this Part.

Part 3E: Deep Soil Zones

Site Area: 923m ²	Proposed	Control	Meets
DC 1. 3E-1 Minimum Deep Soil Zone	52% of the site Area >50m² with min dimensions of 3m	7% of the site area 48.79m²	Yes
3E-1 Existing Significant Trees	Retained	Retained	Yes

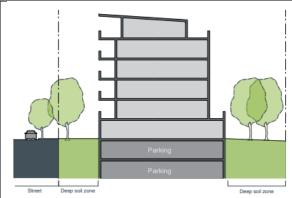


Figure 3E.1 of Part 3E Deep Soil Zones titled: Opportunities for deep soil zones are increased when parking levels are contained within the building footprint.

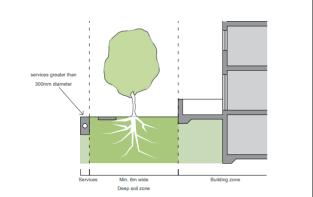


Figure 3E.2 of Part 3E Deep Soil Zones titled: Diagram showing the minimum dimension of deep soil zones for sites greater than 1,500m²

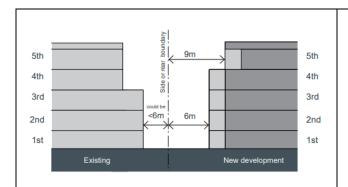
Objective 3E-1 specifies that: Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.

Design criteria 1 of O3E-1 requires that the subject site includes 7% of the site area as deep soil zone having minimum dimensions of 3m. The proposal significant exceeds Design criteria 1 of O3E-1.

Significant trees are to be retained to the Councils' road verge and adjoining sites.

The proposal is satisfactory with the relevant objectives, design criteria and design guidance prescribed by this Part.

Part 3F: Visual Privacy



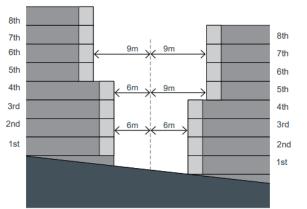


Figure 3F.3 of Part 3F: Visual Privacy titled: New development adjacent to existing buildings should provide adequate separation distances to the boundary in accordance with the design criteria

Figure 3F.4 of Part 3F: Visual Privacy titled: Within the same site, minimum separation should be shared equitably between buildings. On sloping sites, appropriate separation distances ensure visual privacy for apartments on different levels

	Proposed	Control	Meets
DC 1. 3F-1 Minimum Separation From Buildings – Habitable Rooms and Balconies	3.7m north habitable rooms 3m south habitable rooms	6m habitable rooms/balcs 3m non-habitable rooms/balcs	No
3F-2 Location of Bedrooms	Separated from Access and Service Areas	Separated from Access and Service Areas	Yes
3F-2 Location of Balconies and Terraces	In Front of Living Rooms	In Front of Living Rooms	Yes
3F-2 Location of Windows	Offset from Windows of Adjacent Properties	Offset from Windows of Adjacent Properties	Yes

Under Clause 6A(1) and (2), any controls in the Woollahra DCP 2015 relating to visual privacy, solar and daylight access, common circulation and spaces, apartment size and layout, ceiling heights, private open space and balconies, natural ventilation and storage are overridden by controls in SEPP 65.

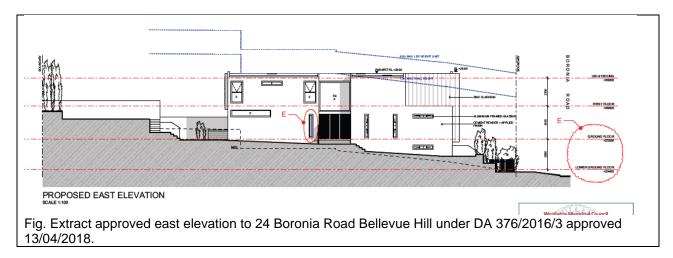
Objective 3F-1 specifies that: Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy

Objective 3F-2 specifies that: Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space

As provided in Figure 3F.3, new development adjacent to existing buildings should provide adequate separation distances to the boundary in accordance with the design criteria.

The design verification statement prepared by in support of the proposal seeks exemption to the Design criteria as follows:

• The proposed development is separated by 4.2m between habitable rooms to the north, and 3m to the south. Non habitable rooms are separated by more than 3m. The building is oriented to direct views away from other buildings to maintain privacy.



As set out in the above compliance table design criteria 1 provides the measurable requirements for how Objective 3F-1 can be achieved. Numerical non-compliance with design criteria 1 of OF-1 is not determinative to this application having regard to the following:

- The siting of all habitable and non-habitable rooms windows prevents direct sightlines to the habitable room windows/ POS of adjacent dwellings within 9m including as follows:
 - New south elevation windows to habitable rooms contain 1.8m high sills to prevent a
 direct sightline to the habitable room windows or private open space of an adjacent
 dwelling within 9m.
 - The proposal does not include north elevation windows to habitable rooms, the north elevation includes a light well courtyard that allows windows to habitable rooms to be orientated to the front and rear of the site (not the side elevation).
- Condition C.1 requires that the second floor level bathroom window opening to the south elevation must consist of fixed translucent glazing to a minimum height of 1.65m above the first floor level in accordance with O2 and C5 of B3.5.4 of the Woollahra Development Control Plan 2015.
- Building separation of the habitable elements is compliant with the minimum side setback controls under Part B3.2.3 of the Woollahra DCP 2015.
- The setback of the proposed building is consistent with similar type and scaled buildings in the immediately vicinity.

With the exception of numerical non-compliance with design criterial 1 of OF-1, the proposal satisfies the relevant objectives, design criteria and design guidance prescribed by this Part

Part 3G: Pedestrian Access and Entries

	Proposed	Control	Meets
3G-1 Building Entrances	Single communal entry	Multiple Entries and Entry locations relate to the street and subdivision pattern and the existing pedestrian network	No

	Proposed	Control	Meets
3G-1 Communal Entries	N/A	Clearly Defined from Private Entries	N/A
3G-2 Location of Lift Lobbies, Stairwells and Hallways	Visible From communal Spaces	Visible From Public Domain/Communal Spaces	Yes
3G-2 Ground Floors and Underground Car Parks	Level Changes minimised	Minimise Level Changes	Yes
3G-3 Pedestrian Links large sites	N/A	Clear Connections	N/A

Objective 3G-1 specifies that: Building entries and pedestrian access connects to and addresses the public domain.

Objective 3G-2 specifies that: Access, entries and pathways are accessible and easy to identify.

Objective 3G-3 specifies that: Large sites provide pedestrian links for access to streets and connection to destinations.

The proposed single communal entry is contextually acceptable, multiple entries (including communal building entries and individual ground floor entries) are not considered necessary to activate the street edge having regard to the lot size and street frontage width.

The proposal satisfies the relevant objectives and design guidance prescribed by this Part.

Part 3H: Vehicle Access

	Proposed	Control	Meets
3H-1 Behind the Building Line	Behind the Building Line	Behind the Building Line	Yes
3H-1 Location of Vehicle Entries	At the Lowest Point of the Site	At the Lowest Point of the Site	Yes
3H-1 Vehicle Standing Areas	Nil	Avoided	Yes
3H-1 Location of Access Points	Avoided	Avoid Headlight Glare to Habitable Rooms	Yes
3H-1 Garbage Collection, Loading and Servicing Areas	Screened From View	Screened From View	Yes
3H-1 Large Vehicle Turning Circles	Avoided	Avoided	Yes
3H-1 Pedestrian and Vehicle Access	Separated and Distinguishable	Separated and Distinguishable	Yes

Objective 3H-1 specifies that: Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes

The proposal satisfies the relevant objectives and design guidance prescribed by this Part.

Part 3J: Bicycle and Car Parking

	Proposed	Control	Meets
DC 1. 3J-1 Number of Car Parking Spaces	8	8 DCP max	Yes

	Proposed	Control	Meets
3J-2 Motorcycle/Scooter Park	Can be accommodated	Sufficient Provision	Yes
3J-2 Bicycle Parking	4	Required, Undercover and Accessible	Yes
3J-3 visible lobby or waiting area should be provided to lifts and stairs	provided	Provided	Yes
3J-4 Ventilation Grills/Screening Devices For Car Parking Openings	Integrated into façade and landscape design	Integrated into Façade and Landscape Design	Yes
3J-5 On Grade Car Parking	Basement level	Avoided	Yes
3J-6 Exposed Parking	none	Not Along Primary Frontages	Yes

Objective 3J-1 specifies that: Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.

Objective 3J-2 specifies that: Parking and facilities are provided for other modes of transport.

Objective 3J-3 specifies that: Car park design and access is safe and secure.

Objective 3J-4 specifies that: Visual and environmental impacts of underground car parking are minimised.

Objective 3J-5 specifies that: Visual and environmental impacts of on-grade car parking are minimised.

Objective 3J-6 specifies that: Visual and environmental impacts of above ground enclosed car parking are minimised.

The proposal satisfies the relevant objectives, design criteria and design guidance prescribed by this Part.

Part 4A: Solar and Daylight Access

	Proposed	Control	Meets
DC 1. 4A-1 Sunlight to Living Rooms and Private Open Spaces of At Least 2 Hours between 9am and 3pm on June 21	100% 4 out of 4	Minimum 70% of Apartments	Yes
DC 2. 4A-1 Apartments without Sunlight between 9am and 3pm on June 21	0% 0 out of 4	Maximum 15% of Apartments	Yes
4A-2 Daylight access is maximised where sunlight is limited	Central courtyard open to the north ensures all apartments receive direct sunlight.	Daylight access is maximised where sunlight is limited	Yes
4A-3 Design incorporates shading and glare control, particularly for warmer months	Overhangs of balconies and roofs above provide shading to eastern and western facing windows Northern windows are small and protected by planting	Design incorporates shading and glare control, particularly for warmer months	Yes

Objective 4A-1 specifies that: To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.

Objective 4A-2 specifies that: Daylight access is maximised where sunlight is limited.

Objective 4A-3 specifies that: Design incorporates shading and glare control, particularly for warmer months.

The proposal satisfies the relevant objectives, design criteria and design guidance prescribed by this Part.

Part 4B: Natural Ventilation

	Proposed	Control	Meets
DC 1. 4B-1 Minimum Cross Ventilation	100% 4 out of 4	60% of Apartments	Yes
DC 2. 4B-3 Maximum Building Depth	N/A – no cross-over or cross-through apartments proposed	18m	N/A

Objective 4B-1 specifies that: All habitable rooms are naturally ventilated.

Objective 4B-2 specifies that: The layout and design of single aspect apartments maximises natural ventilation.

Objective 4B-3 specifies that: The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.

The design verification statement prepared in support of the proposal includes that:

- All habitable rooms are naturally ventilated.
- The apartments are considered dual aspect, due to the central courtyard and wide frontages.
- All apartments are cross ventilated.

The proposal satisfies the relevant objectives, design criteria and design guidance prescribed by this Part.

Part 4C: Ceiling Heights

	Proposed	Control	Meets
DC1. 4C-1 Minimum Ceiling Height – Habitable Rooms	2.7 - 3.1m	2.7m	Yes
DC 1. 4C-1 Minimum Ceiling Height - Non-Habitable Rooms	>2.4m	2.4m	Yes

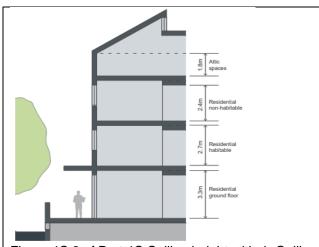


Figure 4C.2 of Part 4C Ceiling heights titled: Ceiling heights of minimum 2.7m help to achieve good daylight access and natural ventilation to residential apartments

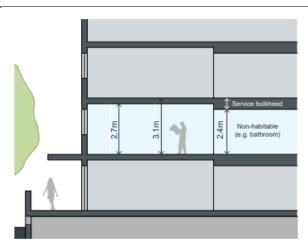


Figure 4C.5 of Part 4C Ceiling heights titled: Service bulkheads are wholly contained within nonhabitable rooms and do not intrude into habitable spaces

Objective 4C-1 specifies that: Ceiling height achieves sufficient natural ventilation and daylight access.

Under Clause 6A(1) and (2), any controls in the Woollahra DCP 2015 relating to ceiling heights, are overridden by controls in SEPP 65.

Under Clause 30(1) of SEPP 65, refusal cannot occur if the ceiling heights are equal to, or greater than Part 4C.

The proposal satisfies the relevant objectives, design criteria and design guidance prescribed by this Part.

Part 4D: Apartment Size and Layout

	Proposed	Control	Meets
DC 1. 4D-1 Minimum Apartment Layout – 3 bedroom	All apartments have 3 bedrooms and are either 146m ² or 131m ²	(85m ² + 5m ² each bathroom)	Yes
DC 2. 4D- 1 external wall windows to habitable rooms	>10%	10% of the floor area of the room	Yes
DC 1. 4D-2 Habitable Room Depth	< 2.5 x ceiling height	max of 2.5 x ceiling height	Yes
DC 2. 4D-2 Maximum Depth of Kitchen from a Window	<8m	8m	Yes
DC 1. 4D-3 Minimum Bedroom Size (Excluding Wardrobes)	>9m²	9m²	Yes
DC 2. 4D-3 Minimum Bedroom Dimension (Excluding Wardrobes)	>3m	3m	Yes
DC 3. 4D-3 Minimum Width of Living Rooms	>4m	4m for 2 and 3 bedroom apartments	Yes
DC 4. 4D-3 Minimum Width of Cross Over/Cross Through Apartments	None proposed	4m	N/A
4D-1 Kitchens in Larger Apartments	Not Included in Main Circulation Space	Not Included in Main Circulation Space	Yes

	Proposed	Control	Meets
4D-1Windows Within Habitable Rooms	Visible From Any Point	Visible From Any Point	Yes
4D-2 Main Living Spaces	Located Away from Noise Sources	Located Away from Noise Sources	Yes
4D-2 Living Areas and Bedrooms	Outer Edge of Building	Outer Edge of Building	Yes
4D - 3Minimum Length of Bedroom Wardrobe	>1.5m	1.5m	Yes
4D-3 Minimum Dimensions of a Wardrobe in a Main Bedroom	Walk in robes	1.8m x 0.6m x 2.1m	Yes

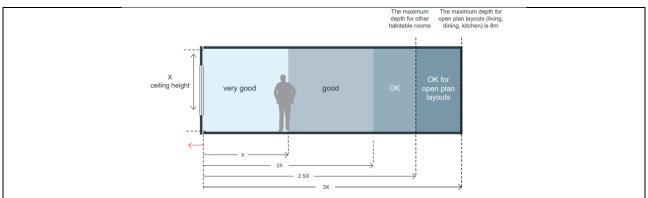


Figure 4D.3 of Part 4D: Apartment Size and Layout titled: *The depth of a single aspect apartment relative to the ceiling height directly influences the quality of natural ventilation and daylight access. The maximum depth of open plan layouts that combine living, dining and kitchen spaces is 8 metres*

Objective 4D-1 specifies that: The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.

Objective 4D-2 specifies that: Environmental performance of the apartment is maximised.

Objective 4D-3 specifies that: Apartment layouts are designed to accommodate a variety of household activities and needs.

Under Clause 6A(1) and (2), any controls in the Woollahra DCP 2015 relating to apartment size and layout are overridden by controls in SEPP 65.

Under Clause 30(1) of SEPP 65, refusal cannot occur if the internal area for each apartment is equal to, or greater than that specified in Part 4D.

The proposal satisfies the relevant objectives, design criteria and design guidance prescribed by this Part.

Part 4E: Private Open Space and Balconies

	Proposed	Control	Meets
DC 2. 4E-1 Private Open Space (Ground Floor Unit) Minimum Area & depth Apartment 1 Apartment 4	>15m ² and >3m depth	15m ² and >3m depth	Yes Yes
DC 1. 4E-1 Minimum Balcony Area & depth Apartment 2 Apartment 3	10m ² and >2m depth	10m ² and >2m depth	Yes Yes

Objective 4E-1 specifies that: Apartments provide appropriately sized private open space and balconies to enhance residential amenity.

Objective 4E-2 specifies that: Primary private open space and balconies are appropriately located to enhance liveability for residents.

Objective 4E-3 specifies that: *Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.*

Objective 4E-4 specifies that: Private open space and balcony design maximises safety.

Under Clause 6A(1) and (2), any controls in the Woollahra DCP 2015 relating to private open space are overridden by controls in SEPP 65.

The proposal satisfies the relevant objectives, design criteria and design guidance prescribed by this Part.

Part 4F: Common Circulation and Spaces

	Proposed	Control	Meets
DC 1. 4F-1 Maximum Number of Units in a Corridor	2	Eight (8)	Yes
4F-2 Common Circulation Spaces	Natural Light and Ventilation Provided	Natural Light and Ventilation Provided	Yes

Objective 4F-1 specifies that: Common circulation spaces achieve good amenity and properly service the number of apartments.

Objective 4F-2 specifies that: Common circulation spaces promote safety and provide for social interaction between residents.

Under Clause 6A(1) and (2), any controls in the Woollahra DCP 2015 relating to circulation and spaces are overridden by controls in SEPP 65.

The proposal satisfies the relevant objectives, design criteria and design guidance prescribed by this Part.

Part 4G: Storage

	Proposed	Control	Meets
 DC1 4G-1 Minimum Storage Area - Apartment 1 Apartment 2 Apartment 3 Apartment 4 	17.08m ² 13.91m ² 13.91m ² 13.59m ²	10m²	Yes Yes Yes Yes
4G-1 Access to Storage	Accessible from Circulation or Living Areas	Accessible from Circulation or Living Areas	Yes
4G-2 Provision of Storage	Can be allocated to Specific Apartments	Allocated to Specific Apartments	Yes
4G-2 Storage for Bulky or Less Used Items	Provided	Provided	Yes
4G-2 Basement carpark storage	Separate rooms	Rear of Side of Car Spaces or in cages so that allocated car parking remains accessible	Yes

	Proposed	Control	Meets
4G-2 Communal storage rooms	Communal storage rooms not provided	Accessible from common circulation areas of the building if provided	Yes
4G-2Storage not located in an apartment	Integrated and Not Visible from Public Domain	Integrated and Not Visible from Public Domain	Yes

Under Clause 6A(1) and (2), any controls in the Woollahra DCP 2015 relating to storage are overridden by controls in SEPP 65.

Objective 4G-1 specifies that: Adequate, well designed storage is provided in each apartment.

Objective 4G-2 specifies that: Additional storage is conveniently located, accessible and nominated for individual apartments.

The proposal satisfies the relevant objectives, design criteria and design guidance prescribed by this Part.

Part 4H: Acoustic Privacy

	Proposed	Control	Meets
4H-1 Window and Door Openings	Away From Noise Sources	Away From Noise Sources	Yes
4H- 2 Location of Rooms	Noisy areas located next to or above each other and quieter areas next to or above quieter areas	Similar Rooms Grouped Together	Yes

Objective 4H-1 specifies that: Noise transfer is minimised through the siting of buildings and building layout.

Objective 4H-2 specifies that: Noise impacts are mitigated within apartments through layout and acoustic treatments.

The proposal satisfies the relevant objectives and design guidance prescribed by this Part.

Part 4J: Noise and Pollution

	Proposed	Control	Meets
4J-1 Impacts of external noise and pollution are minimised	Side boundary openings are minimized as to direct the noise towards the street	Design solutions minimise impacts	Yes
4J-2 Design to High Noise Source	Double glazing to affected facades. Solid balcony Balustrades and external screens.	Limited Openings, Double Gazing or Use of Sound Absorption Materials	Yes

Objective 4J-1 specifies that: *In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.*

Objective 4J-2 specifies that: Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.

The proposal satisfies the relevant objectives and design guidance prescribed by this Part.

Part 4K: Apartment Mix

	Proposed	Control	Meets
4K-1 Apartment Mix	All 3 bedroom apartments	Variety of Apartment Types	No
4K-2 Location of Larger Apartments	Rear to access larger private open space area	Ground Level or Roof where there is potential for more open space or corners	Yes

Objective 4K-1 specifies that: A range of apartment types and sizes is provided to cater for different household types now and into the future.

Objective 4K-2 specifies that: The apartment mix is distributed to suitable locations within the building.

Whilst the proposal comprises only three bedroom apartments, this is acceptable and is suitable to the local market and demographics, noting also that there is a lack of larger three and four bedroom apartments in the wider metropolitan area.

The proposal therefore satisfies the relevant objectives and design guidance prescribed by this Part.

Part 4L: Ground Floor Apartments

	Proposed	Control	Meets
4L-1 Access to Ground Floor Apartments	Not provided	Direct Street Access Provided	No
4L-1 Ground Floor Presentation	Private Open Space and Doors/Windows to the Street	Private Open Space and Doors/Windows to the Street	Yes
4L-1 Ground Floor Apartments	Suitable for SOHO use	Suitable for SOHO use	Yes
4L-2 Elevation of Ground FloorFront YardApartment 1	1.5m	1-1.5m above the street level as per figure 4L4	Yes

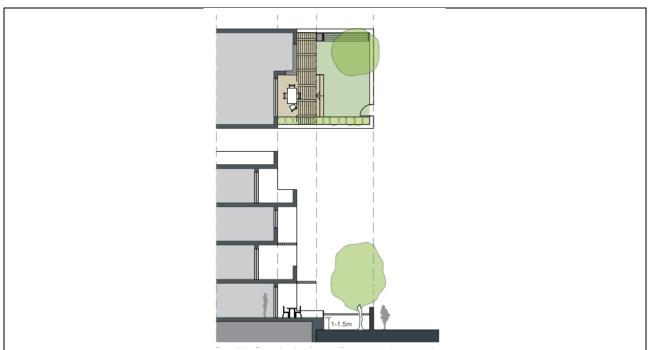


Figure 4L.4 titled: Plan and section of a ground floor apartment with an elevated terrace and a level private courtyard.

Objective 4L-1 specifies that: Street frontage activity is maximised where ground floor apartments are located.

Objective 4L-2 specifies that: Design of ground floor apartments delivers amenity and safety for residents.

The design verification statement in support of the proposal includes:

• Two ground floor apartments are provided, one at the front and one at the rear. Due to the natural slope of the site, and to minimize excavation, these are at different levels, and are above street level. For this reason and for privacy, access is provided from the lobby, and the rear apartment can be accessed from the site for the servicing of the pool and garden.

As set out previously, the single communal entry is contextually acceptable, individual ground floor entry is not considered necessary having regard to the lot size and street frontage width.

The proposal satisfies the relevant objectives and design guidance prescribed by this Part.

Part 4M: Facades

	Proposed	Control	Meets
4M-1 Building Services	Building services within the overall facade	Integrated into Design	Yes
4M-1 Relationship to Adjoining Properties	Relates	Relate to Upper Level Setbacks, Awnings and Colonnade Heights	Yes
4M-1 Articulation to Building Facade	Shadow is created on the facade throughout the day with building articulation	Creates Shadow on the Building	Yes
4M-2 Building Entry	Clearly Defined	Clearly Defined	Yes

	Proposed	Control	Meets
4M-2 Expression of Apartment Layout	Expressed externally through façade articulation and awnings	Through facade treatment such as party walls and slabs	Yes

Objective 4M-1 specifies that: Building facades provide visual interest along the street while respecting the character of the local area.

Objective 4M-2 specifies that: Building functions are expressed by the façade.

The proposal satisfies the relevant objectives and design guidance prescribed by this Part.

Part 4N: Roof Design

	Proposed	Control	Meets
4N-2 Habitable Roof Space	Not proposed	Penthouse, Dormer or Skylights Provided	N/A
4N-2 Rooftop Open Space	Not proposed	No Privacy, Safety or Security Impacts	N/A
4N-3 Roof Lifts	Centred to maximises solar access	To the North	Yes
4N-3 Skylights and Ventilation Systems	Integrated into Design	Integrated into Design	Yes

Objective 4N-1 specifies that: Roof treatments are integrated into the building design and positively respond to the street.

Objective 4N-2 specifies that: Opportunities to use roof space for residential accommodation and open space are maximised.

Objective 4N-3 specifies that: Roof design incorporates sustainability features.

The proposal satisfies the relevant objectives and design guidance prescribed by this Part.

Part 40: Landscape Design

	Proposed	Control	Meets
4O-1 On-going Maintenance Plans	Landscape plans submitted	Required	Yes
4O-1 Microclimate	Appropriately scaled trees	Lower Scale Trees to East and West Elevations	Yes
4O-1 Tree Planting in the Deep Soil Zone	>1 large tree or 2 medium trees per 90m ² of deep soil zone	1 large tree or 2 medium trees per 90m² of deep soil zone	Yes

Objective 4O-1 specifies that: Landscape design is viable and sustainable.

Objective 4O-2 specifies that: Landscape design contributes to the streetscape and amenity.

The proposal satisfies the relevant objectives and design guidance prescribed by this Part.

Part 4P: Planting on Structures

New tree planting is located away from structures such as basement car parks, podiums, roofs and walls.

The proposal satisfies the relevant objectives and design guidelines prescribed by this Part.

Part 4Q: Universal Design

Units	Yes
cil policy nder Part proposal	Yes
u p	with the ncil policy under Part proposal sthan 10 units

The Glossary of the Apartment Design Guide provides the following definitions:

- **Universal design international** design philosophy that enables people to carry on living in the same home by ensuring apartments are able to change with the needs of the occupant
- Adaptable housing housing that is designed and built to accommodate future changes to suit occupants with mobility impairment or life cycle needs

Objective 4Q-1 specifies that: Universal design features are included in apartment design to promote flexible housing for all community members.

Objective 4Q-2 specifies that: A Variety of apartments with adaptable designs are provided.

Objective 4Q-3 specifies that: Apartment layouts are flexible and accommodate a range of lifestyle needs.

The design verification statement prepared in support of the proposal includes that:

- The proposal complies with the Living Housing Guideline's silver level universal design features. These include:
 - 1. A safe continuous and step free path of travel from the street entrance and / or parking area to a dwelling entrance that is level.
 - 2. At least one, level (step-free) entrance into the dwelling.
 - 3. Internal doors and corridors that facilitate comfortable and unimpeded movement between spaces.
 - 4. A toilet on the ground (or entry) level that provides easy access.
 - 5. A bathroom that contains a hob-less (step-free) shower recess.
 - 6. Reinforced walls around the toilet, shower and bath to support the safe installation of grab-rails at a later date
 - 7. A continuous handrail on one side of any stairway where there is a rise of more than one meter.
- Accessibility is maintained throughout the common areas of the proposal, with an adaptable apartment provided.

The proposal satisfies the relevant objectives and design guidance prescribed by this Part.

Part 4T: Awnings and Signage

	Proposed	Control	Meets
4T-1 High pedestrian activity and active frontage awnings	Continuous awning not proposed – proposal does not include active frontage	Awnings should be located along streets with high pedestrian activity and active frontages	Yes
4T-1 Building entry awnings	Awning located over building entry	Awnings should be located over building entries for building address and public domain amenity	Yes

Objective 4T-1 specifies that: Awnings are well located and complement and integrate with the building design.

Objective 4T-2 specifies that: Signage responds to the context and desired streetscape character

The proposal satisfies the relevant objectives and design guidance prescribed by this Part.

Part 4U: Energy Efficiency

	Proposed	Control	Meets
4U-1 Clothes Drying	Adequate natural light is provided to habitable rooms	Adequate natural light is provided to habitable rooms	Yes
4U-1 Clothes Drying	Screened outdoor area	Well Located, Screened Outdoor Areas	Yes
4U-2 Passive solar design to optimise heat storage in winter and reduce heat transfer in summer	Thermal mass in concrete walls and slabs allow for passive heating in winter Overhangs, street awning and screens on Western façade reduce heat transfer in Summer	Design solutions are used	Yes
4U-3 Adequate natural ventilation minimises the need for mechanical ventilation	Cross ventilation in all apartments minimizes the need for mechanical ventilation	Design solutions are used	Yes

Objective 4U-1 specifies that: Development incorporates passive environmental design.

Objective 4U-2 specifies that: Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.

Objective 4U-3 specifies that: Adequate natural ventilation minimises the need for mechanical ventilation.

The proposal satisfies the relevant objectives and design guidelines prescribed by this Part.

Part 4V: Water Management and Conservation

	Proposed	Control	Meets
4V-1 Water Efficient Fittings and Appliances	Provided as per BASIX	Provided	Yes
4V-1 Metering	Apartments individually metered	Individual Metering Required	Yes

	Proposed	Control	Meets
4V-1 Species of Plants	drought tolerance and water usage considered as part of landscape plan – balconies roof terrace species greater drought tolerance	Drought Tolerant, Low Water Use	Yes
4V-3 Flood management systems are integrated into site design	OSD tank located under entry path	Located Under Paved Areas, Driveways or Basement	Yes

Objective 4V-1 specifies that: Potable water use is minimised.

Objective 4V-2 specifies that: *Urban stormwater is treated on site before being discharged to receiving waters.*

Objective 4V-3 specifies that: Flood management systems are integrated into site design.

The proposal was accompanied by a BASIX Certificate detailing the proposal is compliant with the water savings requirements of the BASIX SEPP.

In accordance with Objective 4U-1 adequate natural light is provided to all habitable rooms.

The proposal satisfies the relevant objectives and design guidance prescribed by this Part.

Part 4W: Waste Management

	Proposed	Control	Meets
4W-1 Location of Bin Storage	Away From The Front in Basement	Away From The Front or in Basement	Yes
	Well Ventilated	Well Ventilated	Yes
4W-1 Access Between Bin Storage and Collection Point	Manoeuvrability to Collection Point	Easy Manoeuvrability to Collection Point	Yes
4W-2 Compost Facilities	Not detailed landscape and private open space will allow for provision	Provided	Yes

Objective 4W-1 specifies that: Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.

Objective 4W-2 specifies that: Domestic waste is minimised by providing safe and convenient source separation and recycling.

The proposal satisfies the relevant objectives and design guidance prescribed by this Part.

Part 4X: Building Maintenance

	Proposed	Control	Meets
4X-2 Window Design	Able to be cleaned from inside	Able to be cleaned from inside	Yes
4X-2 External Scaffolding form Maintenance	Design solutions negate external scaffolding for maintenance access	Not Permitted	Yes
4X-3 Material selection reduces ongoing maintenance costs	robust and durable materials and finishes selected for heavy wear location	Provided for Communal Open Space Areas	Yes

Objective 4X-1 specifies that: Building design detail provides protection from weathering.

Objective 4X-2 specifies that: Systems and access enable ease of maintenance.

Objective 4X-3 specifies that: Material selection reduces ongoing maintenance costs.

In accordance with objective 4X-1 the proposal the façade is adequately designed to provide protection from weathering.

In accordance with objective 4X-2 the proposal includes suitable access for cleaning. The majority of windows can be cleaned from inside or from balconies.

In accordance with objective 4X-3 the proposal includes minimized painted surfaces and maximized natural and durable materials.

The proposal satisfies the relevant objectives, design guidance prescribed by this Part.

11. STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

Chapter 2 Vegetation in non-rural areas

The proposal is considered to be satisfactory with regard to the relevant provisions of Chapter 2 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

Chapter 6 Water Catchments

Chapter 6 (Water Catchments) of the SEPP applies to the subject land which is located within a regulated catchment being the Sydney Harbour Catchment.

The land is within the Sydney Harbour Catchment but is outside the Foreshores and Waterways Area and therefore only the provisions in Part 6.2 of the SEPP applies.

In deciding whether to grant development consent to development on land in a regulated catchment, matters relating to water quality and quantity, aquatic ecology, flooding, recreation and public access and total catchment management must be considered.

The proposal does not contravene the relevant general requirements under Part 6.2 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021.

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

SEPP (Building Sustainability Index: BASIX) 2004 applies to the proposed development. It relates to commitments within the proposed development in relation to thermal comfort, water conservation and energy efficiency sustainability measures.

The development application was accompanied by a BASIX Certificate demonstrating compliance with the SEPP. These requirements are imposed in the conditions of consent.

13. STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

Chapter 2 Coastal Management

The provisions of this chapter that are relevant to the subject application involve managing development in the coastal zone and protecting the environmental assets of the coast. It is considered that the proposal, as conditioned, will not have any significant adverse environmental impact upon the harbour coastal locality and therefore satisfactory with regard to the relevant provisions of the Chapter 2 of SEPP (Resilience and Hazards) 2021.

Chapter 4 Remediation of Land

Clause 4.6(1) (a) of SEPP (Resilience and Hazards) 2021, requires consideration to be given as to whether the subject land is contaminated. The application maintains the existing residential land use of the subject land, the site is not within an investigation area.

The long-term land use of the site as well as surrounding adjoining land uses has been and continues to be residential and is therefore it is considered unlikely by the applicant to be contaminated. On this basis, further investigation was not considered necessary.

Assessment of the initial site evaluation information provided by the applicant indicates the land does not require further consideration under Clause 4.6 of SEPP (Resilience and Hazards) 2021.

14. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

14.1. Clause 1.2: Aims of Plan

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

14.2. Land Use Table

The proposal for a residential flat building is permissible and is consistent with the objectives of the R3 Medium Density Residential zone:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.

14.3. Clause 4.1A: Minimum Lot Sizes for a Dual Occupancies, Multi Dwelling Housing and Residential Flat Building

Part 4.1A (2) specifies a minimum lot size of 700m² for residential flat buildings in the R3 zone. As detailed in the compliance table, the subject site area of 696.8m² is non-compliant in this regard.

Site Area: 696.8m ²	Proposed	Control	Complies
Minimum Lot Size –	696.8m ²	700m²	No
Multi-Unit/Residential Flat Building			

The proposal does not comply with Clause 4.1A(2) of Woollahra LEP 2014 as detailed and assessed under Clause 4.6 of Woollahra LEP 2014.

14.4. Clause 4.3: Height of Buildings

Clause 4.3 (2) limits development to a maximum height of 9.5m.

	Proposed	Control	Complies
Maximum Building Height	12.24m RL31.8AHD – RL19.56HD	9.5m	No

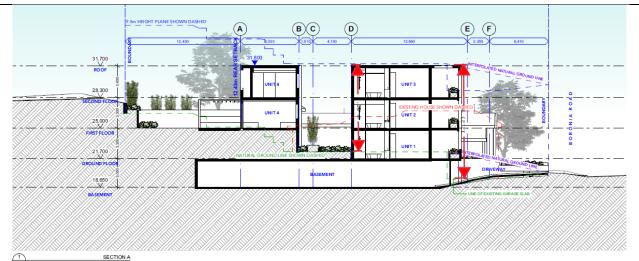


Fig. Extract Long Section A detailing proposed maximum building heights, the roof form of the second floor level varies between 9.3m and 12.24m in height.

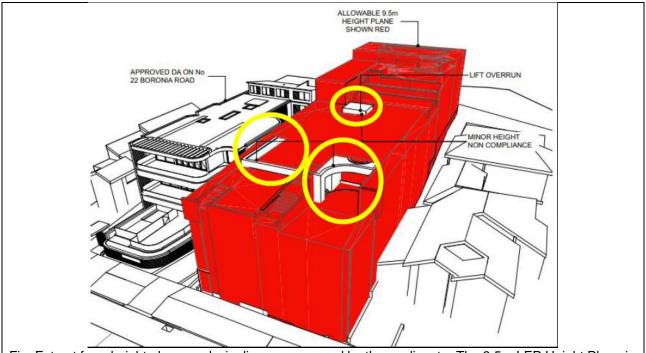


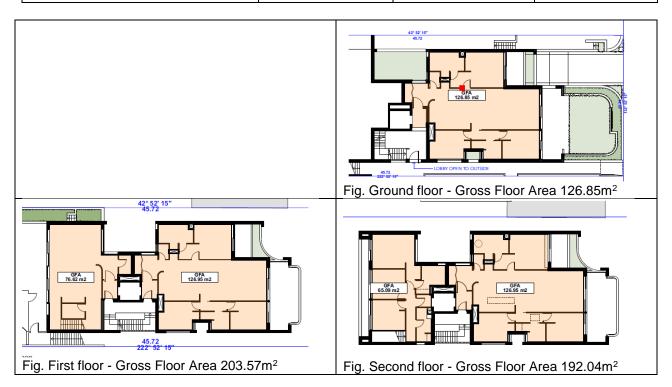
Fig. Extract from height plane analysis diagram prepared by the applicant – The 9.5m LEP Height Plane is shown in red and the area of height variation is circled.

The proposal does not comply with Clause 4.3 (2) of Woollahra LEP 2014 as detailed and assessed under Clause 4.6 of Woollahra LEP 2014.

14.5. Clause 4.4: Floor Space Ratio

Clause 4.4(2) limits development to a maximum floor space ratio of 0.75:1 for a building.

Site Area: 696.8m ²	Proposed	Control	Complies
Floor Space Ratio	0.75:1 522.46 m²	0.75:1 522.6m²	Yes



The proposal includes a compliant calculable Gross Floor Area (GFA) of 522.46 m² and Floor Space Ratio (FSR) of 0.75:1.

The proposal is compliant with the maximum floor space ratio prescribed by Part 4.4(2) of Woollahra LEP 2014, the proposal includes a Gross Floor Area (GFA) of 522.46 m² and Floor Space Ratio (FSR) of 0.75:1.

The proposal is also acceptable with regard to the relevant objectives under Clause 4.4(1)(a) of Woollahra LEP 2014 for development in a R3 Medium Density Residential Zone, as follows:

- In accordance with objective (1) (a) (i) proposed bulk and scale is compatible with the desired future character of the area.
- In accordance with objective (1) (a) (ii) the proposal is suitably designed in terms of the minimisation of adverse environmental effects on the use or enjoyment of adjoining properties and the public domain, and
- In accordance with objective (1) (a) (iii) the proposal is suitably designed to allow adequate provision on the land for deep soil planting and areas of private open space.

The proposal is acceptable in terms of Clause 4.4 of the Woollahra LEP 2014.

14.6. Clause 4.6: Exceptions to Development Standards

Departures

Clause 4.1A: Minimum Lot Sizes for a Dual Occupancies, Multi Dwelling Housing and Residential Flat Building

The existing 696.8m2 site area equates to a 3.2m² (0.46%) departure from the 700m² minimum lot size for residential flat buildings in the R3 zone as specified under Clause 4.1A of Woollahra LEP 2014.

Clause 4.3: Height of Buildings

Roof elements of the proposed residential flat building exceed the 9.5m maximum height of buildings standard under Clause 4.3(2) of Woollahra LEP 2014 for the site by 2.74m, representing a 28.8% departure from the 9.5m control.

Purpose

Clause 4.6 allows for the contravention of a development standard (provided that the standard is not expressly excluded from the section), with the objectives of the clause being:

- a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Applicant's Written Requests

Clause 4.6(3) requires the consent authority to consider the applicant's written request that seeks to justify the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary and there are sufficient environmental planning grounds to justify the contravention.

Clause 4.6 written statements submitted with the development application in summary make the case that:

Clause 4.1A: Minimum Lot Sizes for a Dual Occupancies, Multi Dwelling Housing and Residential Flat Building

Flexibility is sought in the application of the minimum subdivision lot size development standard to the proposed development in the circumstance of this particular case. In our opinion, the lot size is appropriate, and the proposal is consistent with Council's desired medium density character for the area. The proposal replaces a single dwelling with a residential flat building that responds to the existing and emerging character of the area, and makes a positive contribution to the streetscape. Additionally, the proposal is consistent with the desired future character objectives of the Bellevue Hill South Precinct, which includes a transition of development scale from detached dwelling houses at the northern end of Bellevue Hill to the residential flat buildings that address major streets.

The proposal demonstrates that the extent of the non-compliance is minor and is suitable for the development, accommodating a well-designed residential flat building that complies with the majority of built form controls. It is noted that a number of medium density residential developments are existing, approved or being constructed in the area that appear to be on similarly sized lots. These include nearby properties at Nos. 18 and 20 Boronia Road.

Flexibility with the control will provide a better outcome for and from the development in this circumstance, as the site can readily accommodate a residential flat building with a built form envisaged by Council. The proposal will facilitate the replacement of an ageing single storey dwelling with a sophisticated residential flat building that is consistent with the objectives of the R3 Medium Density Residential Zone. Strict compliance with this development standard would prevent the orderly and economic use and development of the land.

Clause 4.3: Height of Buildings

The proposed height variation is in part due to the drop in existing ground level, which was the result of previous excavation/building work to accommodate the existing garage. The variation is therefore largely considered a technical departure due to the artificially altered existing ground line.

The proposal presents as largely compliant when measured against what would be considered the natural ground line in this location. This is discussed in light of Bettar v Council of the City of Sydney [2014] NSWLEC 1070 (Bettar), where the interpretation of height was considered.

Flexibility is sought in the application of the height development standard to the proposed development in the circumstance of this particular case. The majority of the building complies with the height standard. The additional height is due to the topography of the land and in one case, the need to provide a lift shaft to improve accessibility. The height variations are limited to small areas of the roof and parts of these areas will not be readily visible from the street. Where they are visible, they are integrated well into the portions of the building that comply with the LEP height.

The built form will positively contribute to the public domain when viewed from Boronia Road, with an articulated façade and a compatible height with nearby recently approved residential flat development at Nos. 18 and 20 Boronia Road. This is achieved through the proposal's compliance with the majority of building envelope requirements envisaged for the site, such as FSR and the majority of built form control of the DCP. This ensures the new building envelope is unlikely to cause significant overshadowing or loss of privacy to nearby properties.

The height variation allows for a high-quality residential flat building development to contribute to the emerging medium density residential character. The proposed height responds to the bulk and scale of nearby residential flat buildings and is a more appropriate built form for the site in comparison to the existing single dwelling. Flexibility in this circumstance will provide a better outcome for and from development. To refuse this application would prevent the orderly and economic use and development of the land. On this basis, the non-compliance is consistent with the objectives of Clause 4.6 and is acceptable in this instance.

The Clause 4.6 written statements submitted with the development application are included in full as **Annexure 2**.

On the basis of the above, the case is made that compliance with the development standard is unreasonable/unnecessary and that there are exists a sufficient environmental planning ground to justify contravening the development standard.

Council's Assessment

Clause 4.6(3) requires Council to be satisfied that the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention.

Council is required to undertake a critical review of the written request, and any other material that the Applicant has provided seeking to demonstrate the matters in clause 4.6(3). This is set out below.

Clause 4.6(4) Assessment

Clause 4.6 (4) Consent must not be granted for development that contravenes a development standard unless:

- (a) The consent authority is satisfied that:
 - 2. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - 3. The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) The concurrence of the Secretary has been obtained.

Clause 4.6(4)(a)(i) - Assessment

Clause 4.6(4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be addressed by Cl 4.6(3). There are two separate matters for consideration contained within Cl 4.6(3) and these are addressed as follows:

(a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (Wehbe), Preston CJ established five potential tests (the Wehbe test) for determining whether a development standard could be considered unreasonable or unnecessary:

- The first is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The second is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.
- The third is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.
- The fourth is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
- The fifth is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.

However, the five tests set out in Wehbe above are not the only ways that an applicant can demonstrate that compliance with a development standard is unreasonable or unnecessary. In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (**Initial Action**), Preston CJ stated at paragraph 22:

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an

applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

The applicant's written requests principally adopt the first method of the Wehbe tests to demonstrate that compliance is unreasonable or unnecessary in the circumstances:

• The submitted Clause 4.6 Written Requests and the arguments provided relevant to Test 1 in that the objectives of each development standard are achieved notwithstanding non-compliance with the standards are largely agreed with and accepted.

The applicant's written request has adequately demonstrated that the objectives of each development standard are achieved notwithstanding non-compliance with the standards. It is considered that the non-compliances satisfy the unreasonable or unnecessary tests established by the Court in *Wehbe* and the provisions of cl 4.6(3)(a).

The objectives of the development standards are discussed further in the assessment of Clause 4.6(4)(a)(ii).

(b) That there are sufficient environmental planning grounds to justify contravening the development standard.

Environmental planning grounds which justify the contravention of the standard

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be 'environmental planning grounds' by their nature: See Four2Five Pty Ltd. v Ashfield Council. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act including the objects in s1.3 of the EPA Act.

For reasons provided by the applicant and discussed, there are <u>sufficient</u> environmental planning grounds to justify contravening the development standard in this instance and the breach of the HOB development standard is considered to be in the public interest.

S1.3 of the EPA Act states:

1.3 Objects of Act

The objects of this Act are as follows:

- to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The written request provides explanation of how the proposed development and in particular the breaches of the minimum lot size for RFB and HOB development standards is reasonable and supportable in the circumstances. In doing so, the written request provides sufficient environmental planning grounds to justify contravention of the Minimum Lot Size for Residential Flat Building and Height of Buildings development standard, as it demonstrates that the proposal achieves aims (c) and (g) of Section 1.3 of the Act.

<u>Clause 4.1A: Minimum Lot Sizes for a Dual Occupancies, Multi Dwelling Housing and</u> Residential Flat Building

The proposal is located within the R3 Medium Density Residential Zone, which already accommodates increased development density. The subject site is surrounded by residential flat buildings that range between three and four storeys some of which also do not comply with the current lot size development standard. If development on the site were to remain as a single dwelling, it would be inconsistent with emerging development in the surrounding locality. The minor shortfall in minimum lot size furthermore does not compromise the ability of the proposal to deliver a development which satisfies the requirements of the Apartment Design Guide and DCP.

The minor non-compliance with Council's 700m² minimum lot size for RFB development standard is considered to be contextually compatible with development within the locality and accordingly is considered to uphold objects 1.3(c) and (g) of the EPA Act.

On the basis of the above-mentioned contextual compatibility with surrounding development, it is also considered that there exists a sufficient environmental planning ground in this instance to justify the contravention of the development standard as required by Clause 4.6(3)(b) and the consent authority can be satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

Clause 4.3: Height of Buildings

There are a number of environmental planning grounds specific to the site and the height non-compliance which justify contravening the development standard in this instance. These include topographical constraints and existing excavated areas, consistency in the context, improved design outcomes, provision of equitable access, and environmental amenity.

Improved design outcomes - The areas of non-compliance are largely the result of architectural design elements. The roof parapet elements that exceed the development standard ensure a visually appealing and cohesive design when viewed from the street. They also seamlessly integrate into the remaining portions of the building which comply with the height standard. The non-compliant roof parapet and balcony supports at the north eastern corner also ensure the proposal has a consistent design appearance across all levels.

Equitable access - The proposed lift overrun is centrally located within the building in order to maximise functionality. The lift will provide equitable access to Units 2, 3 and 4, throughout all levels of the building. Strict compliance with the development standard would have significant impacts on the accessibility of Unit 4 as the lift overrun cannot be relocated within the compliant building height line without significant design changes and impacts on amenity and usability.

With regard to the establishment of an environmental planning ground based upon height above natural ground level i.e. the ground level that existed prior to previous excavation of the site, the interpretation of height was considered by the Court in Bettar v Council of the City of Sydney [2014] NSWLEC 1070. There was discussion in Bettar concerning the interpretation of *existing ground level* and *basement* which are separately defined.

The LEP definition of *building height* requires a measurement from existing ground level, rather than the ground level that existed prior to the previous excavation of the site.

In considering application of the height development standard, it was indicated by the Court that relying on existing basement levels would result in the height control artificially rising and falling across the site. In Bettar, the Court took the approach of measuring height with the intent, in part, of relating the development proposal to its context in the streetscape.

The Court made the following relevant comments:

"It is relevant to consider the objectives of the building height development standard in considering how best to determine the maximum height of the building using the dictionary definitions in LEP 2012....As one of the purposes of the development standard is to relate the proposal to its context, it follows that the determination of the existing ground level should bear some relationship to the overall topography that includes the site...

The definition of basement in LEP 2012 is the space of a building where the floor level of that space is predominantly below existing ground level and where the floor level of the storey immediately above is less than 1 metre above existing ground level [italics added]. From this definition, it does not follow that existing ground level becomes the level of the basement floor or the soil beneath the basement following the construction of a basement. A basement is, by definition, below ground level and so the level of the basement floor cannot be taken to be existing ground level.

For these reasons, I do not accept [the] approach of defining existing ground level as the ground floor level of the existing building and then dropping it down to the basement level in the north-eastern corner of the site where the existing basement is located. This... relates only to a building that is to be demolished and has no relationship to the context of the site...

I prefer [the alternate] approach to determining the existing ground level because the level of the footpath at the boundary bears a relationship to the context and the overall topography that includes the site and remains relevant once the existing building is demolished." (emphasis added)."

In light of the above judgement, regard has been given to the height of the non-compliant components above natural ground level, i.e. the ground level that existed prior to previous excavation of the site.

Part of the additional height is largely above the existing lower ground floor garage level, which deviates from the site's natural and perceived ground level. If the building height were measured from the natural ground line, the extent of non-compliance would appear less compared to utilising the existing ground line

The non-compliance with Council's 9.5m height development standard is considered to be contextually compatible with development within the locality and accordingly is considered to uphold objects 1.3(c) and (g) of the EPA Act.

On the basis of the above-mentioned contextual compatibility with surrounding development, it is also considered that there exists a sufficient environmental planning ground in this instance to justify the contravention of the development standard as required by Clause 4.6(3)(b) and the

consent authority can be satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

Clause 4.6(4)(a)(ii) - Assessment

Clause 4.6(a)(a)(ii) requires the consent authority to be satisfied that:

ii) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the minimum lot size for residential flat buildings, height of buildings development standard and the objectives of the subject R3 Medium Density Residential zone.

An assessment against these objectives is provided below:

Clause 4.1A of the LEP – Minimum lot size for dual occupancies, manor houses, multi dwelling housing and residential flat buildings.

Objectives of Clause 4.1A

The proposal is assessed against sub-clause (1) objective of Clause 4.1A which specifes the following objective:

(1) The objective of this clause is to achieve planned residential density in certain zones consistent with the desired future character of the neighbourhood.

To assess whether the proposed breach of the minimum lot size for residential flat buildings achieves the desired future character (DFC) of the neighbourhood, it is reasonable to consider the DFC objectives for the Bellevue Hill South Residential Precinct as specified in Part B1.7.2 of the WDCP 2015.

The breach does not derogate against the objectives in relation to the DFC elements that relate to the residential flat buildings. As specified the site is located within the R3 Medium Density Residential Zone, which already accommodates increased development density. The subject site is surrounded by residential flat buildings that range between three and four storeys some of which also do not comply with the current lot size development standard.

Accordingly, non-compliance is considered to be consistent with the above-mentioned objective of minimum lot size for residential flat buildings development standard.

Clause 4.3 – Height of Buildings

Objectives of Clause 4.3

The proposal is assessed against sub-clause (1) objectives of Clause 4.3 which specify the following objectives:

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

Background:

'Desired Future Character' (DFC) of the neighbourhood or area is not defined in the WLEP 2014

In SJD DB2 Pty Limited v Woollahra Municipal Council [2020] NSWLEC 1112 ('SJD'), it was determined that the existing and approved developments located in the vicinity should be taken into consideration when assessing whether the proposal achieves the DFC of the neighbourhood or area.

The conclusions found by AC Clay in SJD were later affirmed on appeal by CJ Preston in Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115. Stemming from the findings in SJD, C Gray gave further clarity as to what local aspects can inform DFC in Ricola Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1047 ('Ricola') at Para 23:

23 Throughout the WLEP 2014, there is a common objective in the zone and in the development standards for height and FSR, for the development to be compatible with the desired future character. The desired future character can be ascertained from the applicable development standards, the controls in the WDCP 2015 and recent approvals.

Non-compliances are considered to be of an appropriate scale and form contextually so as to be compatible with the character and amenity of the surrounding neighbourhood.

To assess whether the proposed height breach achieves the DFC of the neighbourhood, it is reasonable to consider the DFC objectives for the Bellevue Hill South Residential Precinct as specified in Part B1.7.2 of the WDCP 2015.

The proposed height breach is considered to satisfy these objectives in relation to the DFC elements that relate to the height and scale of the development – refer to discussion under Part B1.7.2 Bellevue Hill South Residential Precinctof the Woollahra DCP 2015 of this report.

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

The proposal does not result in adverse overshadowing impacts to existing buildings and open space. The proposal accords with the access to sunlight controls under Part 4A Solar and daylight access of the Apartment Design Guide of SEPP 65 and Part B3.5.2 of the WDCP 2015. The proposal therefore achieves consistency with objective (c).

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

There are no significant view loss, overshadowing or visual intrusion impacts as a result of the non-compliant height. Also, the proposed height non-compliance does not contribute to an adverse privacy impacts to the adjoining properties. The proposal achieves consistency with objective (d).

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

The proposal does not have an adverse impact upon public and private views of the harbour. The proposal achieves consistency with objective (e).

Accordingly, non-compliance is considered to be consistent with the above-mentioned objectives of the height of buildings development standard.

R3 Medium Density Residential zone

Objectives of the R3 Medium Density Residential zone:

 To provide for the housing needs of the community within a medium density residential environment.

The precinct is an established area comprising many residential flat buildings. The development is a considered and contextual response that is consistent with the reasonable housing needs of the community. The proposal will continue to provide for the housing needs of the community, and does not alter exceed the desired density of the site.

To provide a variety of housing types within a medium density residential environment.

The proposal does not adversely impact on achievement of this objective and contributes to housing diversity within the wider area.

 To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposal is consistent with this objective.

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

The proposed development is suitably scaled for site, consistent with ensuring the height and scale of development achieves the desired future character of the Bellevue Hill South residential precinct.

Clause 4.6(4)(b) - Concurrence of the Secretary

Clause 4.6(4)(b) requires the consent authority to be satisfied that:

(b) the concurrence of the Secretary has been obtained.

The Department issued a Planning Circular No. *PS20-002 (dated 05 May 2020)* which notified Councils of arrangements "...where the Director General's concurrence may be assumed for exceptions to development standards under environmental planning instruments which adopt clause 4.6 ...of the Standard Instrument..." Clause 64 of the EPA Regulations provides that Council may assume the Director-General's [Secretary's] concurrence for exceptions to development standards, thus satisfying the terms of this clause.

Conclusion to Clause 4.6(4) – Assessment

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

The applicant's written request adequately addresses the relevant matters for consideration in Cl4.6(3)(a) and (b). Specifically:

- The information provided has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- The applicant has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

Conclusion

The written submissions from the applicant have adequately demonstrated that the contravention of the Minimum Lot size for RFB and Height of Buildings development standards prescribed by Parts 4.1 A and 4.3(2) of the Woollahra LEP 2014 are justified pursuant to the relevant matters for consideration prescribed by Clause 4.6.

The consent authority can be satisfied that the written request has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that sufficient environmental planning grounds have been demonstrated to justify the contravention of the standard.

The consent authority can be satisfied that the proposal with regards to the breach of the minimum lot size for RFB and HOB development standards is in the public interest as they are consistent with the objectives of the Minimum Lot Size for RFBs and Height of Buildings development standards and those applicable to development within the R3 Medium Density Residential zone.

14.7. Clause 5.10: Heritage Conservation

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

Heritage items and buildings, works, relics or trees within a heritage conservation area

The subject site is located in vicinity to the following Heritage items listed and described in Schedule 5 as follows:

Suburb	Item name	Address	Property description	Significance	Item no
Bellevue Hill	Street name	Various		Local	671
	inlays				

Council's Heritage Officer advised that there will be no adverse impact on the heritage items located in close proximity to the site.

Demolition of the site's dwelling house

The proposed demolition of the altered dwelling house is supported by a Heritage Demolition Report.

As set out in **Annexure 4** Councils' Heritage Officer is satisfied in terms of the proposed demolition of the site's existing dwelling including that the subject site does not meet the threshold for individual heritage listing and demolition will not adversely impact Woollahra's heritage.

Aboriginal Object or Place

The subject site forms part of potentially Aboriginal Heritage Sensitive land, however the site is not identified as Aboriginal Heritage Sensitive land.

The recommended conditions of this application include requirements in terms of unexpected finds protocols for any Aboriginal objects or unexpected findings.

The proposed development as recommended to be determined is acceptable with regard to the objectives in Clause 5.10 of the Woollahra LEP 2014.

14.8 Clause 5.21: Flood Planning

The objectives of Part 5.21 are:

- a) to minimise the flood risk to life and property associated with the use of land,
- b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,
- c) to avoid adverse or cumulative impacts on flood behaviour and the environment,
- d) to enable the safe occupation and efficient evacuation of people in the event of a flood.

Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development:

- a) is compatible with the flood function and behaviour on the land, and
- b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and
- c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and
- d) incorporates appropriate measures to manage risk to life in the event of a flood, and
- e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.

In deciding whether to grant development consent on land to which Part 5.21 applies, the consent authority must consider the following matters:

- a) the impact of the development on projected changes to flood behaviour as a result of climate change,
- b) the intended design and scale of buildings resulting from the development,
- c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,
- d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion

Council's Drainage Engineer has reviewed the development proposal and advised that the proposal is generally satisfactory and on this basis does not require flood specific conditions of consent.

The proposal is acceptable with regard to Clause 5.21 of Woollahra LEP 2014.

14.9. Part 6.1: Acid Sulfate Soils

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

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

14.10 Clause 6.2: Earthworks

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

The proposed excavation works have been reviewed and considered by Council's technical experts as follows:

- Subject to conditions, Council's Development Engineer advised that excavation are acceptable subject to conditions of consent.
- Subject to conditions, Council's Heritage Officer raised no objection on the basis of any archaeological considerations.
- Subject to conditions, Council's Trees Officer has raised no objection on the basis of detrimental impacts to existing significant trees or vegetation.

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

It is considered that potential adverse environmental impacts related to the proposed excavation works as revised will be minimised as much as is practicably possible subject to the imposition of conditions of development consent.

The proposal as is acceptable with regard to the relevant objectives in Clause 6.2 of the Woollahra LEP 2014.

15. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

15.1. Chapter B1: Residential Precinct

15.1.1. Part B1.7 Bellevue Hill South Precinct

The site is located in the Bellevue Hill South Residential Precinct. As specified in the desired future character explanation:

- New development should be designed to step down sloping sites and provide side boundary setbacks that allow for views between buildings.
- Development should not detract from the amenity of adjoining and adjacent lower density forms of residential development.
- Development along the local roads will provide a mix of housing densities and styles in well designed contemporary buildings, which reinforce the natural topography and provide opportunities for view sharing.
- Development must provide opportunities for view sharing from both public spaces and private properties. In particular, buildings should step down the site, also minimising cut and fill.

The proposal is well considered in terms of the minimisation of impacts on existing views and vistas and the reinforcing the presentation of the natural topography of the site.

Streetscape character and key elements of the precinct

The proposal is consistent with the desired future character objectives O1, O2, O3, O4, O5, O6 and O7 and is acceptable in terms of respecting or enhancing the following existing key streetscape element character elements a), b), c), d), e), f), g) and h) of the Bellevue Hill South Precinct: as follows:

- a): The proposal details an architecturally designed dwelling designed by Mark Shapiro Architects.
- b), c): The proposal is suitably and contextually sited relative to topography and land contours.

- d), e) and f): The proposal details adequate deep soil landscaping within the front and rear setbacks and maintains existing mature street trees and grassed verges.
- g): The proposal is well considered in terms of not impacting on the publicly available district views.
- h): The subject site does not contain an inter-War flat building.

Desired future character objectives

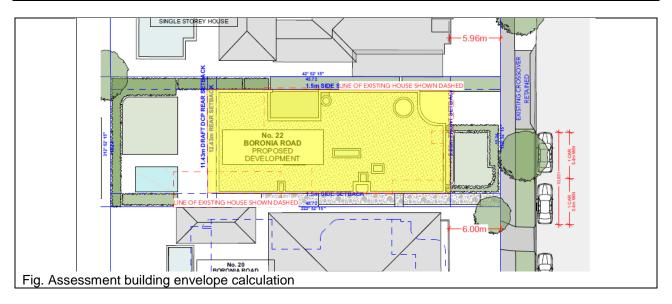
- O1 The proposed new residential flat building is acceptable in terms of respecting or enhancing the streetscape character and key elements of the Bellevue Hill South Residential Precinct.
- O2 –The proposed new residential flat building maintains the evolution of residential building styles through the introduction of well designed contemporary buildings, incorporating modulation and a varied palette of materials.
- O3 –The proposed new residential flat building is appropriately scaled for its location and context.
- O4 and O7 The subject site does not contain an inter-War flat building.
- O5 –The proposed new residential flat building is suitably designed in terms of topography and the minimisation of cut and fill.
- O6 –The proposal is suitably designed in terms of view sharing principles.

Accordingly, the proposed development accords with the precinct character statement, listed streetscape character and key elements and desired future character objectives of the Bellevue Hill South Residential Precinct as contained in Part B1.7 of the Woollahra DCP 2015.

15.2. Chapter B3: General Development Controls

15.2.1. Part B3.2: Building Envelope

Site Area: 696.8m ²	Proposed	Control	Complies
 C1 B3.2.2 - Front Setback 6.41m – 9.38m front elevation walling 5.36m balcony projections 	5.36m – 9.38m	5.86m	No
C2 B3.2.2 - Maximum Unarticulated Length to Street	<6m	6.0m	Yes
C1 B3.2.3 - Side Boundary SetbacksNorthwest elevationSoutheast elevation	1.5m 1.5m	1.5m	Yes Yes
C4 B3.2.3 - Maximum Unarticulated Wall Length Northwest elevation Southeast elevation	11.55m 9.25m	12m	Yes Yes
C1, C2 and C3 B3.2.4 - Rear Setback	12.43m	12.43m	Yes



The building envelope is a three dimensional space within which a building is to be located. The building envelope control is established by applying the following controls:

- front, side and rear setbacks
- maximum building height set by WLEP 2014

Part B3.2.2: Front Setback

The numerical front setback control under C1 is the horizontal distance between the building envelope and the primary street boundary, measured at 90° from the boundary, determined by averaging the three most typical setbacks of the four closest residential buildings that face the same side of the street.

As detailed in the building envelope compliance table, with the exception of minor front balcony protrusions, the proposal details a compliant front setback in accordance with C1, consistent with that established by surrounding development, containing sufficient landscaped areas and deep soil planting to reinforce the existing streetscape character of Boronia Road.

Non-compliance in terms of the minor front balcony protrusions is supported as numerical non-compliance does not hinder achievement of the underlying objectives O1, O2 and O3 as follows:

- O1 The new residential flat building reinforces the existing streetscape and character of the location.
- O2 The front setback of the new residential flat building is consistent with surrounding envelopment to Boronia Road.
- O3 Adequate landscaped area and deep soil planting (61%) forward of the building is achieved to the Boronia Road frontage in excess of the required 40% under part B3.7.1.

The proposed building includes adequate articulation and architectural detail to the street frontage and positively contributes to the streetscape in accordance with C2.

The proposal is adequately accordant with the relevant front setback objectives and controls:

- O1, O2, O3 and C1 (front setback)
- O4 and C2 (maximum unarticulated width)

Part B3.2.3: Side Setbacks



Fig. Existing south side setback to the Boronia Street elevation.



Fig. Existing north side setback to the Boronia Street elevation.

The side setback under C2 is the horizontal distance between the side property boundary and the building envelope, measured at 90° from the boundary at the front setback.

With a lot width of 15.24m measured at 90° from the boundary at the front setback, C2 requires a minimum side setback of 1.5m. As detailed in the building envelope assessment table, the proposal accords with C2.

C4 requires buildings to have a maximum unarticulated wall lengths of 12m to side elevations. As detailed in the building envelope assessment table, the proposal is compliant with the maximum 12m side elevation wall length control under C4.

The proposal accords with the relevant side setback and maximum unarticulated width objectives and controls:

O1, O2, O3, O4, O5, O6, O7, C2 and C4 (side setback and maximum unarticulated width)

Part B3.2.4: Rear Setback

The numerical rear setback control under C1, C2 and C3 is a consequence of the site depth, front setback and building depth as set out in the formula at Figure 6 of Part 3.2.4.

As required by C3 for development in the R3 Medium Density Residential Zone where an FSR applies, the building depth is 60% of the site depth.

Formulaic compliance with C1 and C3 results in a rear setback as follows:

12.428m (45.72m - 27.432m (60.935m x 0.6) – 5.86m)

As detailed in the building envelope assessment table, the proposed rear setback accords with the rear setback controls under C1, C2 and C3.

The proposal accords with the relevant rear setback objectives and controls:

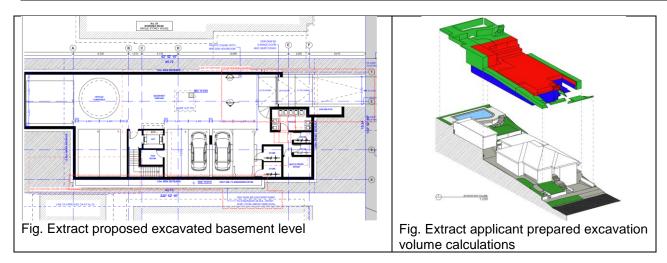
O1, O2, O3, O4, O5, O6, O7, C1. C2 and C3 (rear setback)

Conclusion

The proposal is acceptable with regard to the building envelope controls in Part B3.2 of the Woollahra DCP 2015.

15.2.2. Part B3.4: Excavation

Site Area: 696.8m ²	Proposed	Control	Complies
C2 and C4 B3.4 Maximum Volume of Excavation and applicable variations for RFB	966.08m ³ (1564.7m ³ – C4 a) 890m ³ car parking – C4 b) 32m ³ storage)	696.8m ³ prior to applying exemptions in C4: a) excavation for parking b) 8m ³ excavation per dwelling for storage	Yes
C6 and C7 B3.4 Excavation, Piling and Subsurface Wall Setback Northwest side elevation South east side elevation	1.5m 1.5m	1.5m 1.5m	Yes Yes
C9 B3.4 Geotechnical Report	Geotech report submitted	Required Where > 2.0m	Yes



- O1 To set maximum acceptable volumes of excavation which:
 - a) require buildings to be designed and sited to relate to the existing topography of the site;
 - b) ensure excavation, including the cumulative impacts of excavation, does not adversely impact land stabilisation, ground water flows and vegetation;
 - c) avoid structural risks to surrounding structures;
 - d) ensure noise, vibration, dust and other amenity impacts to surrounding properties during construction are reasonable;
 - e) enable deep soil planting in required setbacks;
 - f) ensure traffic impacts and impacts on local infrastructure arising from the transfer of excavated material from the development site by heavy vehicles are reasonable; and
 - g) satisfy the principles of ecologically sustainable development (including the energy expended in excavation and transport of material and the relative energy intensity of subterranean areas in dwellings).
- C2 For a residential flat building, manor houses, multi dwelling housing, multi dwelling housing (terraces), or attached dwelling development (including attached and detached garaging)—the maximum volume of excavation permitted is no greater than the volume shown in Figure 14B.

- C4 A variation to the volume shown in Figure 14B will be considered for residential flat buildings only, however the maximum volume of excavation permitted will only be the amount needed to accommodate:
 - a) car parking to comply with the maximum rates in Part E1 of this DCP and any reasonable access thereto, if the maximum car parking rates are required by the Council; and
 - b) storage at a rate of 8m³ (cubic metres) per dwelling
- C5 The volume controls in C1 and C2 above do not apply to backyard swimming pools and tennis courts located outside the building envelope. (Note: Separate controls apply which limit excavation, refer to Section 3.7.4 Ancillary development swimming pools, tennis courts and outbuildings).
- C6 Basement walls and any piling (or similar structural elements) must be no closer to the boundary than permitted by the setback controls (refer to Figure 15).
- C7 Notwithstanding C6, basement walls and any piling (or similar structural elements) for residential flat buildings, manor houses, multi dwellings housing, multi dwelling housing (terraces) and attached dwellings must be no closer to the boundary than 1.5m (see Figure 16).
- C9 Excavation below 2m or within 1.5m of the boundary must be accompanied by a geotechnical and hydrogeological report and a structural report demonstrating that the works will not have any adverse effect on surrounding structures

The application is subject to an objection in terms of the volume of excavation and the residual void area located between the basement level car parking and the first floor level of Unit 4:

- As detailed in the below assessment the volume of proposed excavation is acceptable in terms
 of achieving compliance with the applicable objectives and controls of Part B3.4 of the
 Woollahra DCP 2015.
- The void arises from the siting of the proposed development relative to the slopping topography
 of the site and the proposed provision of on-site parking to a single basement level which is
 supported by Council's Traffic Engineer and accords with the relevant on-site parking
 provisions contained in the Woollahra DCP 2015.
- As detailed in the below assessment basement level car parking is required under O2 and C5
 of Part B3.6 of the Woollahra DCP 2015 for all denvelopment involving three or more dwellings
 to ensure that on-site parking does not detract from the streetscape character and amenity.

C2 limits the the calculable maximum volume of excavation to 696.8m³ for a residential flat building to the subject site excluding the permissible excavation variations under C4.

As detailed in the excavation compliance table, the total volume of excavation proposed exceeds that permitted under C2 prior to applying the permissible excavation variations under C4.

The submitted SEE in support of the proposal has requested that council to apply the variations as permitted under C4 including as follows:

• The building has been sited to relate to the topography where practicable. As the site is located on a sloping allotment, excavation is required to accommodate compliant basement car parking and level access to private open space areas throughout the development...

• ...As the basement will be solely used for car parking, storage, waste and services, and will not contain habitable spaces, the proposed additional excavation would be considered appropriate in the circumstances of this case.

The permissible 922m³ excavation volume variation under control C4 detailed in excavation compliance table is calculated as follows:

- C4 a) 890m3 volume of excavation associated with basemen level car parking to comply with the maximum rates in Part E1 of this DCP and access thereto.
- C4 b) 32m³ volume of excavation for storage at a rate of 8m³ (cubic metres) per dwelling.

As detailed above applying the permissible 922m³ excavation variation under control C4 results in total calculable excavation volume of 642.7m³ which is less than the maximum 696.8m³ specified under C2.

C5 excludes including excavation volumes for the proposed rear swimming pool which is located to the rear setback are of the site to the total excavation volume under C2.

Accordingly, proposed excavation is compliant in terms of the maximum volume of excavation controls and permitted variations under C2, C4 and C5.

As detailed in the excavation compliance table, the proposal accords with C6 and C7 which specify basement walls for residential flat buildings are to be no closer than 1.5m from site boundaries.

Council's Technical Services have reviewed the submitted Geotechnical Report in support of the proposal as required by C9 and have no objections to the proposed excavation on technical grounds subject to conditions of development consent.

As detailed in the excavation compliance table, the proposal accords with C7 which requires basement walls for residential flat buildings to be no closer than 1.5m from site boundaries.

The proposal is accordant with the applicable objectives and controls:

O1, O2, O3, O4, O5, C2, C4, C5, C6, C7 and C9 (excavation controls)

15.2.3. Part B3.5: Built Form and Context

Part B3.5.1: Streetscape and Local Character

	Proposed	Control	Complies
C2 B3.5.1 Retain vegetation of landscape value	Vegetation of landscape value retained	Vegetation of landscape value retained	Yes
C3 B3.5.1 Siting of Development	Building form steps down slope of site and follows the topography of the land	Steps down sloping sites and follows the topography of the land	Yes
C4 B3.5.1 External building materials and colours	External building materials and colours do not detract from the streetscape.	External building materials and colours do not detract from the streetscape.	Yes
C5 B3.5.1 Roof forms and roof structures	Suitably accordant	Well-designed, contribute positively to streetscape, well- integrated with the architecture	Yes
C6 B3.5.1 Materials	Use of reflective materials is minimised	Use of reflective materials is minimal	Yes

	Proposed	Control	Complies
C8 B3.5.1 Roof Materials	Non-reflective	Roof materials are non-reflective	Yes



Fig. Applicant supplied photomontage of streetscape presentation.

The design of the proposed residential flat building is consistent with the desired future character of the Bellevue Hill South Residential Precinct and will positively contribute to the Boronia Road streetscape.

The development is of high visual quality that will enhance the Boronia Road streetscape.

The proposal is compliant in terms of the applicable objectives and controls:

- O1, O2, O3, C1, C2, C3, C4, C5 and C6 (streetscape character)
- O4 and C8 (roof forms)
- O5 and C9 (public domain surveillance)

Part B3.5.2: Overshadowing

	Existing	Proposed	Control	Complies
C1(a) Solar Access to ground level open space of adjacent properties				
24 Boronia Road	>50% and >35m ²	No change		Yes
20 Boronia Road	>50% and >35m ²	>50% and >35m ² 9am – 3pm	F00/ 0F 2 f	Yes
18 Boronia Road	>50% and >35m ² 9am – 12pm	>50% and >35m ² 9am - 12pm	50% or 35m ² for 2 hours	Yes
15 Blaxland Road	>50% and >35m ² 9am – 3pm	No change		Yes
13 Blaxland Road	>50% and >35m ² 9am - 3pm	No change		Yes

- O1 To minimise overshadowing to adjoining properties.
- C1 The development is designed so that:
 - a) sunlight is provided to at least 50% (or 35m² with a minimum dimension of 2.5m, whichever is the lesser) of the main ground level private open space of adjacent properties for a minimum of 2 hours between 9am and 3pm on 21 June. Where existing overshadowing is greater than this, sunlight is not further reduced; and
 - b) north facing windows to upper level habitable rooms of adjacent dwellings receive at least 3 hours of sun between 9am and 3pm on 21 June over a portion of their surface.
- C2 Lot orientation may make C1 above difficult to achieve so a reduced amount of solar access may be considered, provided the proposed building complies with all setback controls.

The proposal is supported by both horizontal shadow diagrams (Shadow Diagram Drawing DA9100 Rev A) and views from the sun (Solar Access Drawing DA9200 A).

The Woollahra DCP 2015 definition of north facing is as follows:

• **north facing** the orientation range within 20° west and 30° east of true solar north.

Control C1b) which applies to north facing habitable windows of adjacent dwellings is not applicable as any upper level habitable rooms of the adjacent dwelling to 20 Boronia Road Bellevue Hill are orientated approximately 42° east of true solar north.

As detailed in the compliance table the proposal maintains compliant solar access to adjoining private open space in terms of control C1.

The proposal accords with the relevant access to sunlight provisions in Part B3.5.2 and is compliant in terms of the applicable objectives and controls:

• O1, C1 and C2 (overshadowing to adjoining properties)

Part B3.5.3: Public and Private Views

The proposal would not give rise to any impacts in terms of public and private views or view sharing.

The proposal is compliant in terms of the applicable objectives and controls:

- O1, O2, Cl, C2, C3 and C4 (public views and vistas)
- O3, C5, C6 and C7 (private views)
- O4, C9 and C10 (landscaping)

Part B3.5.4: Acoustic and Visual Privacy

- O1 To ensure adequate acoustic privacy for occupants and neighbours.
- O2 To ensure adequate visual privacy for occupants and neighbours while balancing the need to provide for reasonable levels of environmental amenity, including access to sunlight and ventilation, and good architectural outcomes.
- O3 To minimise the impacts of private open space.

Under Clause 6A(1) and (2) of the SEPP 65, any controls in the Woollahra DCP 2015 relating to acoustic and visual privacy, are overridden by controls in Part 3F (Visual Privacy) and Part 4H (Acoustic Privacy) in SEPP 65. Refer to Section 10 for detailed discussion.

Council's standard conditions relating to the control of offensive noise and the attenuation of noise from mechanical plant have been recommended (refer to recommended **Conditions C.17, I.5** and **I.6.**

Recommended **Condition C.1** requires that the second floor level bathroom window opening to the south elevation must consist of fixed translucent glazing to a minimum height of 1.65m above the first floor level in accordance with O2 and C5 of B3.5.4 of the Woollahra Development Control Plan 2015.

Part B3.5.5: Internal Amenity

Numerical non-compliance with C2 in terms of not all sanitary compartments having direct natural light and direct natural ventilation, is not determinative to this assessment.

The proposal is adequately compliant in terms of the applicable objectives and controls:

• O1, O2, C1, C2, C3 and C4 (adequate internal amenity)

15.2.4. Part B3.6: On-Site Parking

Site Frontage: 15.24m	Proposed	Control	Complies
C1 B3.6 Location of Parking	Within the Buildable Area	Within the Buildable Area	Yes
C2 B3.6 Width of car parking structures facing the street frontage	<6m	40% of Frontage or maximum 6m	Yes
C5 B3.6 Basement Parking	Basement Parking	Required for 3 or More Dwellings	Yes
C11 B3.6 Width of Driveway	3.1m Minimised	Minimised	Yes
C12 B3.6 Maximum Number of Driveways	1	One	Yes

The proposal accords with C1 in terms of the on-site parking being suitably designed and located so that:

- a) Access does not dominate the Boronia Road street frontage;
- b) Access includes retention of trees and vegetation of landscape value; and
- c) On-site parking is located within the building envelope.

The proposal accords with C2 in terms of the proposed access structures facing the Boronia Road limited to 40% of the site frontage and less than 6m.

The proposal is compliant in terms of the applicable objectives and controls:

- O1, O2, O3, O4, C1, C2, C3, C4 and C5 (general parking controls)
- O6, O7 and C10 (on-site parking including separate structures)
- O8, C11, C12 and C13 (visual and environmental impacts)

15.2.5. Part B3.7: External Areas

Site Area: 696.8m ²	Proposed	Control	Complies
		180.52m ²	
C1 B3.7.1 50% of the site area outside the buildable area	186.88m² 52%	50% of the site area outside the	Yes
361.03m² x 0.5	32 /6	buildable area is deep soil landscaped area	

Site Area: 696.8m ²	Proposed	Control	Complies
C2 B3.7.1 Deep Soil Landscaping – Front Setback 89.31m ² x 0.4	41.8m² 33.7%	35.72m ² 40% of front setback	Yes
C4 B3.7 Deep Soil Landscaping – Rear Setback 189.43m ² x 0.5	89.24m² 47%	94.72m ² 50% of rear setback	No
C11 B3.7.4 Private Open Space Total Area Minimum dimension	>8m² >2m	8m² 2m	Yes Yes

Part 3.7.1: Landscaped Areas and Private Open Space

- O1 To ensure that the areas outside the floorplate contribute to the desired future character of the location.
- O2 To provide sufficient deep soil landscaped area to support substantial vegetation.
- O3 To provide for on-site stormwater absorption.
- O5 To ensure that dwellings in residential flat buildings, manor houses, multi dwelling housing or multi dwelling housing (terraces) are provided with adequate private open space that enhances the amenity of the dwellings.

As detailed in the compliance table above, with the exception of provision of deep soil landscape area to the rear setback area of the site under C4, provision of deep soil landscape area and private open space area is accordant with C1, C2 and C11.

Numerical non-compliance with C4 is supported on the basis that proposed provision of deep soil does not derogate against the deep soil landscape area objectives O1, O2 and O3 in terms of:

- O1 Ensuring areas outside the buildable area contribute to the desired future character of the Bellevue Hill South residential precinct.
- O2 Provision of sufficient deep soil landscaped area to support substantial vegetation.
- O3 Adequate provision for on-site storm water absorption having regard to overall compliance with C1.

In all other aspects the proposal is compliant in terms of the applicable objectives and controls:

- O1, O2, O3, C4 and C5 (sufficient deep soil landscaped area)
- O4, C8, C9 and C10 (accessible and useable primary open space)
- O5 and C11 (adequate private open space residential flat buildings, manor houses, multi dwelling housing or multi dwelling housing (terraces)
- O6, C12, C13, C14 and C15 (private open space design)
- O7, O8, O9, O10, C16, C17, C18, C19 and C20 (landscaping)

Part 3.7.2: Fences

	Proposed	Control	Complies
C4 B3.7.2 Front Fence Height	0.6m	1.2m if solid; or 1.5m if 50% transparent or open	Yes
C7 B3.7.2 Gate Swing	Swing path set behind boundary	Opens Inwards	Yes
C9 B3.7.2 Side and Rear Fence Height	Not fully detailed	1.8m	Yes

In accordance with O5 and C9 without affecting the amenity to adjoining properties **Condition C.1 d)** is recommended requiring new side and rear boundary timber piling fencing be located along

the boundary of the subject site and not exceed 1.8m and involve demolition/excavation works located outside of the subject site.

As recommended to be determined, the proposal is compliant in terms of the applicable objectives and controls:

- O1, O2, O3, O4, C1, C2, C3, C4, C5, C7 and C8 (fences general controls)
- O5, C9 and C10 (rear and side fencing)
- O6 and C11 (sloping streets)
- O7, O8, C12, C13, C14, C15 and C16 (streetscape/building character fences and walls)
- O7, O8 and C15 (material detailing)

Part 3.7.3: Site Facilities

In accordance with Part B3.7.3 design, provision and integration of site facilities is acceptable in terms of the overall appearance and streetscape presentation of the development.

Council's standard condition, **Condition F.4** is recommended to be imposed requiring that all letter boxes must be constructed and located in accordance with AS/NZS 4253:1994 *Mailboxes* and to Australia Post's satisfaction in accordance with O1 and C1 of Section B3.7.3.

Council's standard condition, **Condition C.18** is recommended to be imposed requiring acoustic certification of mechanical plant and equipment (including AC condensers) to minimise acoustic impacts to adjoining properties in accordance with O8 and C8 of Section B3.7.3.

In accordance with O6, O7, O8, C7, C8 and C9 of Section B3.7.3 to minimise visual and amenity impacts, **Condition C.1 b)** is recommended requiring that:

- Roof level services mechanical plant equipment is to be limited to the lift overrun and is to be confined to the location detailed to the to the approved roof plan, and annotated as "LIFT OVERRUN".
- Mechanical plant equipment with the exception of the approved lift overrun must be located internally within the principal building in suitably designed plant room or the like to ensure that they do not result in adverse streetscape or amenity impacts.
- The location of air conditioning plant equipment is to be internally housed in an approved plant room area.

Condition A.5 is imposed in accordance with O9 and C10 the burning of solid fuels to the proposed external fire pit located to the front private open space of Unit 1 is not approved as part of this application.

As recommended to be determined the proposal is compliant in terms of the applicable objectives and controls:

- O1, O2, O3, O4, C1, C2, C3 and C4 (mail boxes, storage and cloths drying)
- O6, O7, O8, C7, C8 and C9 (Mechanical plant equipment)
- O8 and C11 (adequate garbage and recycling collection areas)
- O9 and C10 (new fireplaces burn non-solid fuels)
- O10 and C11 (waste management)
- O11, C12 and C13 (site services and streetscape)

Part B3.7.4 Ancillary Development – Swimming Pools, Tennis Courts and Outbuildings

Swimming Pools

Part 3.7.4: Swimming Pools	Proposed	Control	Complies
C3 B3.7.4 Swimming pool water edge from property boundaries	>1.8m	1.8m	Yes
C4 B3.7.4 Level of Swimming Pool surround above or below ground level	0.3m – 1.6 below ground level	Max 1.2m	No
C5 B3.7.4 Maximum Depth of Swimming Pool	2m	Max 2m from pool surround level	Yes

O1 To provide for recreational opportunities for swimming without compromising the amenity of the adjoining properties.

As detailed in the above compliance table the siting of the pool is in part located greater than 1.2m below existing ground contrary to C4. The SEE in support of the proposal specifies this is due to the need to provide level POS from Unit 4 and to improve surveillance safety.

Numerical non-compliance is supported for the reasons advanced by the applicant and that non-compliance would not hinder achievement of the underlying objectives O1, O2 and O3 of the control.

In all other aspects, the proposal is compliant with the applicable objectives and controls:

O1, O2, O3, C1, C2, C3, C4, C5 and C6 (swimming pools)

Conclusion

The proposal is acceptable with regard to the external controls in Part B3.7 of the Woollahra DCP 2015.

15.2.6. Part B3.8: Additional Controls for Development Other Than Dwelling Houses

Part B3.8.1 Minimum lot width

	Proposed	Control	Complies
C1 B3.8.1 Minimum lot width RFB >3 Units	15.24m	21m	No*

^{*} Existing non-compliance/not determinative

O1 To ensure that sites have a minimum width to provide for the amenity of occupants and adjoining properties.

C1 requires a minimum lot width of 21m for a residential flat building containing four or more dwellings.

The subject site has a lot width of 15.24m, which does not comply with C1.

O2 To limit excavation.

O3 To retain trees and vegetation of landscape value.

Numerical non-compliance is not determinative to this application. In accordance with the underlying objective outcome, the design of the proposal provides suitable amenity for occupants and adjoining properties.

Part B3.8.6 Residential flat buildings, manor houses, multi dwelling housing and multi dwelling housing (terraces)

It is noted that in addition to the Woollahra DCP 2015 controls, *State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP 65)* is also a mandatory consideration for all applications for residential flat buildings and multi dwelling housing that is three or more storeys and contains four or more self-contained dwellings. Refer to Section 10 of this assessment report for detailed assessment.

Conclusion

The proposal is acceptable with regard to the additional controls in Part B3.8 of the Woollahra DCP 2015.

15.3. Chapter E1: Parking and Access

Council's Traffic Engineer assessed the proposed development parking controls against Chapter E1 Parking and Access of the Woollahra DCP 2015.

Parking for residential uses is calculated using the generation rates specified in E1.4.2.

The tables below have been copied from their referral response which is included as Attachment 5 to this assessment report.

Table 1: Car Parking Provision

Residential Component	Quantity	DCP Maximum Requirement per Dwelling	DCP Maximum Permitted Parking
3 bedroom	4	2	8
Visitors	4	0.25	1.25 (1)
Total permitted			9
Proposed provision			8

Table 2: Bicycle and Motorbike Parking Provision

BICYCLE			
	Quantity	DCP Minimum Requirement	DCP Minimum Required Parking
Residential Residents	4 dwellings	1 per dwelling	4
Residential Visitors	4 dwellings	1 per 10 dwellings	0.4 (0)
Total required			4
MOTORBIKE			
	Quantity	DCP Minimum Requirement	DCP Minimum Required Parking
Car Spaces	8	1 per 10 car spaces	0.8 (1)
Total required			1

Council's Traffic Engineer have provided the following comments:

The proposal includes four (4) storage rooms that can accommodate four (4) bicycle parking spaces, which complies with DCP's minimum requirement. The non-provision of motor bike parking will result in a shortfall of one (1) space than DCP's requirement, however given the nature and scale of the development, motor bike parking demand is minor and can be accommodated in the car parking spaces allocated to each unit if necessary. The marginal shortfall is therefore considered acceptable.

15.3.1. Part E1.4: Residential parking

The proposed provision of eight (8) car parking spaces (including four (4) spaces for residents and four (4) spaces for visitors) complies with the Woollahra DCP 2015 maximum requirement.

15.3.2. Part E1.6: Bicycle parking and end-of-trip facilities

The proposal accords with the relevant objectives and controls:

- O1, C1 and C2 (Bicycle parking)
- O2, C3 and C4 (Bicycle facilities)

Council's Traffic Engineer has deemed the proposed bicycle parking as satisfactory and therefore the proposal is acceptable with regard to Part E1.6 of the Woollahra DCP 2015.

15.3.3. Part E1.7 Motorcycle parking rates

Council's Traffic Engineer has deemed numerical non-compliance in terms of the provision motorcycle parking acceptable and therefore on this basis the proposal is acceptable with regard to Part E1.7 of the Woollahra DCP 2015.

15.3.4. Part E1.10: Parking and Access Design Standards

Council's Development Engineer and Council's Traffic Engineer have reviewed the proposal and advised that subject to conditions of development consent which forms part of the recommendations of this report, that the proposed vehicular access and car parking layout will comply with AS2890.1:2004: Parking Facilities - Off-Street Car Parking.

15.3.5. Part E1.11 Electric vehicle charging points

The controls for electric vehicle charging points encourage and support the increased use of electric vehicles by ensuring the installation of appropriate electric circuitry and dedicated electric vehicle charging points.

- O1 To encourage and support increased usage of electric vehicles
- C4 All new residential and non-residential development (other than for dwelling houses, semidetached dwellings or dual occupancies) must provide 1 car parking space or 10% of all car parking spaces – whichever is greater - to have a 'Level 2' electric vehicle charging point installed.

Compliance with O1 and C1 is achieved by conditions of consent. Refer to **Condition C.17** and **F.8.**

Conclusion

As recommended to be determined the proposal is accordant with regard to the parking and access objectives and controls in Chapter E1 of the Woollahra DCP 2015.

15.4. Chapter E2: Stormwater and Flood Risk Management

Council's Drainage Engineer has reviewed the development proposal and advised that the proposal is generally satisfactory and on this basis does not require flood specific conditions of consent.

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

15.5. Chapter E3: Tree Management

Council's Trees Officer has reviewed the development proposal and provided recommend conditions of development consent.

As recommended to be determined, the proposal is acceptable with regard to Chapter E3 of the Woollahra DCP 2015.

15.6. Chapter E4: Contaminated Land

Part E4.2.1 Initial evaluation

Part E4.2.1 requires an initial evaluation must accompany every development application to determine whether contamination is an issue and where sufficient information is available to carry out a planning function.

SEPP (Resilience and Hazards) 2021 includes outlines controls of what should be considered when undertaking the initial evaluation. The long-term land use of the site as well as surrounding adjoining land uses has been and continues to be residential and is therefore it is considered unlikely by the applicant to be contaminated. On this basis, further investigation was not considered necessary.

The proposal is satisfactory with regard to Chapter 4 of SEPP (Hazards and Resilience) 2021 and the proposal is acceptable with regard to Chapter E4 of the Woollahra DCP 2015.

15.7. Chapter E5: Waste Management

Chapter E5 is applicable to all development and seeks to establish waste minimisation and sustainable waste management during demolition and construction phases and throughout the ongoing use of the building.

15.7.1. E5.3 On-site waste and recycling controls for all development

The SWMMP addresses volume and type of waste and recyclables to be generated, storage and treatment of waste and recyclables on site, disposal of residual waste and recyclables and operational procedures for ongoing waste management once the development is complete.

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

The proposal is compliant in terms of the applicable objectives and controls:

- O1, O2, O3, C1, C2, C3, C4, C5 and C6 (promote reuse and recycling in residential flat buildings)
- O3, C7, C8, C9, C10 and C11 (waste and recycling collection points)

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

15.7.2. Part E5.5: Multi Dwelling Housing and Residential Flat Buildings

The proposal is compliant in terms of the applicable waste minimisation and sustainable waste management objectives and controls:

- O1, C1, C2, C4 and C5 (promote reuse and recycling in residential flat buildings)
- O2, C8, C9, C11 and C12 (waste and recycling collection points)

The proposal is acceptable with regard to the objectives and controls in Chapter E5 of the Woollahra DCP 2015.

15.8. Chapter E6: Sustainability

15.8.1. E6.3 Solar energy systems (including solar panels, solar hot water systems and solar heating systems

- O1 To minimise the amenity impacts of solar energy systems particularly in regard to streetscape impacts, scenic quality, visual impact and view loss.
- C1 The solar energy system meets the following location requirements:
 - a) is in line with the roof surface or no more than 300mm above and parallel with the roof surface:
 - b) is located behind the front setback and not visible from the street;
 - c) does not involve mirrors or lenses to reflect or concentrate sunlight; and
 - d) for buildings in heritage conservation areas and buildings which are heritage items— is not located on any part of a roof plane, wall or chimney of the principal building form.
- C2 The location of the solar energy system does not have an unreasonable visual impact on:
 - a) the streetscape and scenic quality of the area;
 - b) visual quality of the area when viewed from the harbour or a public recreation area;
 - c) amenity of adjoining and adjacent properties; or
 - d) existing harbour and city views obtained from private properties.

Note: A view analysis and/or heritage impact assessment may be required as a part of the DA to detail the extent of potential impacts.

The proposed residential flat building includes an alternative energy system (photovoltaic system).

The submitted architectural plans and SEE in support of the proposal are silent in terms of the maximum level of the roof mounted solar panels building height of the location of the photovoltaic system.

Condition C.1 a) is recommended to be imposed to ensure certainty of development consent in terms of maximum building height inclusive of photovoltaic panels not exceeding RL 31.8 AHD in accordance of O1, C1 and C2 of Part E6.3 of the Woollahra DCP 2015.

As recommended to be determined the proposal is compliant in terms of the applicable objectives and controls:

• O1, C1 and C2 (amenity impacts of solar energy systems)

The proposal as recommended to be determined is acceptable with regard to the objectives and controls in Chapter E6 of the Woollahra DCP 2015.

15.9. Chapter E8: Adaptable Housing

15.9.1. Part E8.2 Adaptable housing

	Proposed	Control	Complies
C1 E8.2 Adaptable housing mix	Less than 10 units	10% adaptable housing for development comprising 10 or more dwellings to Class A certification under AS 4299 – Adaptable housing.	Yes

- O1 To increase the amount of building stock that provides for adaptable housing.
- O2 To provide opportunities for dwellings to be readily converted into accessible dwellings to meet the current and future needs of the community.
- C1 Development for an attached dwelling, multi dwelling housing, multi dwelling housing (terraces), manor houses, residential flat building or shop top housing containing 10 or more dwellings, designs and constructs at least 10% of the dwellings to Class A certification under AS 4299 Adaptable housing.

An adaptable dwelling is a dwelling that can be modified to be an accessible dwelling.

An accessible dwelling is a dwelling designed and built to accommodate the needs of people with a disability, and which complies with the AS 1428 - Design for access and mobility.

The proposal restricted to 4 apartments accords with C1.

In accordance with the underlying objectives O1 and O2, The Apartment Design Guide Report prepared in support of the proposal specifies that:

- The proposal complies with the Living Housing Guideline's silver level universal design features.
- The oversized nature of the apartments means they could be adapted with relative ease.

The proposal is compliant in terms of the applicable adaptable housing objectives and controls:

O1, O2, C1 and C2 (Adaptable housing)

The proposal is acceptable with regard to the objectives and controls in Chapter E8 of the Woollahra DCP 2015.

16. SECTION 7.12 CONTRIBUTIONS PLAN

In accordance with Schedule 1, a 1% levy applies with the monies being used for a variety of works as outlined in Schedule 2 of the Section 7.12 Contributions Plan 2022.

17. APPLICABLE ACTS/REGULATIONS

17.1. Environmental Planning and Assessment Regulation 2021

Clause 61(1) Additional matters that consent authority must consider

Clause 61(1) of the EPA Regulation 2021 requires Council to take into consideration Australian Standard AS 2601-2001: The demolition of structures. This requirement is addressed by Council's standard condition.

17.2. National Parks and Wildlife Act 1974

Council's Heritage Officer has recommended conditions relating to unexpected findings of Aboriginal archaeological objects and associated requirements in order to satisfy the relevant requirements of the National Parks and Wildlife Act 1974.

17.3. Swimming Pools Act 1992

The Swimming Pools Act 1992, requires swimming pools to be surrounded by a child-resistant barrier, which separates the swimming pool from any residential building. The barrier must be designed, constructed, installed and maintained in accordance with the standards prescribed by the regulations.

Additional provisions relate to:

- a) Swimming pool registration in accordance with Section 30B of the Swimming Pools Act 1992
- b) A Certificate of Compliance pursuant to Section 22D of the Swimming Pools Act 1992
- c) Water recirculation and filtration systems
- d) Backwash discharge to the sewer

These requirements are imposed by standard condition.

18. THE LIKELY IMPACTS OF THE PROPOSAL

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

19. THE SUITABILITY OF THE SITE

The site is considered suitable for the proposed development as conditioned.

20. CONCLUSION

This assessment has considered the application in terms of the relevant matters under Section 4.15(1) of the Environmental Planning and Assessment Act and other relevant considerations and the proposal is considered to be satisfactory in this regard, subject to conditions.

21. DISCLOSURE STATEMENTS

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

22. RECOMMENDATION: PURSUANT TO SECTION 4.16 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, is satisfied that the written requests from the applicant under Part 4.6 of the Woollahra Local Environmental Plan 2014 to the $700m^2$ Minimum Lot Size development standard under Clause 4.1 and the 9.5m Height of Buildings development standard under Clause 4.3 of Woollahra LEP 2014 have adequately addressed the relevant matters and the proposed development will be in the public interest because it is consistent with the relevant objectives of the particular standard and the zone. The Panel assumes the concurrence of the Secretary, Department of Planning, Industry and Environment.

AND

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, grant development consent to Development Application No. 210/2023/1 for demolition of the existing dwelling, and construction of a new residential flat building containing four units and basement parking, swimming pool, and associated landscaping on land at 22 Boronia Road Bellevue Hill, subject to the following conditions:

A. General Conditions

A.1 Conditions

Consent is granted subject to the following conditions imposed pursuant to section 4.16 of the *Environmental Planning and 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 4.15 of the *Act*.

Standard Condition: A1 (Autotext AA1)

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.

PC means the Principal Certifier 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 meaning 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.

Woollahra LEP means Woollahra Local Environmental Plan 2014

Woollahra DCP means Woollahra Development Control Plan 2015

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. Standard Condition: A2 (Autotext AA2)

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 both the architectural plans to which is affixed a Council stamp "Approved" and supporting documents listed below as submitted by the Applicant unless modified by any following condition.

Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
DA1001 A	Site plan	Mark Shapiro Architects	25/05/2023
DA2000 B	Basement plan	·	03/08/2023
DA2001 B	Ground floor plan		03/08/2023
DA2002 A	First floor plan		25/05/2023
DA2003 A	Rear first floor plan		25/05/2023
DA2004 A	Second floor plan		25/05/2023
DA2005 A	Roof level plan		25/05/2023
DA2300 B	Section A		03/08/2023
DA2301 A	Section B		25/05/2023
DA2302 A	Section C		25/05/2023
DA2303 A	Section D		25/05/2023
DA2400 A	East elevation		25/05/2023
DA2401 A	North elevation		25/05/2023
DA2402 A	West elevation		25/05/2023
DA2403 A	South elevation		25/05/2023
DA2500 B	Driveway detail		03/08/2023
DA2501 B	Driveway detail		03/08/2023
DA2502 B	Footpath plan and section		03/08/2023
DA2503 B	Section D1		03/08/2023
DA2504 B	Section D2	NOMB	03/08/2023
1367774M	BASIX Certificate	NSW Department of	30/05/2023
DA0404 A	E'c'ala a sala a la	Planning and Environment	05/05/0000
DA2404 A	Finishes schedule	Mark Shapiro Architects	25/05/2023
23.081r01v02	Transport Impact Statement	TRAFFIX	11/04/2023
23.081r02v03	Traffic Response to Request for Information	TRAFFIX	08/08/202
220537	Stormwater Management Plan	SMART Structures Australia	20/07/2023
D00 Rev B			16/08/2023
D01 Rev C			20/07/2023
D02 Rev B			20/07/2023
D03 Rev B			20/07/2023
D10 Rev B			20/07/2023
D15 Rev B			25/01/2023
D16 Rev A			20/07/2023
D17 Rev B			20/07/2023
D18 Rev B			
P2810_01 rev1	Geotechnical Report	Morrow	03/07/2023
SHI-220537-2	Structural Design Certificate	SMART Structures Australia	17/08/2023
	Site Waste Minimisation and	Mark Shapiro Architects	15/03/2023
	Management Plan		

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 4.17(1)(g) of the *Act* modifying or amending the development (refer to conditions which must be satisfied prior to the issue of any *Construction Certificate*.) Standard Condition: A5 (Autotext AA5)

A.4 Ancillary Aspects of Development (section 4.17(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* (2012) unless expressly provided otherwise by these conditions at the Owner's expense.

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

Standard Condition: A8 (Autotext AA8)

A.5 Development Consent is Not Granted in Relation to these Matters

This approval does not give consent to

a) The burning of solid fuels to the proposed external fire pit to located to the private open space of Unit 1.

This condition is imposed to ensure certainty of development consent and to protect the air quality and residential amenity in accordance with O9 and C10 of Section B3.7.3 of the Woollahra DCP 2015.

Standard Condition: A9 (Autotext AA9)

A.6 No Underpinning works

This development consent does <u>NOT</u> give approval to any works outside the boundaries of the subject property including any underpinning works to any structures on adjoining properties and Council's property.

A.7 Vehicular Access and Garaging

Driveways and vehicular access ramps shall be designed to provide adequate ground clearance to the underside of B99 vehicles. In all respects, the proposed vehicular access including any parking spaces must be designed and constructed to comply with the minimum requirements of AS2890.1, AS2890.2, AS2890.6 and the Council's DCP.

A.8 Tree Preservation & Approved Landscaping Works

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

- a) The following trees shall be retained
 - Trees on Council Land

Council Ref No.	Species	Location	Dimension (metres)	Tree Value
1	Tristaniopsis laurina	Street tree	6 x 6	\$5000

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

b) The following trees may be removed:

Council Ref No.	Species	Location	Dimension (metres)
11	Archontophoenix cunninghamiana	Rear Yard	9 x 3

Note: Tree/s to be removed shall appear coloured red on the construction certificate plans. **Note:** The species marked (*) is exempt from the WMC DCP 2015 and can be removed without requiring consent from Council.

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 6.6 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 Principal Certifier, and Notice of Commencement under the *Act*.

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

NSWLEC 125.
Standard Condition: B1 (Autotext BB1)

B.2 Identification of Hazardous Material

In accordance with Australian Standard AS2601: *The Demolition of Structures*, the Owner shall identify all hazardous substances located on the site including asbestos, polychlorinated biphenyls (PCBs), lead paint, underground storage tanks, chemicals, etc. per clause 1.6.1 of the Standard.

In this regard, **prior to the commencement of any work**, Council shall be provided with a written report prepared by a suitably qualified competent person detailing:

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

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

Standard Condition: B6

B.3 Public Road Assets Prior to Any Work/Demolition

To clarify the condition of the existing public infrastructure prior to the commencement of any development (including prior to any demolition), the Applicant or Owner must submit to Council a full record of the condition of the public road infrastructure adjacent to the development site.

The report must be submitted to Council **prior to the commencement of any work** and include photographs showing current condition and any existing damage fronting and adjoining the site to the:

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

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

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

Note: If the Applicant or Owner fails to submit the asset condition report required by this condition and damage is occasioned to public assets adjoining the site, Council will deduct from security any costs associated with remedying, repairing or replacing damaged public infrastructure. Nothing in this condition prevents Council making any claim against security held for this purpose Standard Condition: B7

B.4 Aboriginal Objects – Unexpected Findings

If unexpected Aboriginal objects or bones are found during any activity associated with this consent, you must:

- a) Not further disturb or move these objects or bones.
- b) Immediately cease all work at the particular location.
- c) In the case of suspected human remains, notify NSW Police.
- d) Notify the Heritage NSW Environment Line on 131 555 and the La Perouse LALC on (02) 9311 4282 as soon as practicable and provide available details of the objects or remains and their location.
- e) Not recommence any work at the particular location unless authorised in writing by Heritage NSW. Additional assessment and approval pursuant to the *National Parks* and *Wildlife Act 1974* may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

Note: The Definition of Aboriginal object as per the Woollahra Local Environmental Plan 2014: any deposit, object or other material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of an area of New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.

Standard Condition: B10 (Autotext BB10)

B.5 Skeletal Remains

If any skeletal remains suspected of being human are found during construction works, work must cease immediately and no further disturbance of the site must occur. The NSW Police and the Department of Premier and Cabinet, Community Engagement, Heritage must be notified and details of the remains and their precise location are to be provided.

Standard Condition: B9

B.6 Aboriginal Heritage Due Diligence Responsibilities

Nothing in this approval allows to cause harm to an Aboriginal object as defined in the *National Parks & Wildlife Act 1974*. Under the *National Parks & Wildlife Act 1974*, it is an offence to harm Aboriginal 'objects' (consisting of any material evidence of the Aboriginal occupation of NSW) without a valid Aboriginal Heritage Impact Permit under Section 90 of the Act. This applies whether the harm occurs either knowingly [s86(1)] or unknowingly [s86(2)].

It is a defence to the strict liability offence of harm to an Aboriginal object under s86(2) if a process of Due Diligence was followed which reasonably determined that the proposed activity would not harm an Aboriginal object.

Standard Condition: B12 (Autotext BB12)

B.7 Aboriginal Heritage Induction

- a) All construction staff and contractors must be made aware of their statutory obligations for Aboriginal heritage under the *National Parks and Wildlife Act 1974*;
- b) An Aboriginal heritage induction is to be delivered by the La Perouse Local Aboriginal Land Council or by a heritage consultant with Aboriginal heritage expertise, if a representative of the Local Land Council is not able to provide the induction), to explain what Aboriginal heritage may be found and outline the unexpected findings procedures; and
- c) Documentary evidence demonstrating compliance with a. and b. above being submitted to Council and the Principal Certifier.

 Standard Condition: B13 (Autotext BB13)

B.8 Sandstone

If sandstone is uncovered during works, it is to be inspected by a qualified archaeologist specialising in Aboriginal heritage for any evidence of rock engraving. Based on this inspection, a determination will be made as to whether further archaeological monitoring/investigation is required, or whether bulk excavation can continue under the recommended 'unexpected finds' protocol.

B.9 Salvage of stone, bricks, joinery and decorative architectural elements to be demolished

Stone, bricks, joinery and decorative architectural elements to be demolished, which include windows and doors, chimney pieces, sandstone, plaster medallions, fireplaces, timber flooring, decorative ceilings and ceiling roses must be salvaged and where possible reused on the project. Salvaged building materials surplus to the project must either be stored on site for future reuse, or transferred to an established second building material dealer for recycling.

B.10 Establishment of Tree Protection Zone (TPZ) Fence

Tree Protection Zones shall be established around all trees to be retained and in accordance with Section 4 of the *Australian Standard Protection of Trees on Development Sites* (AS 4970- 2009). Tree protection zones must also comply with the following requirements;

a) Tree Protection Zone areas

Council Ref No.	Species	Tree Location	Fence Radius from Centre of Trunk (Metres)
1	Tristaniopsis laurina	Street tree	2m
2	Magnolia grandiflora	Adjacent eastern boundary – within front yard of 24 Boronia Rd	Boundary line
3 – 10	Cupressus spp.	Adjacent western boundary – within rear yard of 20 Boronia Rd	2m from boundary line

Note: Where this condition relates to street trees and the fence cannot be placed at the specified radius, the fencing shall be positioned so that the entire verge (nature strip) area in front of the subject property, excluding existing driveways, footpaths and bus stops is protected.

Note: Where this condition relates to trees on private property the radial distance of fencing shall be positioned only within the subject property.

- b) Tree Protection Zones shall be fenced with a 1.8 metre high chainmesh or weldmesh fence and secured to restrict access. The fence shall be established prior to any materials being bought onto the site and before the commencement of works including demolition. The area within the fence shall be mulched and maintained to a depth of 75mm. The soil within the TPZ shall be kept in a moist condition for the duration of the construction works. Unless approved by the site arborist there shall be no access within the TPZ.
- c) A sign identifying the Tree Protection Zone shall be erected on each side of the protection fence indicating the existence of a TPZ. Signage must be visible from within the development site.
- d) No excavation, construction activity, grade changes, storage of materials, stockpiling, siting of works sheds, preparation of mixes or cleaning of tools is permitted within Tree Protection Zones, unless specified in this consent.
- e) Temporary access within the TPZ for pedestrian and machinery movements shall only be permitted with the approval of the site arborist or unless specified in this consent.
- f) The site supervisor must be made aware of all tree protection requirements associated with these conditions of consent by the project arborist. Any subsequent site personnel and contractors to the site must be made aware of all tree protection requirements by the site foreman.
- g) The project arborist shall provide written certification of compliance with the above condition.

B.11 Permissible work within Tree Protection Zones

The following works are permissible within the Tree Protection Zone:

Council Ref No.	Species	Radius from Trunk (metres)	Approved works
1	Tristaniopsis laurina	3.8m	New front boundary wall and associated landscape works.
2	Magnolia grandiflora	2m	Landscape works.
3-10	Cupressus spp.	2.3m	New boundary wall and associated landscape works.

The project arborist shall provide written certification of compliance with the above condition.

B.12 Demolition and Construction Management Plan

The Demolition and Construction Management Plan shall be reviewed and certified by the Project Arborist that appropriate tree protection measures have been accounted for. The Demolition and Construction Management Plan shall be prepared in accordance with all tree protection measures specified within this consent. Considerations by the Project Arborist shall include but not be limited to:

- a) Drawings and method statement showing details and the location of hoarding and scaffold and any pruning required to accommodate the hoarding and scaffolding;
- b) The movement and positioning of heavy machinery, lifting cranes, pier drilling gantry etc;
- c) Site construction access, temporary crossings and movement corridors on the site defined:
- d) Contractors car parking;
- e) Phasing of construction works;
- f) The space needed for all foundation excavations and construction works;
- g) All changes in ground level;
- h) Space for site sheds and other temporary structures such as toilets;
- Space for sorting and storing materials (short or long term), spoil and fuel and the mixing of cement and concrete; and
- j) The effects of slope on the movement of potentially harmful liquid spillages towards or into tree protection areas.

B.13 Arborists Documentation and Compliance Checklist

The site arborist shall provide written certification that all tree protection measures and construction techniques relevant to this consent have been complied with. Documentation for each site visit shall include:

- A record of the condition of trees to be retained prior to and throughout development
- Recommended actions to improve site conditions and rectification of non-compliance
- Recommendations for future works which may impact the trees

All compliance certification documents shall be kept on site by the Site Foreman.

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

Stage of arboricultural inspection and supervision	Compliance documentation and photos shall be included
Prior to the demolition of any building or construction and prior to the commencement of any development work	 Project Arborist to hold pre construction site meeting with the principal contractor to discuss methods and importance of tree protection measures and resolve any issues in relation to feasibility of tree protection requirements that may arise. Project Arborist to mark all trees approved for removal under DA consent. The project arborist shall install or supervise the installation of tree protection fencing, trunk protection, ground protection and traffic height control beam.
During any development work	 The project arborist shall supervise all demolition and excavation works within the Tree Protection Zones or specified distances of nominated trees listed in this consent. The project arborist shall ensure pier holes within the Tree Protection Zones or specified distances of nominated trees listed in this consent are positioned to avoid the severance of and damage to roots greater than 50mm diameter. The project arborist shall inspect the installed irrigation system to plants in garden beds. The arborist shall certify there is an appropriate distribution of water to planted and existing trees. Project Arborist to approve relocation of tree protection for landscaping. All landscaping works within the TPZ of trees to be retained are to be undertaken in consultation with the project Arborist to minimise the impact to trees.

Stage of arboricultural inspection and supervision	Compliance documentation and photos shall be included
Prior to any occupation or use of the building	 Ensure all trees conditioned to be planted as part of this consent have been planted in accordance with the details prescribed in this consent.
Prior to the issue of a Final Occupation Certificate	 The project arborist shall supervise the dismantling of tree protection measures. After all demolition, construction and landscaping works are complete the project Arborist shall assess that the subject trees have been retained in the same condition and vigour. If changes to condition are identified the project Arborist should provide recommendations for remediation.

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

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

C. Conditions which must be satisfied prior to the issue of any Construction Certificate

C.1 Modification of Details of the Development (section 4.17(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) Roof level photovoltaic solar panels and skylights are not to exceed a maximum height of RL 31.8 AHD. The lift overrun is not to exceed a maximum height of RL 32.4 AHD.

This condition is imposed to minimise visual and amenity impacts in accordance the design guidelines for objective 4N-3 of the Apartment Design Guide of SEPP 65 and objectives and controls O1, C1 and C5 of B3.5.1 and O1, C1 and C2 of E6.3 of the of the Woollahra DCP 2015.

b) Roof level mechanical plant equipment is limited to the lift overrun and is to be confined to the location detailed to the to the approved roof plan, and annotated as "LIFT OVERRUN".

Mechanical plant equipment with the exception of the approved lift overrun must be located internally within the principal building in suitably designed plant room or the like to ensure that they do not result in adverse streetscape or amenity impacts.

The location of air conditioning plant equipment is to be internally housed to approved plant room areas.

This condition is imposed to minimise visual and amenity impacts in accordance the design guidelines for objectives 4N-1 and 4N-3 of the Apartment Design Guide of SEPP 65 and objectives and controls O6, O7, O8, C7, C8 and C9 of B3.7.3 of the Woollahra DCP 2015.

c) The second floor level bathroom window opening to the south elevation must consist of fixed translucent glazing to a minimum height of 1.65m above the first floor level in accordance with O2 and C5 of B3.5.4 of the Woollahra Development Control Plan 2015.

- d) Rear and side boundary fencing is not to exceed 1.8m in height above the finished ground levels. This condition is imposed to ensure boundary fencing is not visually intrusive in accordance with objectives and controls O5, C9 and C10 of B3.7.5 of Woollahra DCP 2015.
- e) The section of retaining wall along the eastern boundary within 2 metres of Tree 2 must be retained inside. This condition is imposed to protect Tree 2 located within 20 Boronia Road, Bellevue Hill.
- f) The design of the western boundary wall within the TPZ of trees 3-10 shall include pier footings that can be relocated if any tree roots greater than 40mm in diameter are identified during the works.
- g) The Landscape Plan shall be amended as follows:
 - a. The planting of the 4x *Strelitzia nicolai* is to be deleted and an alternative species shall be selected.
 - b. All new tree planting within the site must be a minimum container size of 100 litres at the time of planting.

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 4.15 of the *Act*.

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

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

Standard Condition: C4 (Autotext CC4)

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

The Certifying Authority must not issue any certificates under section 6.4 of the *Act* 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.

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Long Service Levy www.longservice.nsw.gov.au/bci/levy/other- information/levy-calculator	Contact LSL Corporation or use online calculator	No	
SECURITY under section 4.17(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit -making good any damage caused to any property of the Council	\$96,530	No	T115
Tree Damage Security Deposit – making good any damage caused to any public tree	\$5,000	No	T114
Infrastructure Works bond (S138)	\$15,300	No	T113
DEVELOPMENT LEVY under Woollahra Section 7.12 Development Contributions Plan 2021 This plan may be inspected at Woollahra Council or downloaded at www.woollahra.nsw.gov.au			
Development Levy (section 7.12)	\$ 39,200 + Index Amount	Yes, quarterly	T96

Description	Amount	Indexed	Council Fee Code
INSPECTION FEES under section 608 of the Local Government Act 1993			
Public Tree Management Inspection Fee	\$221.34	No	T45
Public Road/Footpath Infrastructure Inspection Fee	\$645	No	T45
Security Administration Fee	\$202	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$ 157,098.34 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 Service Corporation or to Council. Further information can be obtained from the Long Service Corporation website www.longservice.nsw.gov.au or the Long Service Corporation on 131 441.

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 7.12 levy (formerly known as 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 2021 sets out the formula and index to be used in adjusting the levy.

Do you need HELP indexing the levy?

Please contact Council's Customer Service Team on ph 9391 7000. Failure to correctly calculate the adjusted development levy will delay the issue of any certificate issued under section 6.4 of the *Act* and could void any such certificate (eg Construction Certificate, Subdivision Certificate, or Occupation Certificate).

Deferred or periodic payment of section 7.12 levy (formerly known as 94A levy) under the Woollahra Section 94A Development Contributions Plan 202

Where the Applicant makes a written request supported by reasons for payment of the section 7.12 levy other than as required by clause 3.9, the Council may accept deferred or periodic payment. The decision to accept a deferred or periodic payment is at the sole discretion of the Council, which will consider:

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

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

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

Any deferred or periodic payment of the section 7.12 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. 1367774M 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 4.55 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 and 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 Road and Public Domain Works

A separate application under Section 138 of the *Roads Act* 1993 is to be made to, and be approved by Council as the road authority, for the following infrastructure works prior to the issuing of any Construction Certificate. The infrastructure works must be carried out at the applicant's expense:

- a) The removal of the existing vehicular crossing including layback and gutter and the construction a new 3.05 metres wide vehicular crossing plus the reconstruction of the layback wing of the neighbouring crossing in accordance with Council's standard drawing RF2_D, Crossing Specification, driveway detail plan by Mark Shapiro, referenced DA2500-B, dated 03/08/2023 and to the satisfaction of Council's Assets Engineers. The new vehicular crossing must be located at a minimum distance of one (1) metre from the existing power pole. Design longitudinal profiles along each edge/side of the proposed crossing, starting from the centreline of the road to the parking slab must be submitted for assessment,
- b) The reconstruction of the existing 1.8m wide concrete footpath for the full frontage of the site in Boronia Road in accordance with Council's Specification for Roadworks, Drainage and Miscellaneous Works and to the satisfaction of Council's Assets Engineers, A maximum crossfall of 3% must be provided for the concrete footpath from the property boundary towards the top of kerb. A design longitudinal surface profile (scale 1:100) and cross sections (scale 1:50) at every 5 metres intervals must be submitted for assessment.
- c) The reinstatement of all damaged kerb and gutter and road pavement to Council's Specification and to the satisfaction of Council's Assets Engineers,
- d) Where a grass verge exists, the balance of the area between the footpath and the kerb 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 Couch turf.
- e) The stormwater connection to the existing kerb inlet pit located within the site frontage in Boronia Road in accordance with Council's Specification for Roadworks, Drainage and Miscellaneous Works and to the satisfaction of Council's Assets Engineers,
- f) The developer shall be responsible for carrying out all service investigations to allow a gravity connection.
- g) A bond of \$15,300 will be used as security to ensure the satisfactory completion of the infrastructure works. The security or bank guarantee must be the original unconditional bank guarantee with no expiry date.
- h) Council may use all or part of the Infrastructure Bond as well as the Property Damage Security Deposit to meet the cost of removing or completing the works if they do not meet Council's requirements.
- i) The Deposit/Bond will not be released until Council has inspected the site and is satisfied that the Works have been completed in accordance with Council approved drawings and to Council requirements.

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 (Autotext CC13)

C.5 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).

C.6 Provision for Energy Supplies

The Applicant must provide to the Certifying Authority a letter from Austgrid setting out Austgrid's requirements relative to the provision of electricity/gas supply to the development.

Any required electricity pillar and/or substation must be located within the boundaries of the site. Where an electricity pillar and electricity substation required within the site but no provision has been made to place it within the building and such substation has not been detailed upon the approved development consent plans an application under section 4.55 of the *Act* is required to be submitted to Council. Council will assess the proposed location of the required electricity pillar and/or substation.

The Construction Certificate plans and specifications, required to be submitted pursuant to clause 139 of the *Regulation*, must detail provisions to meet the requirements of Austgrid.

Where the electricity pillar and/or substation is required, the Construction Certificate plans and specifications must provide:

- a) A setback not less than 3m from the road boundary and dense landscaping of *local native plants* to screen the electricity pillar and/or substation from view within the streetscape.
- b) A setback not less than 3m from any other site boundary (fire source feature) and not within the areas required to be kept clear of obstructions to vehicle visibility pursuant to clause 3.2.4 of AS2890.1-1993(See: Figures 3.2 and 3.3).
- c) A setback to and not within the drip line of any existing tree required to be retained.
- d) A setback not less than the 10m from any NSW Fire Brigade booster connection as prescribed by clause 5.6.3(d)(iii) of AS 2419.1-1994 or be separated from any booster connections by a construction with a fire resistance rating of not less than FRL 90/90/90 for a distance of not less than 2 m each side of and 3 m above the upper hose connections in the booster assembly pursuant to clause 5.6.3(c)(ii) of AS 2419.1-1994, and
- e) The Owner shall dedicate to the appropriate energy authority, free of cost, an area of land adjoining the street alignment to enable an electricity pillar and/or substation to be established, if required. The size and location of the electricity pillar and/or substation is to be in accordance with the requirements of the appropriate energy authority and Council. The opening of any access doors must not intrude onto the public road reserve.

Note: If the electricity pillar and/or substation is not located within the building its location, screening vegetation, all screen walls or fire separating walls must have been approved by the grant of development consent or amended development consent prior to the issue of any *Construction Certificate* for those works. Documentary evidence of compliance, including correspondence from the energy authority is to be provided to the Certifying Authority prior to issue of the Construction Certificate. The Certifying Authority must be satisfied that the requirements of energy authority have been met prior to issue of the Construction Certificate.

Note: This condition has been imposed because the application fails to provide sufficient detail (either by plans or by the Statement of Environmental Effects) demonstrating that provision has been made to Austgrid's satisfaction for the provision of electricity supply to the building. Nevertheless, Council has no reason to believe that provision cannot be reasonably made for electricity to service the development.

Note: Where it is proposed to shield any booster connection or any building from any electricity pillar and/or substation pursuant to clause 5.6.3(c)(ii) of AS 2419.1-1994 or by fire resisting construction under the BCA respectively and this construction has not been detailed upon the approved development consent plans such works should be considered inconsistent with consent pursuant to clause 145 of the *Regulation*. The Applicant must lodge with Council details for any such construction pursuant to section 4.55 of the *Act* to allow assessment under section 4.15 of the *Act*.

Note: Electricity pillar and/or Substations must not be located within the minimum sight distance at driveway entrances under Australian Standard AS/NZS 2890 (Set)-2004 *Parking Facilities Set whether such driveways service the site or any adjoining land.*Standard Condition: C21

C.7 Soil and Water Management Plan – Submission and Approval

The Principal Contractor or Owner-builder must submit to the Certifying Authority a soil and water management plan complying with:

- a) "Do it Right On Site, Soil and Water Management for the Construction Industry" published by the Southern Sydney Regional Organisation of Councils, 2001; and
- b) "Managing Urban Stormwater Soils and Construction" 2004 published by the NSW Government (The Blue Book).

Where there is any conflict *The Blue Book* takes precedence.

The Certifying Authority must be satisfied that the soil and water management plan complies with the publications above prior to issuing any Construction Certificate.

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

Note: The International Erosion Control Association – Australasia 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" publication can be downloaded from www.woollahra.nsw.gov.au, and The Blue Book is available at www.environment.nsw.gov.au/stormwater/publications.htm.

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 Structural Adequacy of Existing Supporting Structures

A certificate from a professional engineer (structural engineer), certifying the adequacy of any existing supporting structures 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 structures are able to support the additional loads proposed.

Standard Condition: C35 (Autotext CC35)

C.9 Professional Engineering Details

The Construction Certificate plans and specifications, clause 7 of the *Environmental Planning* and Assessment (Development Certification and Fire Safety) Regulation 2021, must include detailed professional engineering plans and/or specifications for all structural, electrical, hydraulic, hydrogeological, 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.10 Engineer Certification

This development consent does <u>NOT</u> give approval to any works outside the boundaries of the subject property including any underpinning works to any structures on adjoining properties and Council's property.

Any structural design is not to incorporate any temporary or permanent underpinning works or ground anchors, bolts, etc which encroach outside the boundaries of the subject property. Engineer certification to this effect shall be submitted to the Certifying Authority prior to issue of any Construction Certificate.

C.11 Geotechnical and Hydrogeological Design, Certification and Monitoring

Prior to the issue of the Construction Certificate, the applicant must submit, for approval by the Principal Certifier, a detailed geotechnical report prepared by a geotechnical engineer with National Engineering Register (NER) credentials in accordance with Council's DCP and Councils document "Guidelines for Preparation of Geotechnical and Hydrogeological Reports". The report must include 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 details of cut-off walls or similar controls prior to excavation such that any temporary changes to the groundwater level, during construction, will be kept within the historical range of natural groundwater fluctuations. Where the historical range of natural groundwater fluctuations is unknown, the design must demonstrate that changes in the level of the natural water table, due to construction, will not exceed 0.3m at any time,
- d) Provide tanking of all below ground structures to prevent the entry of all ground water such that they are fully tanked and no on-going dewatering of the site is required.
- e) Provide a Geotechnical and Hydrogeological Monitoring Program that:
 - will detect any settlement associated with temporary and permanent works and structures,
 - will detect deflection or movement of temporary and permanent retaining structures (foundation walls, shoring bracing or the like),
 - will detect vibration in accordance with AS 2187.2-1993 Appendix J including acceptable velocity of vibration (peak particle velocity),
 - will detect groundwater changes calibrated against natural groundwater variations.
 - details the location and type of monitoring systems to be utilised,
 - details the pre-set acceptable limits for peak particle velocity and ground water fluctuations.
 - details recommended hold points to allow for the inspection and certification of geotechnical and hydrogeological measures by the professional engineer, and
 - details a contingency plan.
 Standard Condition: C40 (Autotext: CC40)

C.12 Ground Anchors

This development consent does <u>NOT</u> give approval to works or structures over, on or under adjoining properties, public roads and/or footpaths. Prior written consent must be obtained from all relevant adjoining property owner(s) for the use of any Ground Anchors extending beyond the boundaries of the subject property.

The use of permanent ground anchors under Council land is not permitted. Temporary ground anchors under Council's land 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 website. Approval may be granted subject to conditions of consent. Minimum 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 (Autotext: CC41)

C.13 Parking Facilities

Before the issue of any construction certificate, the construction certificate plans and specifications required under clause 7 of the Development Certification and Fire Safety Regulation, must include detailed plans and specifications for all bicycle, car and commercial vehicle parking in compliance with AS/NZS 2890.1: Parking Facilities - Off-Street Car Parking.

The plans must satisfy the following requirement(s):

- a) Sight distance requirements must comply with Clause 3.2.4 and Figure 3.3 of AS2890.1:2004;
- b) Traffic light system be incorporated to manage traffic flow between the ground floor and basement level. Priorities should be given to vehicles entering the car park to minimise conflicts with traffic along the frontage road;
- c) The maximum gradient of the access driveway should be 1 in 20 (5%) as per Clause 3.3 of AS/NZS 2890.1 and should be clearly depicted in the architectural drawings;
- d) A 2m x 2.5m sight splay be provided along both sides of the access driveway, as per Clause 3.2.4 and Figure 3.2 of AS/NZS2890.1:2004. Any structure within the splay area including landscape should be lower than 600mm to ensure visibility
- e) Details including dimensions, type, model and manufacturers specification of the proposed turntable should be provided in the detailed plans,
- f) All parking spaces shall have minimum dimensions of 2.4m x 5.4m, clear of any obstructions, to comply with AS2890.1. If the side boundary of a parking space is a wall, or if there are obstructions such as columns restricting door opening, 300mm shall be added to the width of the space,

g) Driveway and vehicular access ramp shall be designed to provide adequate ground clearance to the underside of B99 vehicles.

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

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

Standard Condition: C45 (Autotext: CC45)

C.14 Stormwater Management Plan

Prior to issue of the Construction Certificate, the applicant must submit, for approval by the Principal Certifier, detailed stormwater management plans prepared by a suitably qualified and experienced civil engineer, which include the following:

- General design in accordance with stormwater management plans, referenced 220537 prepared by SMART Structures Australia, dated 16/08/2023, other than amended by this and other conditions,
- b) The Permissible Site Discharge (PSD) for the proposed development must not exceed 23.69 L/s which includes any stormwater runoff that is bypassing the on-site detention (OSD) system. In this regard, the discharge orifice from the OSD system must be further reduced with additional storage to be provided, as determined by using the Drains model, to compensate for the stormwater runoff from the bypassing area so that the total discharge leaving the site is limited to 23.69 l/s for storms up to and including the 1% AEP events,
- c) In order to prevent any backwater effects, invert level of the proposed OSD discharge orifice must be designed so that it is set above the HGL of the downstream drainage system where the top of kerb level at the connecting kerb inlet pit is to be used as the tailwater level when connecting into the road drainage system,
- d) The discharge of stormwater from the site, by direct connection, to Council's existing kerb inlet pit located within the frontage of the site on Boronia Road,
- e) The installation of a pumpout system with a minimum storage capacity of 3.4m³ to comply with Section 8 of AS3500.3,
- f) The installation of stormwater filtration /treatment system which includes but not limited to the installation of 6m³ rainwater tank, 2 x 690PSorb StormFilter and 2 x OceanGuard 200 by Ocean Protect to achieve the minimum the water quality targets stipulated in Chapter E2.2.3 of Council's DCP,
- g) All below ground structures are to be fully tanked to ensure subsoil drainage/seepage water is not collected and discharged to the kerb and gutter in accordance with Chapter E2.2.5 and 2.2.10 of the Council's DCP. Notation to this requirement shall be clearly depicted on the drawings.
- h) Internal stormwater drainage including but not limited to gutters and downpipes, pipes and pits are to be designed for rainfall intensities up to and including the 1% AEP event if an unimpeded overland flow path to the street drainage system is not available.
 Design details and calculations must be included in the stormwater management plans,
- i) Dimensions of all drainage pits and access grates must comply with AS3500.3,
- j) Compliance the objectives and performance requirements of the BCA,
- k) Any rainwater tank (See Note below) required by BASIX commitments including their overflow connection to the Stormwater Drainage System, and
- I) General compliance with the Council's Woollahra DCP 2015 Chapter E2 Stormwater and Flood Risk Management.

On-site Stormwater Detention (OSD) Requirements:

The minimum Site Storage Requirements ("SSR") for the required on-site stormwater detention (OSD) system must be 13.94m³ or determined by a Drains model whichever is greater and the Permissible Site Discharge (PSD) for the proposed development must not exceed 23.69 L/s.

The Stormwater Management Plan must also 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 Australian Government publication, *Australian Rainfall and Run-off,* 2019 edition or most current version thereof. It must include:

- a) All pipe layouts, dimensions, grades, lengths and material specification,
- b) Location of proposed rainwater tanks,
- c) All invert levels reduced to Australian Height Datum (AHD),
- d) Location and dimensions of all drainage pits,
- e) Point and method of connection to Councils drainage infrastructure, and
- f) Overland flow paths over impervious areas.

On-site Stormwater Detention (OSD) details:

- a) Any potential conflict between existing and proposed trees and vegetation.
- b) Internal dimensions and volume of the proposed detention storage.
- c) Diameter of the outlet to the proposed detention storage basin.
- d) Plans, elevations and sections showing the detention storage basin invert level, centreline level of outlet, top water level, finished surface level and adjacent structures.
- e) Details of access and maintenance facilities.
- f) Construction and structural details of all tanks and pits and/or manufacturer's specifications for proprietary products.
- g) 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.
- h) Non-removable fixing details for orifice plates where used.

Rainwater Reuse System details:

- Any potential conflict between existing and proposed trees and vegetation,
- b) Internal dimensions and volume of the proposed rainwater storage,
- Plans, elevations and sections showing the rainwater tanks, finished surface level and adjacent structures,
- d) Details of access and maintenance facilities,
- e) Construction and structural details of all tanks and pits and/or manufacturer's specifications for proprietary first flush products,
- f) Details of the emergency overland flow-path (to an approved Council drainage point) in the event of a blockage to the rainwater tanks.

For the proposed stormwater connection to the Council's drainage infrastructure, 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* (2012).

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: C.51 (Autotext CC51)

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 childresistant barriers and the resuscitation sign) with the provisions of the *Swimming Pools Act* 1992 and the Building Code of Australia.

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

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

Standard Condition: C55 (Autotext CC55)

C.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 Water's sewer, the yard gully or any new connection to the sewer system including a detailed cross section of the connection complying with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

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

Standard Condition: C56 (Autotext CC56)

C.17 Electric vehicle circuitry and electric vehicle charging point requirements

An accurate electrical plan and specifications for all off-street car parking must be prepared by a suitably qualified person, demonstrating the following;

- a) That each off-street car parking space will be provided with electrical circuitry to support the installation of a Level 2 electric vehicle charger point. The construction certificate plans are to:
 - Identify the power capacity to each car parking space.
 - identify the load management system on each level of parking such as a distribution board.
 - identify the conduit system to allow each car space to install an electric vehicle charger point such as cable trays and/or buried cables underground. This system should allow future installation of cabling to power electric vehicle charger points and allow internet access (run Ethernet cable or install 4G modem).
- b) A minimum of one Level 2 electric charger must be provided and Level 2 chargers must be provided to not less than 10% of all car parking spaces. The location of all electric vehicle chargers must be shown on the construction certificate plans.
- c) The certifier must be satisfied that the electrical plans and specifications are consistent with (a) and (b) prior to the issue of the construction certificate.

Note: The minimum electric circuitry requirements for 'Level 2' electric vehicle charging points are:

- a) Privately available spaces including visitor spaces: 'Level 2' slow single phase 7kW power; and
- Publicly available spaces: 'Level 2' fast three-phase 11-22kW power Standard Condition: C57 (Autotext CC57)

C.18 Acoustic Certification of Mechanical Plant and Equipment

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

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

Where sound attenuation is required this must be detailed.

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

- **1. Australian Acoustical Society**—professional society of noise-related professionals www.acoustics.asn.au
- 2. Association of Australian Acoustical Consultants—professional society of noise related professionals www.aaac.org.au. Standard Condition: C62 (Autotext CC62)

C.19 Tree Management Plan

The Construction Certificate plans and specifications shall show the following information:

- a) Trees to be numbered in accordance with these conditions:
 - shaded green where required to be retained and protected
 - shaded red where authorised to be removed
 - shaded yellow where required to be transplanted
 - shaded blue where required to be pruned
- b) References to applicable tree management plan, arborists report or transplant method statement.

This plan shall be kept on site until the issue of the final occupation certificate

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 4.17(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 <u>Home Building Act 1989</u> requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

- a) to the extent to which an exemption is in force under the *Home Building Regulation* 2004, or
- b) to the erection of a temporary building.

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

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

Note: All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia. Standard Condition: D1 (Autotext DD1)

D.2 Dilapidation Reports for existing buildings

Dilapidation surveys and dilapidation reports shall be conducted and prepared by a *professional engineer* (structural) for all buildings and/or structures that are located within the likely "zone of influence" of any excavation, dewatering and/or construction induced vibration as determined applicable by a Structural Engineer.

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

No. 20 Boronia Road

No. 24 Boronia Road

No. 15 Blaxland Road

The dilapidation reports must be completed and submitted to the *Certifying Authority* for approval. A copy of the approved reports shall be 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 (Autotext DD4)

D.3 Adjoining Buildings Founded on Loose Foundation Materials

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

Note: A failure by contractors to adequately assess and seek professional engineering (geotechnical) advice to ensure that appropriate underpinning and support to adjoining land is maintained prior to commencement may result in damage to adjoining land and buildings. Such contractors are likely to be held responsible for any damages arising from the removal of any support to supported land as defined by section 177 of the *Conveyancing Act 1919*. Standard Condition: D6 (Autotext DD6)

D.4 Construction Management Plan

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

An application for the CMP must be submitted for approval, and all associated application fees must be paid.

The CMP must be submitted as a self-contained document that outlines the nature of the construction project and as applicable, include the following information:

- Detail the scope of the works to be completed including details of the various stages,
 e.g. demolition, excavation, construction etc. and the duration of each stage.
- b) Identify local traffic routes to be used by construction vehicles.
- c) Identify ways to manage construction works to address impacts on local traffic routes, particularly during school pick-up and drop-off hours.
- d) Identify other developments that may be occurring in the area and identify ways to minimise the cumulative traffic impact of these developments. Should other developments be occurring in close proximity (500m or in the same street) to the subject site, the developer/builder is to liaise fortnightly with the other developers/builders undertaking work in the area in order to minimise the cumulative traffic and parking impacts of the developments.
- e) Detail how construction workers will travel to and from the site and parking arrangements for those that drive.
- f) Identify any proposed road closures, temporary traffic routes, loss of pedestrian or cyclist access, or reversing manoeuvres onto a public road, and provide Traffic Control Plans (TCPs) prepared by an accredited RMS Red or Orange card holder to manage these temporary changes.
- g) Detail the size (including dimensions), numbers and frequency of arrival of the construction vehicles that will service the site for each stage of works.
- h) Provide for the standing of vehicles during construction.
- If construction vehicles are to be accommodated on the site, provide a scaled drawing showing where these vehicles will stand and the vehicle swept path to show that these vehicles can access and egress the site in a forward direction (including dimensions and all adjacent traffic control devices, such as parking restrictions, pedestrian facilities, kerb extensions, etc.).
- j) If trucks are to be accommodated on Council property, provide a scaled drawing showing the location of any proposed Works Zone (including dimensions and all adjacent traffic control devices, such as parking restrictions, pedestrian facilities, kerb extensions, etc.).
- k) Show the location of any site sheds and any anticipated use of cranes and concrete pumps and identify the relevant permits that will be required.
- If a crane/s are to be accommodated on site, detail how the crane/s will be erected and removed, including the location, number and size of vehicles involved in the erection/removal of the crane/s, the duration of the operation and the proposed day and times, any full or partial road closures required to erect or remove the crane/s and appropriate Traffic Control Plans (TCPs) prepared by an approved RMS Red or Orange Card holder.
- m) Make provision for all materials, plant, etc. to be stored within the development site at all times during construction.
- n) State that any oversized vehicles proposed to operate on Council property (including Council approved Works Zones) will attain a Permit to StandPlant on each occasion (Note: oversized vehicles are vehicles longer than 7.5m or heavier than 4.5T.)
- o) Show the location of any proposed excavation and estimated volumes.

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

Notes:

- A minimum of eight weeks will be required for assessment. Site work must not commence until the Construction Management Plan is approved.
- Failure to comply with this condition may result in fines and proceedings to stop work.
- Council and NSW Police approval is required prior to a partial or full temporary road closure. If you
 are seeking a partial or full temporary road closure you must comply with the relevant conditions of
 this consent and you must also gain the approval of the Eastern Suburbs Police Area Command.
- If you partial or full close a road without compliance with Council and NSW Police requirements Council Rangers or the Police can issue Penalty Infringement Notices or Court Attendance Notices leading to prosecution.
- Traffic Supervisors at the Eastern Suburbs Police Area Command can be contacted on eastsubtraffic@police.nsw.gov

Condition Reason: To facilitate the efficient operation of construction projects, minimise traffic disruption, and protect the public, and the surrounding environment, during site works and construction

D.5 Works (Construction) Zone – Approval and Implementation

If the Construction Management Plan relies upon a Works Zone, before any site work commences, a Works Zone application must be made.

If the works zone is approved, all fees for the Works Zone must be paid before it can be installed.

All Works Zone signs must have been erected by Council to permit enforcement of the Works Zone by Council's Rangers and NSW Police before commencement of any site work. Signs are not erected until full payment of Works Zone fees is made.

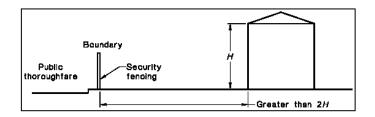
Note: A minimum of four to six weeks must be allowed (for routine applications) from the date of making an application to the Traffic Committee (Woollahra Local Traffic Committee) constituted under clause 20 of the Transport Administration (General) Regulation 2018 to exercise those functions delegated by Transport for New South Wales under section 31(3) of the Transport Administration Act 1988.

Note: The enforcement of the Works Zone is at the discretion of Council's Rangers and the NSW Police Service. Any breach of the Works Zone must be reported to either Council or the NSW Police Service.

Standard Condition: D10 (Autotext DD10)

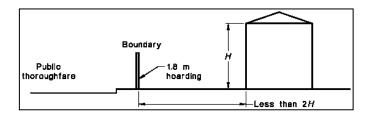
D.6 Security Fencing, Hoarding (including 'Creative Hoardings') and Overhead Protection

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.



Type A Hoarding

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



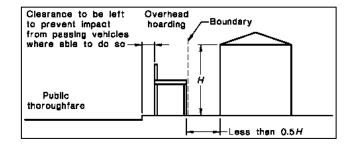
Type B Hoarding

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 4.0m; 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 2.1m,
- 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 0.5m 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 ensure that overhead protective structures are installed and maintained in accordance with the NSW "Code of Practice - Overhead Protective Structures 1995". This is code available at

www.safework.nsw.gov.au/ data/assets/pdf_file/0008/52883/Overhead-protective-structures-Code-of-practice.pdf

All Hoardings

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.

Hoardings on Public Land including 'Creative Hoardings'

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.

A creative hoarding (i.e. an approved artwork or historic image affixed to the hoarding) is required if the hoarding meets the criteria in Council's Creative Hoardings Policy (adopted March 2020). The cost of printing and affixing the creative hoarding is the responsibility of the Principal Contractor or Owner-builder. The Creative Hoardings Policy can be downloaded from Council's website www.woollahra.nsw.gov.au

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.

Note: Council seeks to increase public art in the public domain by requiring artwork or historic images on hoardings located on public land. Under the Creative Hoardings Policy an application for a hoarding proposed on public land will require an approved artwork or historic image affixed to the hoarding if the hoarding meets the criteria in section 3 of the Policy:

A. Hoardings proposed on land zoned B2 Local Centre, or B4 Mixed Use, or SP2 Infrastructure under Woollahra Local Environmental Plan 2014 AND erected for 8 weeks or more

OR

- B. Hoardings proposed on land located along a State classified road (regardless of the zone) AND erected for 8 weeks or more OR
- C. Hoardings proposed in any other location than that referred to in A. and B. above AND erected for 12 weeks or more, except where:
 - i. the capital investment value of the work to which the hoarding relates is less than \$1 million

OR

- ii. the land is zoned R2 Low Density Residential OR
- iii. the land is zoned R3 Medium Density Residential and the hoarding located in a lane or street that does not have through traffic (eg a cul-de-sac or no through road).

Artwork and historic images for the hoardings are assessed and approved in accordance with the Creative Hoardings Policy. Details of the artwork or images proposed to be affixed to the hoardings must be submitted with Council's form "Application for a permit to use a footpath for the erection of a hoarding/scaffolding".

The Creative Hoardings Policy can be downloaded from www.woollahra.nsw.gov.au or for more information contact Council's Cultural Development Team.

Standard Condition: D11 (Autotext DD11)

D.7 Site Signs

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

Clause 98A of the Regulation provides:

Erection of signs

- For the purposes of section 4.17(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 Certifier 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 6.28 of the *Act*, to comply with the Building Code of Australia.

Clause 227A of the Regulation provides:

Signs on development sites

If there is a person who is the Principal Certifier 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 Principal Certifier it will provide the sign to the Principal Contractor or Owner-builder who must ensure that the sign is erected and maintained as required by clause 98A and clause 227A of the *Regulation*.

Standard Condition: D12 (Autotext DD12)

D.8 Toilet Facilities

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

Each toilet provided:

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

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

In this condition:

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

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

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

Note: This condition does not set aside the requirement to comply with SafeWork NSW requirements. Standard Condition: D13 (Autotext DD13)

D.9 Erosion and Sediment Controls – Installation

The Principal Contractor or Owner-builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:

- 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" 2004 published by the NSW Government (The Blue Book).

Where there is any conflict *The Blue Book* takes precedence.

- **Note**: The International Erosion Control Association Australasia (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" publication can be downloaded from www.woollahra.nsw.gov.au and *The Blue Book* is available at www.environment.nsw.gov.au/stormwater/publications.htm
- **Note**: A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the *Act* and/or the *Protection of the Environment Operations Act* 1997 **without any further warning**. It is a criminal offence to cause, permit or allow pollution.
- **Note**: Section 257 of the *Protection of the Environment Operations Act 1997* provides inter alia that "the occupier of premises at or from which any pollution occurs is taken to have caused the pollution"
- **Warning**: Irrespective of this condition any person occupying the site may be subject to proceedings under the *Protection of the Environment Operations Act 1997* where pollution is caused, permitted or allowed as the result of their occupation of the land being developed. Standard Condition: D14 (Autotext DD14)

D.10 Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 of the *Act*)

The erection of the building in accordance with this development consent must not be commenced until:

- 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 Certifier for the building work, and
 - notified the Principal Certifier that the person will carry out the building work as an Owner-builder, if that is the case, and
- c) The Principal Certifier 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 Certifier 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 1.4 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 6.1 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 6.6(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, PC 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 6.6(2) of the *Act*.

Standard Condition: D15 (Autotext DD15)

D.11 Notification of <u>Home Building Act 1989</u> requirements

- a) For the purposes of section 4.17(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 <u>Home Building Act 1989</u> must not be carried out unless the Principal Certifier 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 Certifier 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 6.28 of the *Act*, to comply with the Building Code of Australia. Standard Condition: D17 (Autotext DD17)

E. Conditions which must be satisfied during any development work

E.1 Compliance with BCA and Insurance Requirements under the *Home Building Act 1989*

For the purposes of section 4.17(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 (BCA),
- b) in the case of residential building work for which the <u>Home Building Act 1989</u> requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

- a) to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4) of the *Regulation*, or
- b) to the erection of a temporary building.

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

Note: All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia. Standard Condition: E1 (Autotext EE1)

E.2 Compliance with Australian Standard for Demolition

Demolition of buildings and structures must comply with Australian Standard AS 2601—2001: *The Demolition of Structures*.

Standard Condition: E2 (Autotext EE2)

E.3 Compliance with Construction Management Plan

All development activities and traffic movements must be carried out in accordance with the approved Construction Management Plan (CMP). All controls in the CMP must be maintained at all times. A copy of the CMP must be kept on-site at all times and made available to the Principal Certifier or Council on request.

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

Standard Condition: E3 (Autotext EE3)

E.4 Requirement to Notify about New Evidence

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

Standard Condition: E4 (Autotext EE4)

E.5 Critical Stage Inspections

Critical stage inspections must be called for by the Principal Contractor or Owner-builder as required by the Principal Certifier, any PC service agreement, the *Act* and the *Regulation*.

Work must not proceed beyond each critical stage until the Principal Certifier 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 6.5 of the Act or as required by the Principal Certifier and any PC Service Agreement.

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

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

Standard Condition: E5 (Autotext EE5)

E.6 Hours of Work - Amenity of the Neighbourhood

- a) No work must take place on any Sunday or public holiday.
- b) No work must take place before 7am or after 5pm any weekday.
- c) No work must take place before 7am or after 1pm any Saturday.
- d) The following work **must not** take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday:
 - (i) piling,
 - (ii) piering,
 - (iii) rock or concrete cutting, boring or drilling,
 - (iv) rock breaking,
 - (v) rock sawing,
 - (vi) jack hammering, or
 - (vii) machine excavation.
- e) No loading or unloading of material or equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.
- f) No operation of <u>any equipment</u> associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.
- g) No rock excavation being cutting, boring, drilling, breaking, sawing, jack hammering or bulk excavation of rock, must occur without a 15 minute break every hour.

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

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

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

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

Note: Compliance with these hours of work does not affect the rights of any person to seek a remedy to offensive noise as defined by the *Protection of the Environment Operations Act 1997*, the *Protection of the Environment Operations (Noise Control) Regulation 2017.*

Note: NSW EPA Noise Guide is available at www.epa.nsw.gov.au/noise/nglg.htm Standard Condition: E6 (Autotext EE6)

E.7 Public Footpaths – Safety, Access and Maintenance

The Principal Contractor or Owner-builder and any other person acting with the benefit of this consent must:

- a) Not erect or maintain any gate or fence swing out or encroaching upon the road or the footway.
- b) Not use the road or footway for the storage of any article, material, matter, waste or thing.
- c) Not use the road or footway for any *work*.
- d) Keep the road and footway in good repair free of any trip hazard or obstruction.
- e) Not stand any plant and equipment upon the road or footway.
- f) Provide a clear safe pedestrian route a minimum of 1.5m wide.
- g) Protect heritage listed street name inlays in the footpath which are not to be removed or damaged during development.

This condition does not apply to the extent that a permit or approval exists under the section 148B of the *Road Transport Act 2013*, section 138 of the *Roads Act 1993* or section 68 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.

Note: Section 73 of the *Road Transport (Safety and Traffic Management) Act 1999* allows the NSW Police to close any road or road related area to traffic during any temporary obstruction or danger to traffic or for any temporary purpose.

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
 - 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.
 Standard Condition: E7 (Autotext EE7)

E.8 Maintenance of Environmental Controls

The Principal Contractor or Owner-builder must ensure that the following monitoring, measures and controls are maintained:

- a) erosion and sediment controls,
- b) dust controls,
- c) dewatering discharges,
- d) noise controls,
- e) vibration monitoring and controls,
- f) ablutions.

Standard Condition: E11

E.9 Compliance with Geotechnical / Hydrogeological Monitoring Program

Excavation must be undertaken in accordance with the recommendations of the Geotechnical / Hydrogeological Monitoring Program and any oral or written direction of the supervising professional engineer.

The Principal Contractor and any sub-contractor must strictly follow the Geotechnical / Hydrogeological Monitoring Program for the development including, but not limited to:

- a) the location and type of monitoring systems to be utilised,
- b) recommended hold points to allow for inspection and certification of geotechnical and hydrogeological measures by the professional engineer, and
- c) the contingency plan.

Note: The consent authority cannot require that the author of the geotechnical/hydrogeological report submitted with the development application to be appointed as the professional engineer supervising the work however, it is the Council's recommendation that the author of the report be retained during the construction stage.

Standard Condition: E12 (Autotext EE12)

E.10 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 and 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 Regulation 2008* prohibits excavation in the vicinity of roads as follows: "Excavations adjacent to road - A person must not excavate land in the vicinity of a road if the excavation is capable of causing damage to the road (such as by way of subsidence) or to any work or structure on the road." Separate approval is required under the *Roads Act 1993* for any underpinning, shoring, soil anchoring (temporary)) or the like within or under any road. Council will not give approval to permanent underpinning, shoring, soil anchoring within or under any road.

Note: The encroachment of work or the like is a civil matter of trespass or encroachment and Council does not adjudicate or regulate such trespasses or encroachments except in relation to encroachments upon any road, public place, Crown land under Council's care control or management, or any community or operational land as defined by the *Local Government Act* 1993.

Standard Condition: E13 (Autotext EE13)

E.11 Vibration Monitoring

Vibration monitoring equipment must be installed and maintained, under the supervision of a professional engineer with expertise and experience in geotechnical engineering, between any potential source of vibration and any *building* identified by the professional engineer as being potentially at risk of movement or damage from settlement and/or vibration during the excavation and during the removal of any excavated material from the land being developed.

If vibration monitoring equipment detects any vibration at the level of the footings of any adjacent building exceeding the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity an audible alarm must activate such that the Principal Contractor and any sub-contractor are easily alerted to the event.

Where any such alarm triggers all excavation works must cease immediately. Prior to the vibration monitoring equipment being reset by the professional engineer and any further work recommencing the event must be recorded and the cause of the event identified and documented by the professional engineer.

Where the event requires, in the opinion of the professional engineer, any change in work practices to ensure that vibration at the level of the footings of any adjacent building does not exceed the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity these changes in work practices must be documented and a written direction given by the professional engineer to the Principal Contractor and any sub-contractor clearly setting out required work practice.

The Principal Contractor and any sub-contractor must comply with all work directions, verbal or written, given by the professional engineer.

A copy of any written direction required by this condition must be provided to the Principal Certifier within 24 hours of any event.

Where there is any movement in foundations such that damaged is occasioned to any adjoining *building* or such that there is any removal of support to *supported land* the professional engineer, Principal Contractor and any sub-contractor responsible for such work must immediately cease all work, inform the owner of that *supported land* and take immediate action under the direction of the professional engineer to prevent any further damage and restore support to the *supported land*.

Note: professional engineer has the same mean as in clause A1.1 of the BCA.

Note: *building* has the same meaning as in section 1.4 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 the Conveyancing Act 1919. Standard Condition: E14 (Autotext EE14)

E.12 Erosion and Sediment Controls - Maintenance

The Principal Contractor or Owner-builder must maintain water pollution, erosion and sedimentation controls in accordance with:

- a) the Soil and Water Management Plan required under this consent.
- b) "Do it Right On Site, Soil and Water Management for the Construction Industry" published by the Southern Sydney Regional Organisation of Councils, 2001, and
- c) "Managing Urban Stormwater Soils and Construction" 2004 published by the NSW Government (The Blue Book).

Where there is any conflict *The Blue Book* takes precedence.



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

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

Warning: Irrespective of this condition any person occupying the site may be subject to proceedings under the *Protection of the Environment Operations Act 1997* where pollution is caused, permitted or allowed as the result of the occupation of the land being developed whether or not they actually cause the pollution.

Standard Condition: E15 (Autotext EE15)

E.13 Disposal of Site Water During Construction

The Principal Contractor or Owner-builder must ensure:

- a) Prior to pumping any water into the road or public stormwater system that approval is obtained from Council under section 138(1)(d) of the *Roads Act 1993*.
- b) That water pollution, as defined by the Protection of the Environment Operations Act 1997, does not occur as the result of the discharge to the road, public stormwater system or other place or any site water.
- c) That stormwater from any roof or other impervious areas is linked, via temporary downpipes and stormwater pipes, to a Council approved stormwater disposal system immediately upon completion of the roof installation or work creating other impervious areas.

Note: This condition has been imposed to ensure that adjoining and neighbouring land is not adversely affected by unreasonable overland flows of stormwater and that site water does not concentrate water such that they cause erosion and water pollution.

Standard Condition: E17 (Autotext EE17)

E.14 Site Cranes

Site crane(s) and hoist(s) may be erected within the boundary of the land being developed subject to compliance with Australian Standards AS 1418, AS 2549 and AS 2550 and all relevant parts to these standards.

Cranes must not swing or hoist over any public place unless the Principal Contractor or Owner-builder have the relevant approval under the Local Government Act 1993, Crown Lands Act 1989 or Roads Act 1993.

The crane must not be illuminated outside approved working hours other than in relation to safety beacons required by the Civil Aviation Safety Authority under the *Civil Aviation Act* 1988 (Cth).

No illuminated sign(s) must be erected upon or displayed upon any site crane.

Note: Where it is proposed to swing a crane over a public place the Principal Contractor or Owner-builder must make a separate application to Council under section 68 of the *Local Government Act 1993* and obtain activity approval from Council prior to swinging or hoisting over the public place.

Note: Where it is proposed to swing a crane over private land the consent of the owner of that private land is required. Alternatively, the Principal Contractor or Owner-builder must obtain an access order under the *Access to Neighbouring Land Act 2000* or easement under section 88K of the *Conveyancing Act 1919* or section 40 of the *Land and Environment Court Act 1979* as appropriate. The encroachment of cranes or the like is a civil matter of trespass and encroachment. Council does not adjudicate or regulate such trespasses or encroachments. Standard Condition: E19 (Autotext EE19)

E.15 Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum

The Principal Contractor or Owner-builder must ensure that a registered surveyor carries out check surveys and provides survey certificates confirming the location of the building(s), ancillary works, flood protection works and the stormwater drainage system relative to the boundaries of the site and that the height of buildings, ancillary works, flood protection works and the stormwater drainage system relative to Australian Height Datum complies with this consent at the following critical stages.

The Principal Contractor or Owner-builder must ensure that work must not proceed beyond each of the following critical stages until compliance has been demonstrated to the Principal Certifier's satisfaction:

- a) Upon the completion of foundation walls prior to the laying of any floor or the pouring of any floor slab and generally at damp proof course level.
- b) Upon the completion of formwork for floor slabs prior to the laying of any floor or the pouring of any concrete and generally at each storey.
- c) Upon the completion of formwork or framework for the roof(s) prior to the laying of any roofing or the pouring of any concrete roof.
- d) Upon the completion of formwork and steel fixing prior to pouring of any concrete for any ancillary structure, flood protection work, swimming pool or spa pool or the like.
- e) Upon the completion of formwork and steel fixing prior to pouring of any concrete for driveways showing transitions and crest thresholds confirming that driveway levels match Council approved driveway crossing levels and minimum flood levels.
- f) Stormwater drainage Systems prior to back filling over pipes confirming location, height and capacity of works.
- g) Flood protection measures are in place confirming location, height and capacity.

Note: This condition has been imposed to ensure that development occurs in the location and at the height approved under this consent. This is critical to ensure that building are constructed to minimum heights for flood protection and maximum heights to protect views and the amenity of neighbours.

Standard Condition: E20 (Autotext EE20)

E.16 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 68 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.

Note: Waste storage containers must not be located on the footpath without a site specific activity approval. Where such site specific activity approval is granted a 1.5m wide clear path of travel is maintained free of any trip hazards.

Standard Condition: E21 (Autotext EE21)

E.17 Prohibition of Burning

There must be no burning of any waste or other materials. The burning of copper chrome arsenate (CCA) or pentachlorophenol (PCP) treated timber is prohibited in all parts of NSW.

All burning is prohibited in the Woollahra local government area.

Note: Pursuant to the *Protection of the Environment Operations (Clean Air) Regulation 2010* all burning (including burning of vegetation and domestic waste) is prohibited except with approval. No approval is granted under this consent for any burning. Standard Condition: E22 (Autotext EE22)

E.18 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.
- All waste and skip bins being kept covered when not being filled or emptied.
- f) The surface of excavation work being kept wet to minimise dust.
- g) Landscaping incorporating trees, dense shrubs and grass being implemented as soon as practically possible to minimise dust.

Note: "Dust Control - Do it right on site" can be downloaded from Council's website 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.safework.nsw.gov.au and www.safework.

Note: Demolition and construction activities may affect local air quality and contribute to urban air pollution. The causes are dust, smoke and fumes coming from equipment or activities, and airborne chemicals when spraying for pest management. Precautions must be taken to prevent air pollution.

Standard Condition: E23 (Autotext EE23)

E.19 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* (2012).

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 from Council's website www.woollahra.nsw.gov.au Standard Condition: E24 (Autotext EE24)

E.20 Swimming and Spa Pools – Temporary Child Resistant Barriers and other Matters

Temporary child-resistant barriers must be installed in compliance with the *Swimming Pools Act 1992* and Building Code of Australia where any swimming pool or spa pool, as defined by the *Swimming Pools Act 1992*, contains more than 300mm in depth of water at any time.

Permanent child-resistant barriers must be installed in compliance with the *Swimming Pools Act 1992* and the Building Code of Australia as soon as practical.

Backwash and any temporary dewatering from any swimming pool or spa pool as defined by the *Swimming Pools Act 1992* must be discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

Note: This condition does not prevent Council from issuing an order pursuant to section 23 of the Swimming Pool Act 1992 or taking such further action as necessary for a breach of this condition or the Swimming Pools Act 1992. Standard Condition: E26

otandara condition. E20

E.21 Site Waste Minimisation and Management – Demolition

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

- a) the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work,
- b) an area is to be allocated for the storage of materials for use, recycling and disposal (giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation and access and handling requirements),
- c) provide separate collection bins and/or areas for the storage of residual waste,
- d) clearly 'signpost' the purpose and content of the bins and/or storage areas,
- e) implement measures to prevent damage by the elements, odour, health risks and windborne litter, and
- f) minimise site disturbance, limiting unnecessary excavation.

When implementing the SWMMP the Applicant must ensure:

- a) footpaths, public reserves and street gutters are not used as places to store demolition waste or materials of any kind without Council approval,
- b) any material moved offsite is transported in accordance with the requirements of the *Protection of the Environment Operations Act 1997*,
- c) waste is only transported to a place that can lawfully be used as a waste facility,
- d) generation, storage, treatment and disposal of hazardous waste and special waste (including asbestos) is conducted in accordance with relevant waste legislation administered by the NSW Environment Protection Authority, and relevant occupational health and safety legislation administered by SafeWork NSW, and
- e) evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained.

Note: Materials that have an existing reuse or recycling market should not be disposed of in a land fill. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.

Standard Condition: E31 (Autotext EE31)

E.22 Site Waste Minimisation and Management – Construction

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

- a) the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work,
- b) arrange for the delivery of materials so that materials are delivered 'as needed' to prevent the degradation of materials through weathering and moisture damage,
- c) consider organising to return excess materials to the supplier or manufacturer,
- d) allocate an area for the storage of materials for use, recycling and disposal (considering slope, drainage, location of waterways, stormwater outlets and vegetation),
- e) clearly 'signpost' the purpose and content of the storage areas.
- arrange contractors for the transport, processing and disposal of waste and recycling and ensure that all contractors are aware of the legal requirements for disposing of waste,
- g) promote separate collection bins or areas for the storage of residual waste,
- h) implement measures to prevent damage by the elements, odour and health risks, and windborne litter.
- i) minimise site disturbance and limit unnecessary excavation,
- j) ensure that all waste is transported to a place that can lawfully be used as a waste facility, and

k) retain all records demonstrating lawful disposal of waste and keep them readily accessible for inspection by regulatory authorities such as Council, the NSW EPA or SafeWork NSW.

Standard Condition: E32 (Autotext EE32)

E.23 Asbestos Removal

All asbestos removal work must be carried out safely according to NSW work health and safety legislation.

Where hazardous material, including bonded or friable asbestos has been identified in accordance with the conditions in Section B above, and such material must be demolished, disturbed and subsequently removed, all such works must comply with the following criteria:

- a) Be undertaken by contractors who hold a current SafeWork NSW "demolition licence" and a current SafeWork NSW "Class A licence" for friable asbestos removal.
- b) Be carried out in accordance with the relevant SafeWork NSW codes of practice.
- c) No asbestos products may be reused on the site.
- d) No asbestos laden skip or bins shall be left in any public place.

Note: This condition is imposed to protect the health and safety of persons working on the site and the public

Standard Condition: E39

E.24 Classification of Hazardous Waste

Prior to the exportation of hazardous waste (including hazardous fill or soil) from the site, the waste materials must be classified in accordance with the provision of the *Protection of the Environment Operations Act 1997* and the NSW EPA *Waste Classification Guidelines, Part1: Classifying Waste, 2014.*

Note: This condition is imposed to ensure that where hazardous waste will be removed from a site an asbestos licensed contractor can definitively determine where the waste may be legally taken for disposal.

Standard Condition: E40

E.25 Disposal of Asbestos and Hazardous Waste

Asbestos and hazardous waste, once classified in accordance with the hazardous waste classification condition above must only be transported to waste facilities licensed to accept asbestos and appropriate classifications of hazardous waste.

Note: This condition is imposed to ensure that asbestos and other hazardous waste is disposed of lawfully under the *Protection of the Environment Operations Act 1997* and relevant NSW EPA requirements.

Standard Condition: E41

E.26 Asbestos Removal Signage

Standard commercially manufactured signs containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm are to be erected in prominent visible positions on the site when asbestos is being removed.

Note: This condition is imposed to ensure awareness of any hazard to the health and safety of persons working on the site and public.

Standard Condition: E42

E.27 Notification of Asbestos Removal

In addition to the requirements for licensed asbestos removalists to give written notice to SafeWork NSW all adjoining properties and those opposite the development site must be notified in writing of the dates and times when asbestos removal is to be conducted.

The notification is to identify the licensed asbestos removal contractor and include a contact person for the site together with telephone and facsimile numbers and email addresses.

Note: This condition has been imposed to ensure that local residents are informed and have adequate communication facilitated for incidents of asbestos removal.

Standard Condition: F43

E.28 Tree Preservation

All persons must comply with Chapter E.3 – Tree Management of Council's Development Control Plan (DCP) 2015, other than where varied by this consent. The DCP applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.

General Protection Requirements

- a) The TPZ must be maintained during all development work unless otherwise specified within these conditions of consent.
- b) Excavation must cease where tree roots with a diameter exceeding 50mm are exposed. The *principal contractor* must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.
- 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 arborist. The arborist is to supply a detailed report to the appointed certifier.

Note: Trees must be pruned in accordance with Australian Standard AS 4373 "Pruning of Amenity Trees" and WorkCover NSW Code of Practice Amenity Tree Industry.

E.29 Replacement/Supplementary trees which must be planted

Any replacement or supplementary tree shall be grown in accordance with Tree stock for landscape use (AS 2303:2018). The replacement tree shall be planted in *deep soil landscaped area* and maintained in a healthy and vigorous condition. If the replacement tree is found to be faulty, damaged, dying or dead before it attains a size whereby it becomes a prescribed tree in accordance with Chapter E.3 of Council's Development Control Plan, it must be replaced with another of the same species which complies with the approved Landscape Plans.

The project arborist shall document compliance with the above condition.

E.30 Hand excavation within tree root zones

Excavation undertaken within the specified radius from the trunks of the following trees shall be hand dug.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
1	Tristaniopsis laurina	Street tree	3.6m
3 – 10	Cupressus spp.	Adjacent western boundary – within rear yard of 20 Boronia Rd	2.3m

Small hand tools such as mattocks or using compressed air or water jetting only shall be used. Roots with a diameter equal to or in excess of 50mm shall not be severed or damaged unless approved in writing by the project arborist.

Mechanical excavation is permitted beyond this radius when root pruning by hand along the perimeter line is completed. Exposed roots to be retained shall be covered with mulch or a geotextile fabric and kept in a moist condition and prevented from drying out.

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 5 or recognised equivalent).

The project arborist shall document compliance with the above condition.

E.31 Footings in the vicinity of trees

Footings for any structure within the specified radius from the trunks of the following trees shall be supported using an isolated pier and beam system.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
1	Tristaniopsis laurina	Street tree	3.6m
3 – 10	Cupressus spp.	Adjacent western boundary – within rear yard of 20 Boronia Rd	2.3m

Excavations for installation of piers shall be located so that no tree root with a diameter equal to or in excess of 50mm is severed or damaged. The smallest possible area shall be excavated which allows construction of the pier. The beam is to be placed a minimum of 100mm above ground level and is to be designed to bridge all tree roots with a diameter equal to or in excess of 50mm.

The project arborist shall document compliance with the above condition.

E.32 Installation of stormwater pipes and pits in the vicinity of trees

Excavation for the installation of stormwater pipes and pits within the specified radius from the trunks of the following trees shall be hand dug.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
1	Tristaniopsis laurina	Street tree	3.6m
3 – 10	Cupressus spp.	Adjacent western boundary – within rear yard of 20 Boronia Rd	2.3m

Any roots greater than 40mm diameter uncovered for the installation of stormwater pipes and pits shall not be severed and remain in situ bridging across the excavated trench. Pipes shall be guided under any roots greater than 40mm bridging across excavated trenches. Stormwater pits shall be positioned so that no roots greater then 40mm diameter are severed.

The project arborist shall document compliance with the above condition.

F. Conditions which must be satisfied prior to any occupation or use of the building (Part 6 of the Act and Part 8 Division 3 of the Regulation)

F.1 Occupation Certificate (section 6.9 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 6.10 of the *Act*) unless an Occupation Certificate has been issued in relation to the building or part.

Note: New building includes an altered portion of, or an extension to, an existing building. Standard Condition: F1 (Autotext FF1)

F.2 Commissioning and Certification of Systems and Works

The Principal Contractor or Owner-builder must submit to the satisfaction of the Principal Certifier 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 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 Certifier 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 PC 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 PC must submit to Council, with any Occupation Certificate, copies of WAE plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA upon which the PC has relied in issuing any Occupation Certificate.

Standard Condition: F7 (Autotext FF7)

F.3 Commissioning and Certification of Public Infrastructure Works

The Principal Contractor or Owner-builder must submit, to the satisfaction of 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* (2012).

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 (Autotext FF9)

F.4 Street Numbering

The development must be provided with street and sole occupancy unit numbers determined by Council. This condition has been imposed to ensure that emergency services, utility services, and the general public are able to clearly and readily locate any property. Further, this condition has been imposed to protect the integrity of street numbering and land information.

Note: Applications for the allocation of street and sole occupancy unit numbers should be made together with any application for a strata certificate or Torrens or community title subdivision certificate. Council will determine at its discretion in accordance with its policy street numbers and street addresses that best suit the public interest.

Standard Condition: F11 (Autotext FF11)

F.5 Letter Box(es)

All letter boxes must be constructed and located in accordance with AS/NZS 4253:1994 *Mailboxes* and to Australia Post's satisfaction.

Note: This condition has been imposed to ensure that mail can be delivered to occupiers of the site. Standard Condition: F12 (Autotext FF12)

F.6 Swimming and Spa Pools – Permanent Child Resistant Barriers and other Matters

Prior to filling any swimming pool, as defined by the Swimming Pools Act 1992:

- a) Permanent child-resistant barriers must be installed in compliance with the *Swimming Pools Act 1992* and the Building Code of Australia.
- b) The swimming pool must be registered in accordance with section 30B of the Swimming Pools Act 1992 on the NSW Government Swimming Pool Register.
- c) The Principal Contractor or Owner must either obtain a certificate of compliance issued pursuant to section 22D of the *Swimming Pools Act 1992* or an appropriate Occupation Certificate authorising use of the swimming pool.
- d) 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.
- e) Water recirculation and filtration systems must be installed in compliance with AS 1926.3-2010: Swimming pool safety Water recirculation systems.

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

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 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: NSW Health guidelines and fact sheets are available at

www.health.nsw.gov.au/environment/publicpools/Pages/default.aspx

Standard Condition: F13 (Autotext FF13)

F.7 Swimming Pool Fencing

Swimming pool fencing is to be constructed in accordance with AS1926-2012 Australian Standard Swimming Pool Safety Part 1 – *Safety Barriers for Swimming Pools*.

Note: Pools commenced or completed after May 2013 must meet Part 3.9.6 of the BCA AS1926.1-2012 and AS1926.2-2012

Standard Condition: F20 (Autotext FF20)

F.8 Certification of Electric Vehicle Charging System

Prior to the issue of any Occupation Certificate or occupation or use of part of the building, the Principal Contractor or Owner-builder must submit to the satisfaction of the Principal Certifier, certification by a suitably qualified person that the electric vehicle charger points and/or electric vehicle circuitry, has been installed in accordance with the construction certificate plans and specifications as required by **Condition C.17**.

Standard Condition: F22 (Autotext FF22)

F.9 Vehicle Access and Manoeuvring – Construction & Certification

Prior to the issue of any Occupation Certificate, the applicant must submit, for approval by the Principal Certifying Authority, certification from a Chartered Traffic Engineer relating to the construction of vehicular access and manoeuvring for the development. This certification must be based on a site inspection of the constructed vehicle access, manoeuvring and vehicle accommodation areas, with dimensions and measurements as necessary, and must make specific reference to the following:

- That the as-constructed carpark complies with the approved Construction Certificate drawings,
- b) That a maximum gradient of 5% has been provided for the first 6 metres from the property boundary to the basement,
- c) That finished driveway gradients and transitions will not result in scraping to the underside of B99 vehicles,
- d) All parking spaces are open type with no partitions,
- e) That the as-constructed vehicular path and parking arrangements comply in full with AS2890.1 in terms of minimum dimensions provided,
- f) That the headroom clearance of minimum 2.2 metres has been provided between the basement floor and any overhead obstruction to comply with Clause 5.3.1 of AS2890.1,
- g) That Aisle widths throughout basements comply with AS2890.1,

F.10 Positive Covenant for Mechanical Parking Installation & Work-As-Executed Certification of Mechanical Systems

Before the issue of any occupation certificate for the whole of the building, mechanical parking installations are to be certified by a professional engineer with works-as-executed drawings supplied to the Principal Certifier detailing:

- Compliance with conditions of development consent relating to mechanical parking installation including traffic light system;
- b) That the works have been constructed in accordance with the approved design;

c) A positive covenant pursuant to Section 88E of the Conveyancing Act 1919 must be created on the title of the subject property, providing for the indemnification of Council from any claims or actions and for the on-going maintenance of the turntable and traffic signal system incorporated in the development. The wording of the Instrument must be in accordance with Council's standard format and the Instrument must be registered at the Land and Property Information NSW.

Note: The PCA must supply a copy of the WAE Plans to Council together with the occupation certificate for the whole of the building.

Note: The occupation certificate for the whole of the building must not be issued until this condition has been satisfied.

F.11 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.

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

G.1 Electricity Substations – Dedication as Road and/or Easements for Access

If an electricity pillar and/or substation is required on the site the owner must dedicate to the appropriate energy authority (to its satisfaction), free of cost, an area of land adjoining the street alignment to enable an electricity pillar and/or substation to be established. The size and location of the electricity pillar and/or substation is to be in accordance with the requirements of the appropriate energy authority and Council. The opening of any access doors must not intrude onto the public road (footway or road pavement).

Documentary evidence of compliance, including correspondence from the energy authority is to be provided to the Principal Certifier prior to issue of the Construction Certificate detailing energy authority requirements.

The Accredited Certifier must be satisfied that the requirements of energy authority have been met prior to issue of the Construction Certificate.

Where an electricity pillar and/or substation is provided on the site adjoining the road boundary, the area within which the electricity pillar and/or substation is located must be dedicated as public road. Where access is required across the site to access an electricity pillar and/or substation an easement for access across the site from the public place must be created upon the linen plans burdening the subject site and benefiting the Crown in right of New South Wales and any statutory corporation requiring access to the electricity pillar and/or substation.

Standard Condition: G4 (Autotext GG4)

H. Conditions which must be satisfied prior to the issue of the Occupation Certificate for the whole of the building

H.1 Fulfillment of BASIX Commitments – clause 154B of the Regulation

All BASIX commitments must be effected in accordance with the BASIX Certificate No. 1367774M.

Note: Clause 154B(2) of the *Environmental Planning and Assessment Regulation 2000* provides: "A certifying authority must not issue a final Occupation Certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."

Standard Condition: H7 (Autotext HH7)

H.2 Removal of Ancillary Works and Structures

The Principal Contractor or Owner must remove from the land and any adjoining public place:

- a) the site sign,
- b) ablutions.
- c) hoarding,
- d) scaffolding, and
- e) waste materials, matter, article or thing.

Note: This condition has been imposed to ensure that all ancillary matter is removed prior to the issue of the Final Occupation Certificate.

Standard Condition: H12 (Autotext HH12)

H.3 Road Works (including footpaths)

The following works must be completed to the satisfaction of Council, in compliance with Council's *Specification for Roadworks, Drainage and Miscellaneous Works* (2012) unless expressly provided otherwise by these conditions at the Principal Contractor's or Owner's expense:

- a) stormwater pipes, pits and connections to public stormwater systems within the road,
- b) driveways and vehicular crossings within the *road*,
- c) removal of redundant driveways and vehicular crossings,
- d) new footpaths within the *road*,
- e) relocation of existing power/light pole,
- f) relocation/provision of street signs,
- g) new or replacement street trees,
- 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
- i) new or reinstated road surface pavement within the *road*.

Note: Security held by Council pursuant to section 4.17(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 (Autotext HH13)

H.4 Positive Covenant and Works-As-Executed Certification of Stormwater Systems

Prior to issue of any Occupation Certificate, stormwater drainage works are to be certified by a professional engineer with works-as-executed drawings prepared by a registered surveyor and submitted, for approval by the Principal Certifying Authority, certifying:

- a) compliance with conditions of development consent relating to stormwater,
- b) the structural adequacy of the on-site stormwater detention (OSD) and rainwater retention and pumpout systems,
- c) that an OSD system with the required storage has been constructed in accordance with the approved stormwater plans,

- d) that a pumpout system with required storage has been constructed in accordance with the approved stormwater plans.
- e) that a rainwater tank with required storage has been constructed in accordance with the approved stormwater plans,
- f) that stormwater from rainwater tank have been connected for non-potable use such as car washing and garden irrigation etc,
- g) that only one stormwater outlet pipe has been constructed in accordance with the approved stormwater plans,
- h) that a stormwater treatment system has been constructed in accordance with the approved plans and meets the water quality targets stipulated in the Council's DCP,
- i) that subsoil drainage/seepage water is NOT collected and discharged into the kerb and gutter in accordance with the approved stormwater drawings,
- j) pipe invert levels and surface levels to Australian Height Datum, and
- k) contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.

A positive covenant pursuant to section 88E of the *Conveyancing Act 1919* must be created on the title of the subject property, providing for the indemnification of Council from any claims or actions and for the on-going maintenance of the stormwater treatment system, on-site detention system, on-site retention system, including any pumps and sumps incorporated in the development. The wording of the Instrument must be in accordance with Council's standard format and the Instrument must be registered with the NSW Land Registry Services.

Note: The required wording of the Instrument can be downloaded from Council's website www.woollahra.nsw.gov.au. The PC must supply a copy of the WAE plans to Council together with the Occupation Certificate.

Note: Occupation Certificate must not be issued until this condition has been satisfied. Standard Condition: H20 (Autotext HH20)

H.5 Positive Covenant for Mechanical Parking Installation & Work-As-Executed Certification of Mechanical Systems

Prior to issue of any Occupation Certificate for the whole of the building, mechanical parking installations are to be certified by a professional engineer with works-as-executed drawings supplied to the Principal Certifier detailing:

- Compliance with conditions of development consent relating to mechanical parking installation including traffic light system;
- b) That the works have been constructed in accordance with the approved design;
- c) A positive covenant pursuant to Section 88E of the Conveyancing Act 1919 must be created on the title of the subject property, providing for the indemnification of Council from any claims or actions and for the on-going maintenance of the turntable and traffic signal system incorporated in the development. The wording of the Instrument must be in accordance with Council's standard format and the Instrument must be registered at the Land and Property Information NSW.

Note: The PCA must supply a copy of the WAE Plans to Council together with the occupation certificate for the whole of the building.

Note: The occupation certificate for the whole of the building must not be issued until this condition has been satisfied.

Condition Reason: To ensure the certification and ongoing maintenance of the mechanical parking installations and to indemnify Council from any claims or actions.

H.6 Landscaping

The *principal contractor* or *owner* must provide to *PCA* a works-as-executed landscape plan and certification from a qualified landscape architect/designer, horticulturist and/or arborist as applicable to the effect that the works comply with this consent.

Note: This condition has been imposed to ensure that all Landscaping work is completed prior to the issue of the Final Occupation Certificate.

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

I.1 Maintenance of BASIX Commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No. 1367774M.

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: 124

I.2 Ongoing Maintenance of the On-site Stormwater Detention (OSD), Stormwater Treatment and Rainwater Systems

The owner(s) must in accordance with this condition and any positive covenant:

- Permit stormwater to be temporarily detained, treated and retained and reused by the systems.
- b) keep the systems clean and free of silt rubbish and debris;
- c) maintain renew and repair as reasonably required from time to time the whole or part of the system so that it functions in a safe and efficient manner;
- d) carry out the matters referred to in paragraphs (b) and (c) at the Owners expense;
- e) not make any alterations to the system or elements thereof without prior consent in writing of the Council and not interfere with the system or by its act or omission cause it to be interfered with so that it does not function or operate properly;
- f) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the land with regard to compliance with the requirements of this covenant;
- g) comply with the terms of any written notice issued by Council in respect to the requirements of this clause within the time stated in the notice; and
- h) where the Owner fails to comply with the Owner's obligations under this covenant, permit the Council or its agents at all times and on reasonable notice at the Owner's cost to enter the land with equipment, machinery or otherwise to carry out the works required by those obligations.

The Owner

- a) indemnifies the Council from and against all claims, demands, suits, proceedings or actions in respect of any injury, damage, loss, cost, or liability (**Claims**) that may be sustained, suffered, or made against the Council arising in connection with the performance of the Owner's obligations under this covenant except if, and to the extent that, the Claim arises because of the Council's negligence or default; and
- b) releases the Council from any Claim it may have against the Council arising in connection with the performance of the Owner's obligations under this covenant except if, and to the extent that, the Claim arises because of the Council's negligence or default.

Note: This condition has been imposed to ensure that owners are aware of require maintenance requirements for their stormwater systems.

Note: This condition is supplementary to the owner(s) obligations and Council's rights under any positive covenant.

Standard Condition: 129

I.3 Swimming and Spa Pools – Maintenance

Swimming and spa pools must be maintained:

- a) in compliance with the *Swimming Pools Act 1992* and the Building Code of Australia with regard to the provision of child-resistant barriers and resuscitation signs,
- b) in compliance with the NSW Health "Public Swimming Pools and Spa Pools Advisory Document" in force at that time. Private pools are encouraged to comply with the same standards as applicable.
- c) in compliance with AS 1926.3-2010 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.

Note: The NSW Health public swimming pools and spa pools guidelines are available at www.health.nsw.gov.au/environment/publicpools/Pages/default.aspx
Standard Condition: I30

I.4 Outdoor Lighting – Residential

Outdoor lighting must comply with AS/NZS 4282:2019: Control of the obtrusive effects of outdoor lighting. The maximum luminous intensity from each luminare and threshold limits must not exceed the level 1 control relevant under tables in AS/NZS 4282:2019.

Note: This condition has been imposed to protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting in public places.

Note: This condition has been imposed to control the obtrusive effects of outdoor lighting.

Standard Condition: I49

I.5 Noise Control

The use of the premises must not give rise to the transmission of *offensive noise* to any place of different occupancy. *Offensive noise* is defined in the *Protection of the Environment Operations Act 1997.*

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

Note: Council will generally enforce this condition in accordance with the Noise Guide for Local Government (www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government) and the NSW Industrial Noise Policy (www.epa.nsw.gov.au/your-environment/noise/industrial-noise) published by the NSW Environment Protection Authority. Other State Government authorities also regulate the Protection of the Environment Operations Act 1997.

Useful links:

Community Justice Centres—free mediation service provided by the NSW Government www.cjc.nsw.gov.au.

NSW Environment Protection Authority— see "noise" section www.environment.nsw.gov.au/noise.

NSW Government legislation- access to all NSW legislation, including the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Noise Control Regulation 2000* is available at www.legislation.nsw.gov.au.

Australian Acoustical Society—professional society of noise related professionals www.acoustics.asn.au.

Association of Australian Acoustical Consultants—professional society of noise related professionals www.aaac.org.au.

Liquor and Gaming NSW—www.liquorandgaming.nsw.gov.au.

Standard Condition: I56

I.6 Noise from Mechanical Plant and Equipment

The noise level measured at any boundary of the site at any time while the mechanical plant and equipment is operating must not exceed the *background noise level*. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed *background noise level* at any time.

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

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

Note: Words in this condition have the same meaning as in the *Noise Policy for Industry* (2017) www.epa.nsw.gov.au/your-environment/noise/industrial-noise/noise-policy-for-industry-(2017)

and Noise Guide for Local Government (2013) www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government Standard Condition: I59

I.7 Provision of Off-street Public and Visitor Parking

During the occupation and ongoing use, in compliance with AS 2890.1: Parking facilities - Off-street car parking, unimpeded public access to off-street parking must be maintained as follows:

Use	Number of spaces
Car Parking (residents)	8
Bicycle Parking	4

Note: Where there is a potential for the trespass of private motor vehicles upon private parking servicing the owner of the site may seek to enter into a free parking area agreement with Council. Council may under such agreement enforce parking restrictions under section 650 of the Local Government Act 1993.

Note: Further information can be obtained from Council's Compliance Team by calling 9391 7000 or from the Office of Local Government at www.olg.nsw.gov.au or call 4428 4100.

Condition Reason: To ensure adequate on-site parking is maintained.

I.8 Parking Permits

During the occupation and ongoing use of the development, future tenants and residents of the proposed development will not be eligible for resident or visitor parking permits.

Condition Reason: To minimise the impact of the development upon on street car parking.

I.9 On-going Maintenance of the Mechanical Parking Installations

During the occupation and ongoing use, the Owner must ensure the ongoing maintenance of the mechanical parking installations in accordance with this condition and any positive covenant. The Owner must:

- a) keep the system clean and free of silt rubbish and debris;
- b) maintain renew and repair as reasonably required from time to time the whole of the system so that it functions in a safe and efficient manner;
- c) carry out the matters referred to in paragraphs (a) and (b) at the Owners expense;
- d) not make any alterations to the system or elements thereof without prior consent in writing of the Council and not interfere with the system or by its act or omission cause it to be interfered with so that it does not function or operate properly;
- e) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the land with regard to compliance with the requirements of this covenant;
- f) comply with the terms of any written notice issued by Council in respect to the requirements of this clause within the time stated in the notice; and
- g) where the Owner fails to comply with the Owner's obligations under this covenant, permit the Council or its agents at all times and on reasonable notice at the Owner's cost to enter the land with equipment, machinery or otherwise to carry out the works required by those obligations.

The Owner

- indemnifies the Council from and against all claims, demands, suits, proceedings or actions in respect of any injury, damage, loss, cost, or liability (Claims) that may be sustained, suffered, or made against the Council arising in connection with the performance of the Owner's obligations under this covenant; and
- b) releases the Council from any Claim it may have against the Council arising in connection with the performance of the Owner's obligations under this covenant.

Notes: This condition is supplementary to the owner(s) obligations and Council's rights under any positive covenant.

Condition Reason: To ensure the ongoing maintenance of the mechanical parking installations.

J. Miscellaneous Conditions

Nil.

K. Advisings

K.1 Criminal Offences – Breach of Development Consent and Environmental Laws

Failure to comply with this development consent and any condition of this consent is a **criminal offence**. Failure to comply with other environmental laws is also a criminal offence.

Where there is any breach Council may without any further warning:

- a) Issue Penalty Infringement Notices (On-the-spot fines):
- b) Issue notices and orders:
- c) Prosecute any person breaching this consent; and/or
- d) Seek injunctions/orders before the courts to restrain and remedy any breach.

Warnings as to potential maximum penalties

Maximum penalties under NSW environmental laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

Warning as to enforcement and legal costs

Should Council have to take any action to enforced compliance with this consent or other environmental laws Council's policy is to seek from the Court appropriate orders requiring the payments of its costs beyond any penalty or remedy the Court may order.

This consent and this specific advice will be tendered to the Court when seeking costs orders from the Court where Council is successful in any necessary enforcement action.

Note: The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of *the Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious.

Standard Advising: K1 (Autotext KK1)

K.2 Dial Before You Dig



The Principal Contractor, Owner-builder or any person digging may be held financially responsible by the asset owner should they damage underground pipe or cable networks. Minimise your risk and dial 1100 Before You Dig or visit www.1100.com.au

When you contact Dial Before You Dig you will be sent details of all Dial Before You Dig members who have underground assets in the vicinity of your proposed excavation.

Standard Advising: K2 (Autotext KK2)

K.3 NSW Police Service and Road Closures

Council and NSW Police approval is required prior to a partial or full temporary road closure. If you are seeking a partial or full temporary road closure you must comply with the relevant conditions of this consent and you must also gain the approval of the Eastern Suburbs Police Area Command.

Warning: If you partial or full close a road without compliance with Council and NSW Police requirements Council Rangers or the Police can issue Penalty Infringement Notices or Court Attendance Notices leading to prosecution.

Note: Traffic Supervisors at the Eastern Suburbs Police Area Command can be contacted on eastsubtraffic@police.nsw.gov.au or ph 9369 9899.

Standard Advising: K4 (Autotext KK4)

K.4 Builder's Licences and Owner-builders Permits

Section 6.6(2)(d) 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 appoint a Principal Contractor for residential building work who must be the holder of a contractor licence.

The Owner(s) must appoint the Principal Certifier. The Principal Certifier must check that the required insurances are 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.

Note: For more information go to the NSW Fair Trading website <u>www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating</u> Standard Condition: K5 (Autotext KK5)

K.5 Building Standards - Guide to Standards and Tolerances

The Principal Certifier does not undertake detailed quality control inspections and the role of the Principal Certifier 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 "NSW Guide to Standards and Tolerances 2017" 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 Principal Certifier does not undertake this role.

Council, as the Principal Certifier or otherwise, does not adjudicate building contract disputes between the Principal Contractor, contractors and the Owner.

Note: For more information on the *NSW Guide to Standards and Tolerances* go to the NSW Fair Trading website <a href="www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/after-you-build-or-renovate/guide-to-standards-and-tolerances or call 133 220. Standard Condition: K6 (Autotext KK6)

K.6 SafeWork NSW Requirements

The Work Health and Safety Act 2011 and subordinate regulations, codes of practice and guidelines control and regulate the development industry.

Note: For more information go to the SafeWork NSW website www.safework.nsw.gov.au or call 131 050.

Standard Condition: K7 (Autotext KK7)

K.7 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 Civil and Administrative Tribunal www.ncat.nsw.gov.au/Pages/cc/Divisions/dividing_fences.aspx

Note: 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. Around 75% of mediations result in an agreement being reached. Mediation sessions can be arranged at convenient times during the day, evening or weekends. To contact the Community Justice Centres go to www.cjc.nsw.gov.au or call 1800 990 777. Standard Advising: K10 (Autotext KK10)

K.8 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Mr Mario D'Alessio, Senior Assessment Officer, on (02) 9391 7120.

However, if you wish to pursue your rights of appeal in the Land and Environment Court you are advised that Council generally seeks resolution of such appeals through a section 34 Conference, site hearings and the use of Court Appointed Experts, instead of a full Court hearing.

This approach is less adversarial, it achieves a quicker decision than would be the case through a full Court hearing and it can give rise to considerable cost and time savings for all parties involved. The use of the section 34 Conference approach requires the appellant to agree, in writing, to the Court appointed commissioner having the full authority to completely determine the matter at the conference.

Standard Condition: K14 (Autotext KK14)

K.9 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 4.17 of the *Act*.

The securities will not be released until a Final Occupation Certificate has been 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.

Note: The Refund of Security Bond Application form can be downloaded from www.woollahra.nsw.gov.au

Standard Condition: K15 (Autotext KK15)

K.10 Recycling of Demolition and Building Material

It is estimated that building waste, including disposable materials, resulting from demolition, excavation, construction and renovation, accounts for almost 70% of landfill. Such waste is also a problem in the generation of dust and the pollution of stormwater. Council encourages the recycling of demolition and building materials.

Standard Condition: K17 (Autotext KK17)

K.11 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 NSW Fair Trading.

Note: For more information go to the NSW Fair Trading website www.fairtrading.nsw.gov.au or call 133 220.

Standard Condition: K18 (Autotext KK18)

K.12 Pruning or Removing a Tree Growing on Private Property

The provisions of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 and the Woollahra Development Control Plan 2015 (DCP), Chapter E3 –Tree Management, 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 Woollahra DCP from Council's website www.woollahra.nsw.gov.au or call Council on 9391 7000 for further advice.

Standard Condition: K19 (Autotext KK19)

K.13 Dilapidation Report

Please note the following in relation to the condition for a dilapidation report:

- a) The dilapidation report will be made available to affected property owners on requested and may be used by them in the event of a dispute relating to damage allegedly due to the carrying out of the development.
- b) This condition cannot prevent neighbouring buildings being damaged by the carrying out of the development.
- c) Council will not be held responsible for any damage which may be caused to adjoining buildings as a consequence of the development being carried out.
- d) Council will not become directly involved in disputes between the developer, its contractors and the owners of neighbouring buildings.
- e) In the event that access for undertaking the dilapidation survey is denied the Applicant is to demonstrate in writing to the satisfaction of the Principal Certifier 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.

Standard Advising: K23 (Autotext KK23)

K.14 Roads Act 1993 Application

Works or structures over, on or under public roads or footpaths are subject to sections 138, 139 and 218 of the *Roads Act 1993* and specifically:

- Construction of driveways and/or new or alterations to footpath paving
- Alteration and/or extension to Council drainage infrastructure
- Alteration and/or addition of retaining walls
- Pumping of water to Council's below ground stormwater system
- Installation of soil/rock anchors under the roadway
- Installation of Stormwater outlet pipes across the nature strip

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. 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 and 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 Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management.

Temporary ground anchors may be permitted, in accordance with Council's "Rock Anchor Policy".

<u>Services</u>: Prior to any excavation works, the location and depth of all public utility services (telephone, cable TV, electricity, gas, water, sewer, drainage, etc.) must be ascertained. The Applicant shall be responsible for all public utility adjustment/relocation works, necessitated by the development work and as required by the various public utility authorities and/or their agents.

All public domain works must comply with the latest version of Council's "Specification for Roadworks, Drainage and Miscellaneous Works" unless expressly provided otherwise by these conditions. This specification and the application form can be downloaded from www.woollahra.nsw.gov.au.

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

Note: When an application under the *Roads Act* is required, then four (4) weeks is to be allowed for assessment.

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

Note: The intent of this condition is that the design of the road, footpaths, driveway crossings and public stormwater drainage works must be detailed and approved prior to the issue of any Construction Certificate. Changes in levels may arise from the detailed design of buildings, road, footpath, driveway crossing grades and stormwater. Changes required under *Road Act* 1993 approvals may necessitate design and levels changes under this consent. This may in turn require the Applicant to seek to amend this consent. Standard Advising: K24 (Autotext KK24)

K.15 Mailboxes

Council has been alerted to an increase in mailbox theft, and as such, all new development, being new dwelling houses and residential flat buildings, are encouraged to have lockable mail boxes.

Standard Advising: K25 (Autotext KK25)

Attachments

- 1. Combined Architectural Set, Landscape Plans & Survey Plan J.
- 2. Clause 4.6 Statements J
- 3. Trees & Landscape Referral J
- 4. Heritage Referral 😃 🖺
- 5. Traffic Engineering Referral J
- 6. Development Engineer's Referral J

APPLICATION

DEVELOPMENT

DEVELOPMENT APPLICATION

NEW RESIDENTIAL FLAT BUILDING

22 Boronia Road Bellevue Hill NSW 2023

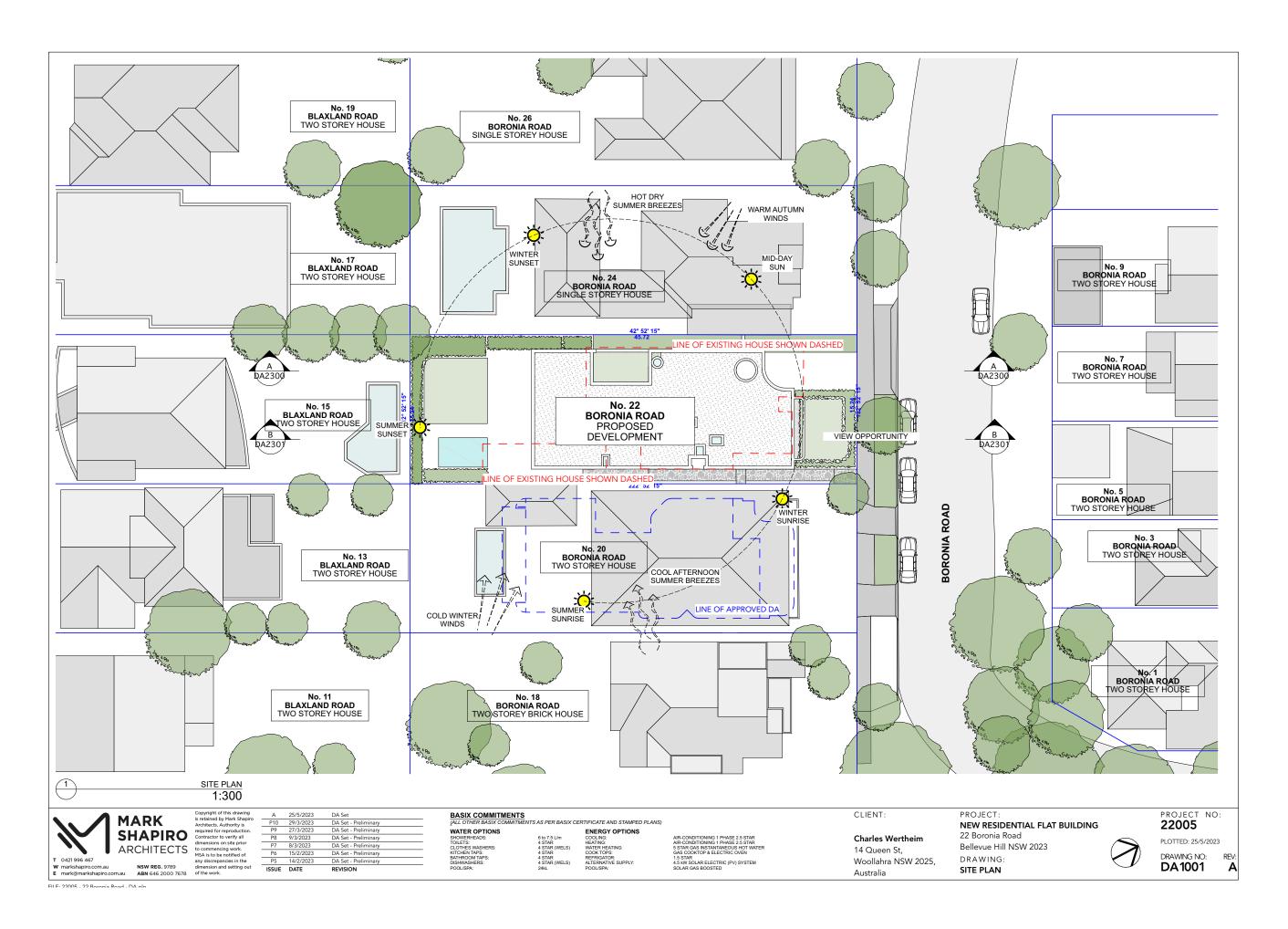
DRAWING No	DRAWING NAME	SCALE	REV
DA0000	COVERPAGE	1:1	Α
DA1000	LOCATION PLAN		Α
DA1001	SITE PLAN	1:300	Α
DA1100	SETBACK DIAGRAM	1:250	Α
DA2000	BASEMENT	1:100	Α
DA2001	GROUND FLOOR	1:100	Α
DA2002	FIRST FLOOR	1:100	Α
DA2003	REAR FIRST FLOOR	1:100	Α
DA2004	SECOND FLOOR	1:100	Α
DA2005	ROOF LEVEL	1:100	Α
DA2300	SECTION A	1:200	Α
DA2301	SECTION B	1:200	Α
DA2302	SECTION C	1:50	Α
DA2303	SECTION D	1:50	Α
DA2400	EAST ELEVATION	1:100	Α
DA2401	NORTH ELEVATION	1:100	Α
DA2402	WEST ELEVATION	1:100	Α
DA2403	SOUTH ELEVATION	1:100	Α
DA2404	FINISHES SCHEDULE	1:100	Α
DA9000	GFA	1:200	Α
DA9001	CROSS VENTILATION AND STORAGE	1:200	Α
DA9002	HEIGHT PLANE DIAGRAM		Α
DA9003	DEEP SOIL	1:200	Α
DA9004	WASTE MANAGEMENT PLAN	1:200	Α
DA9005	EXCAVATION VOLUME		Α
DA9100	SHADOW DIAGRAMS	1:500	Α
DA9200	SOLAR ACCESS	1:500	Α
DA9400	NOTIFICATION PLAN	1:250, 1	Α

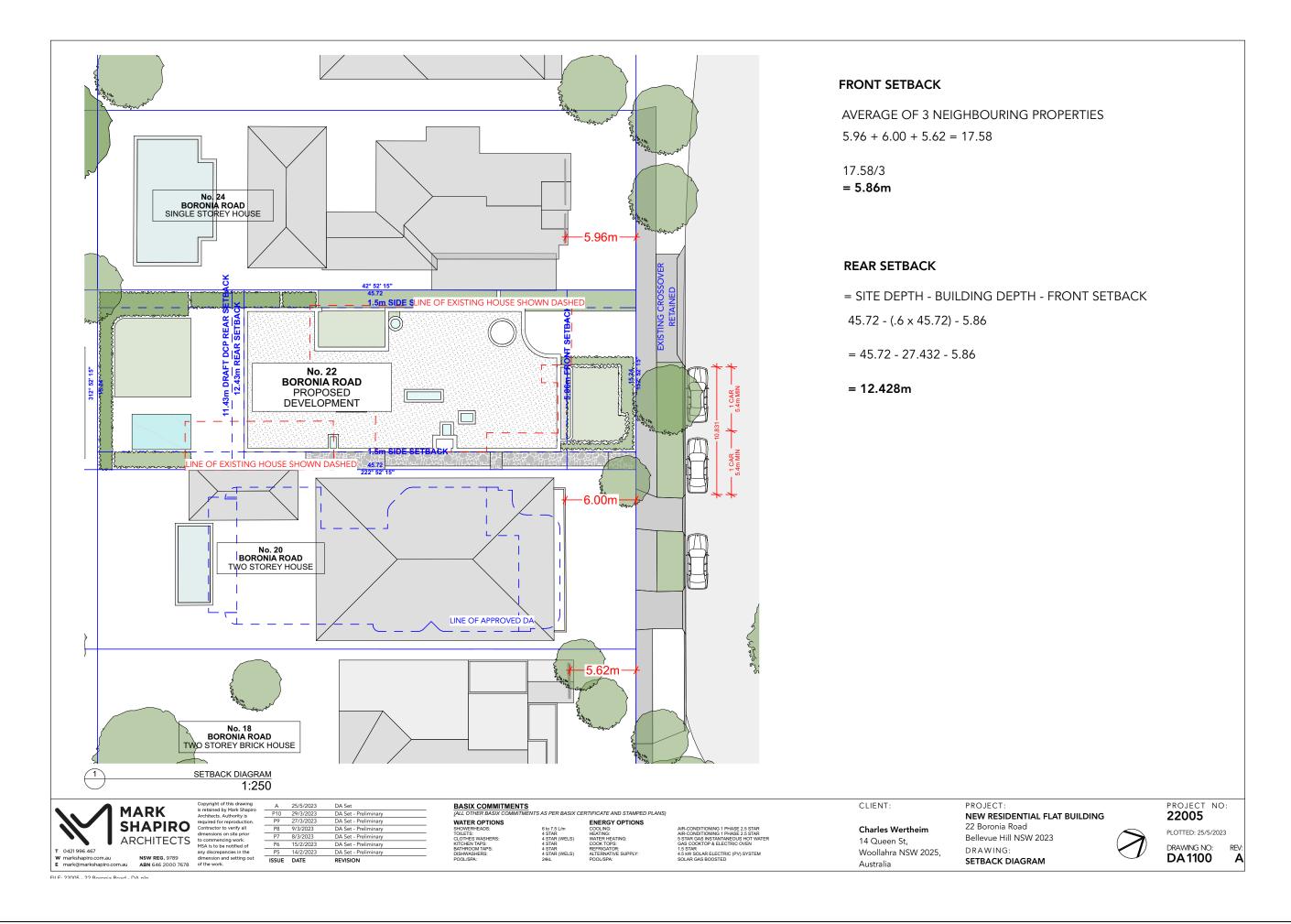


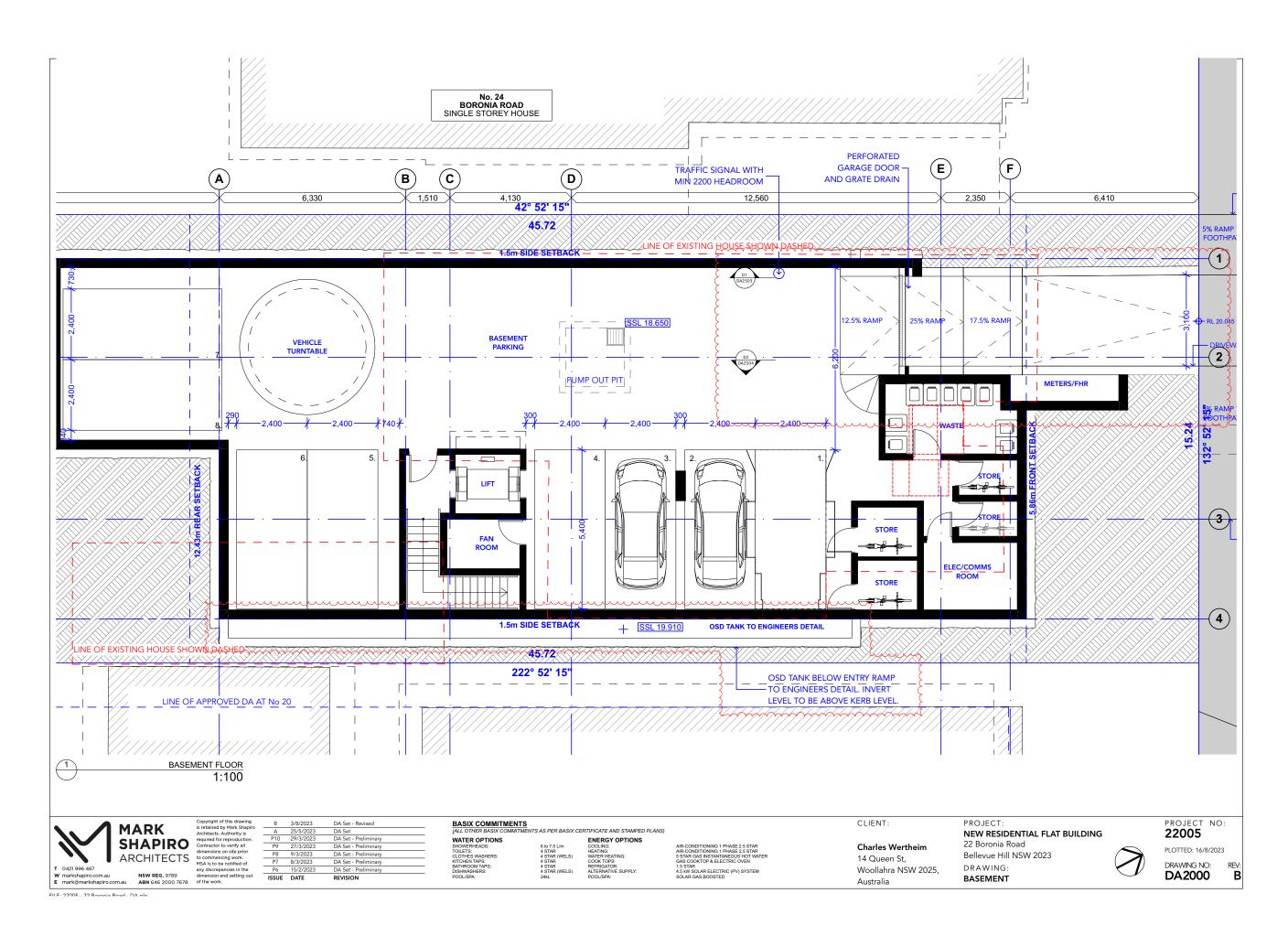


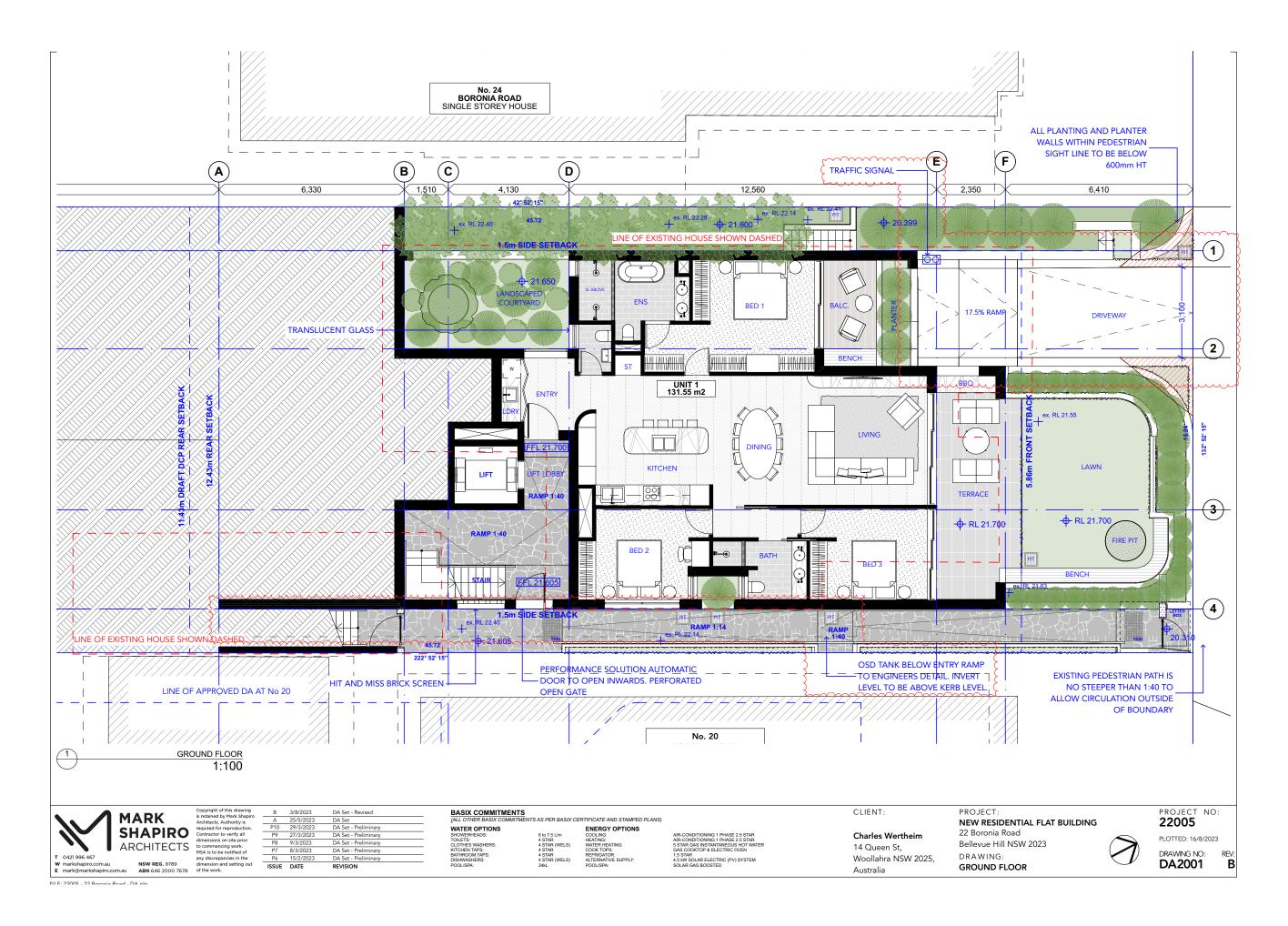
MARK SHAPIRO

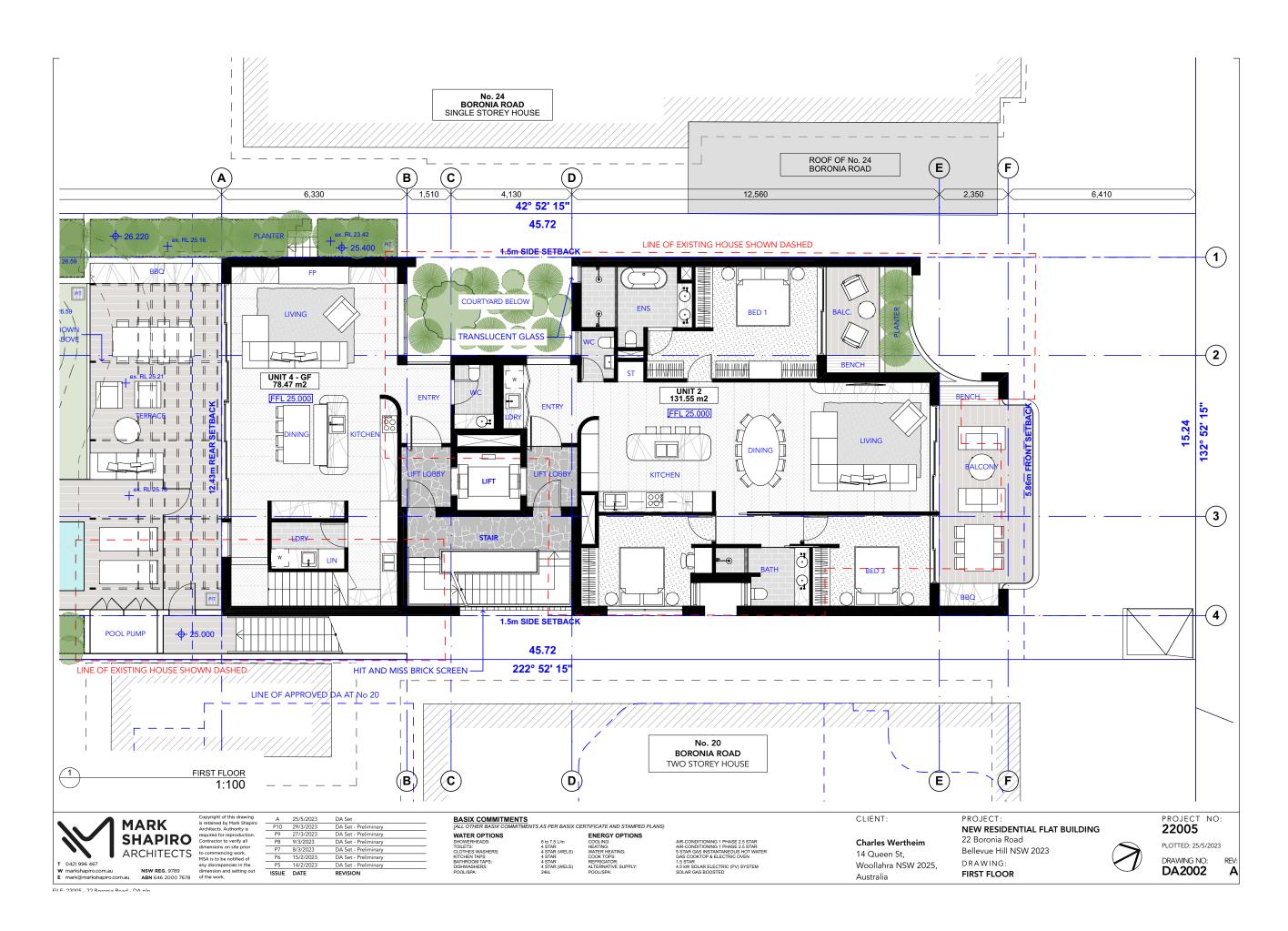


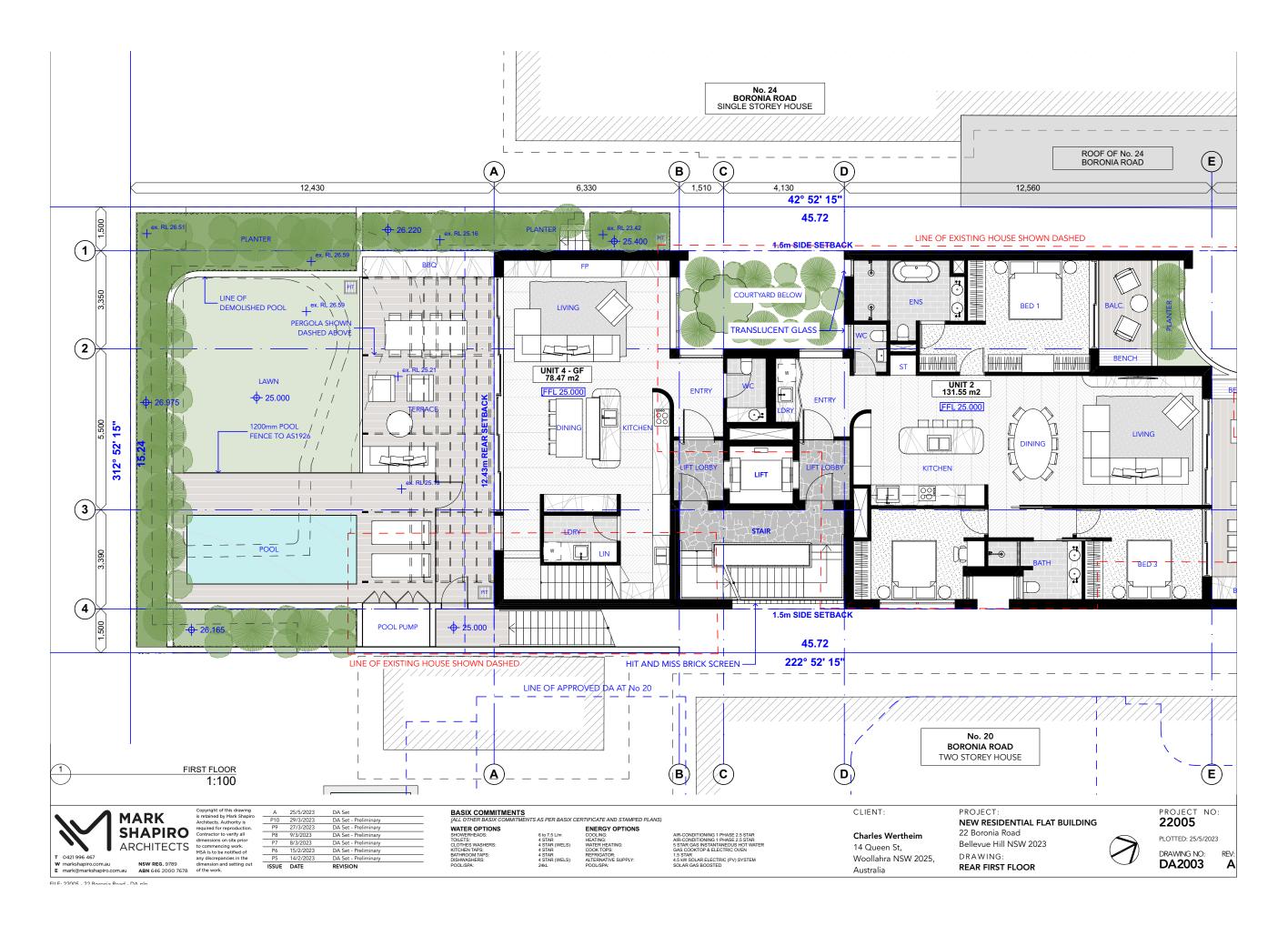


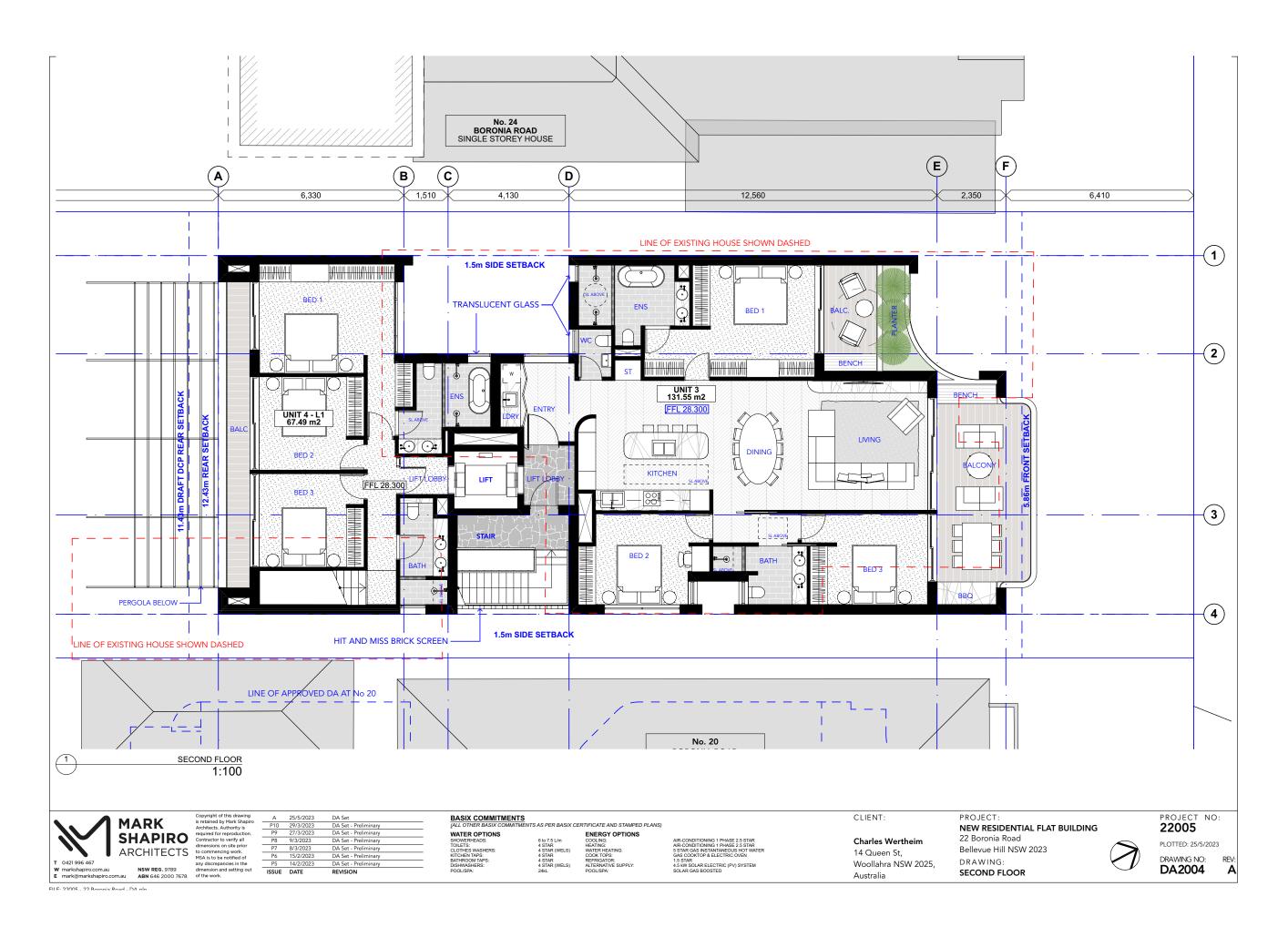


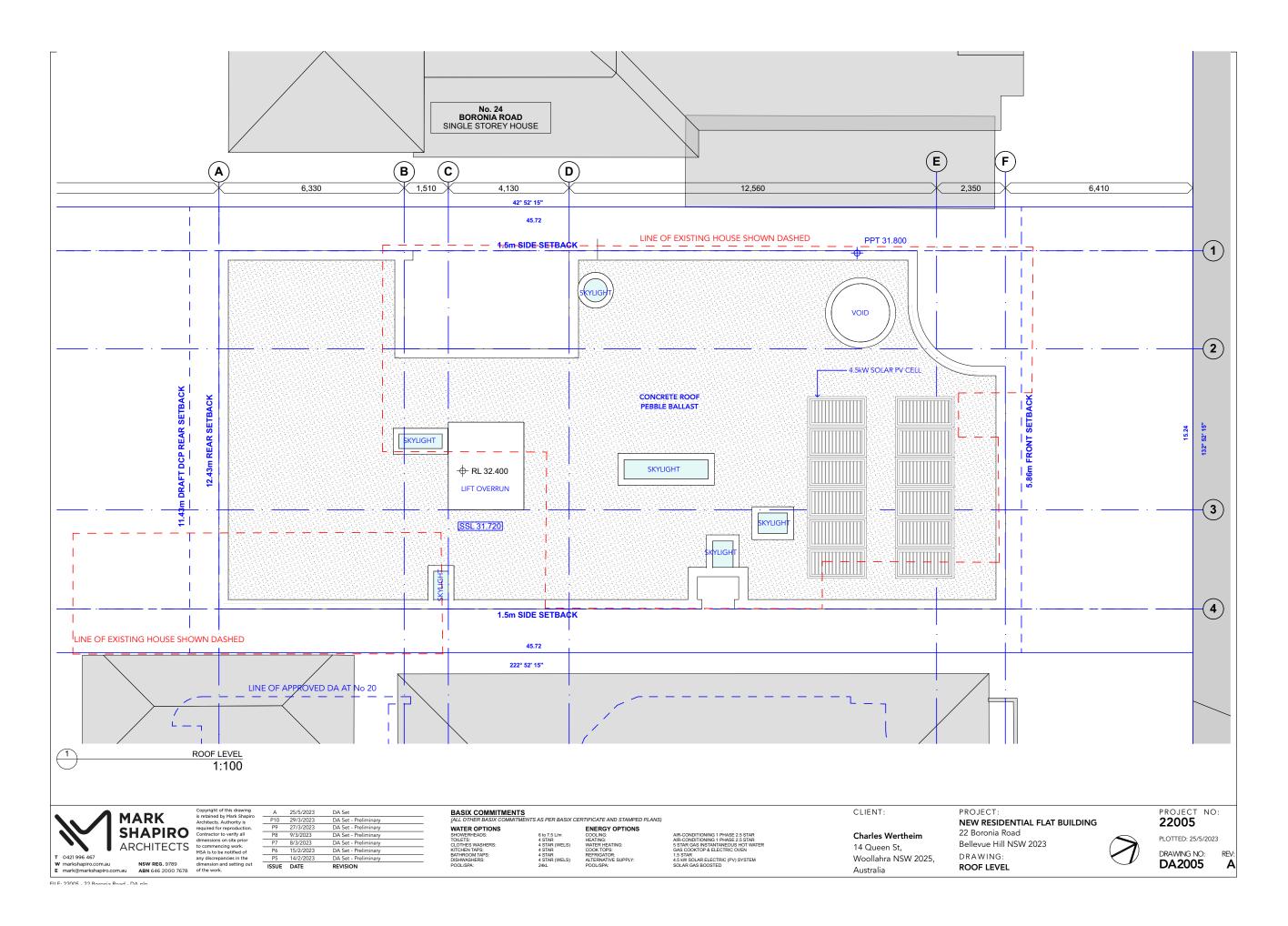


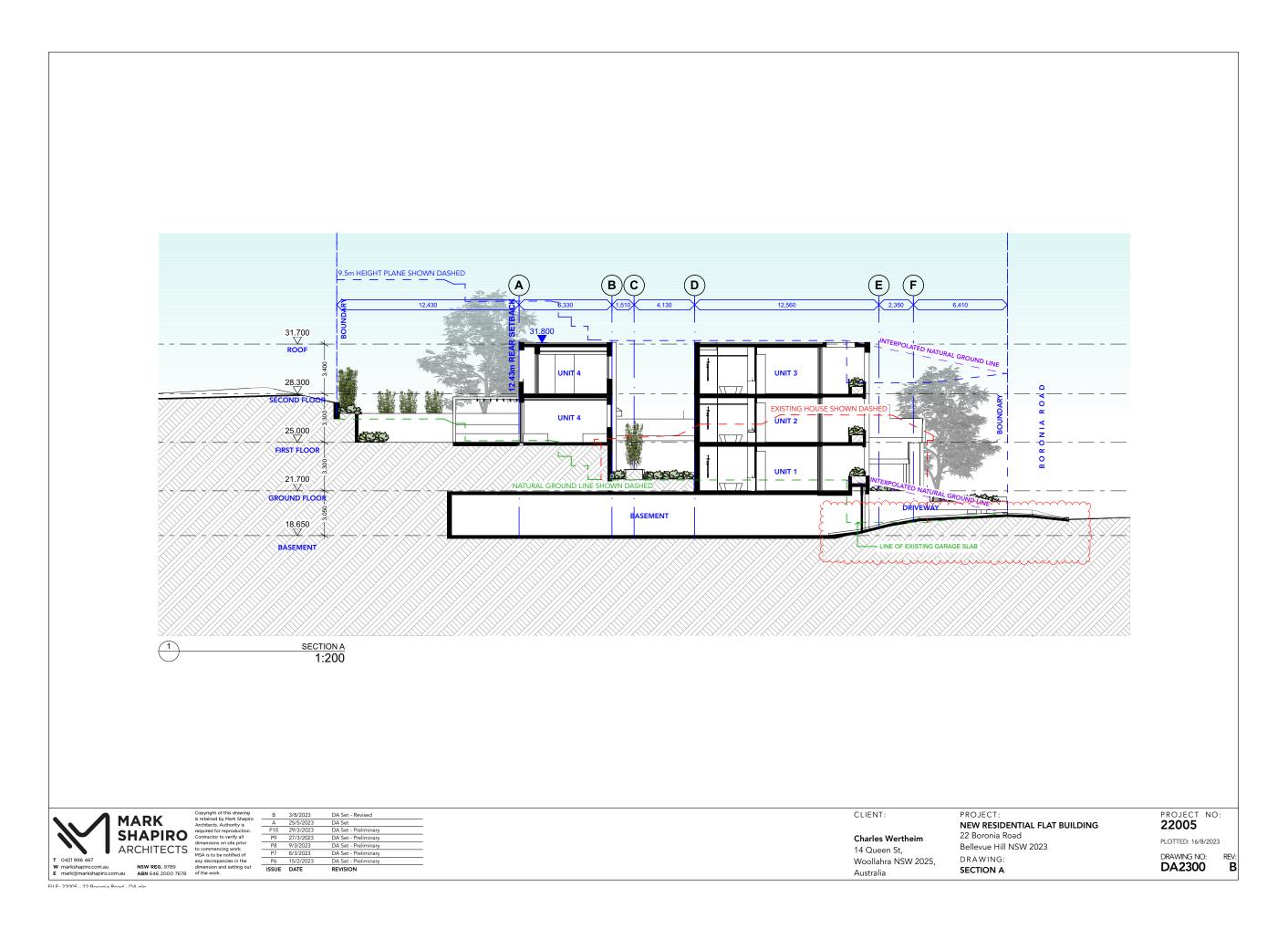


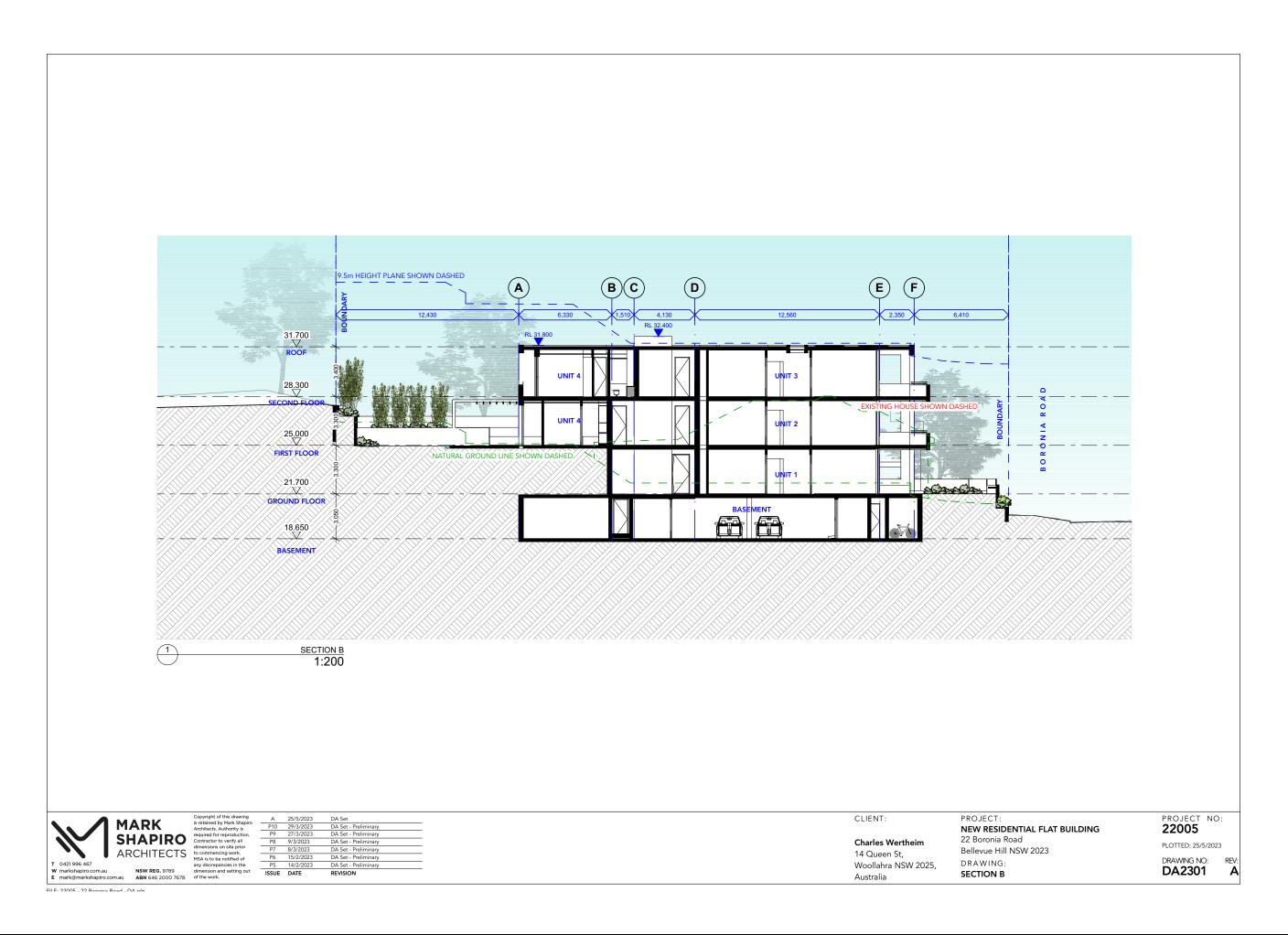


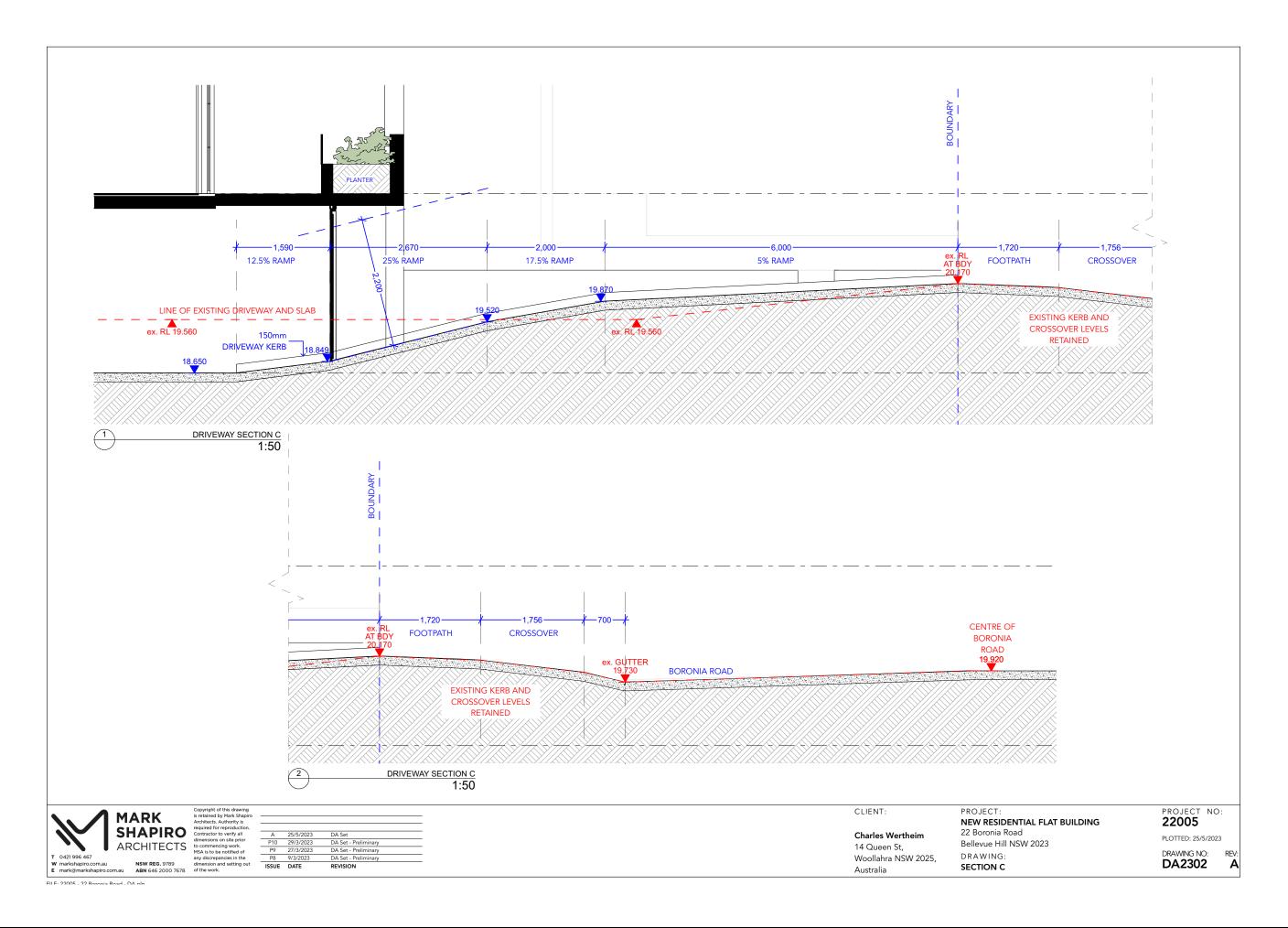


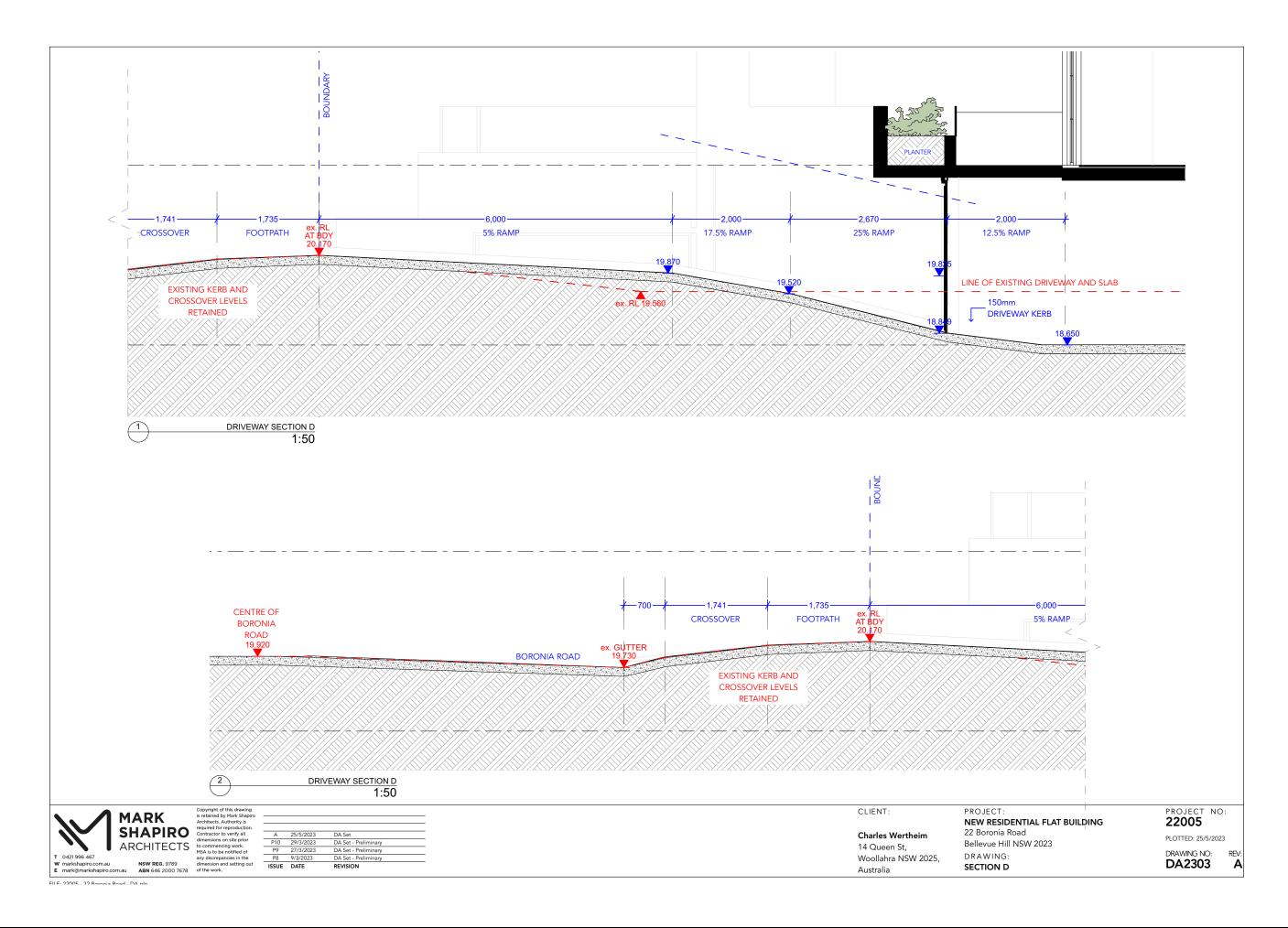


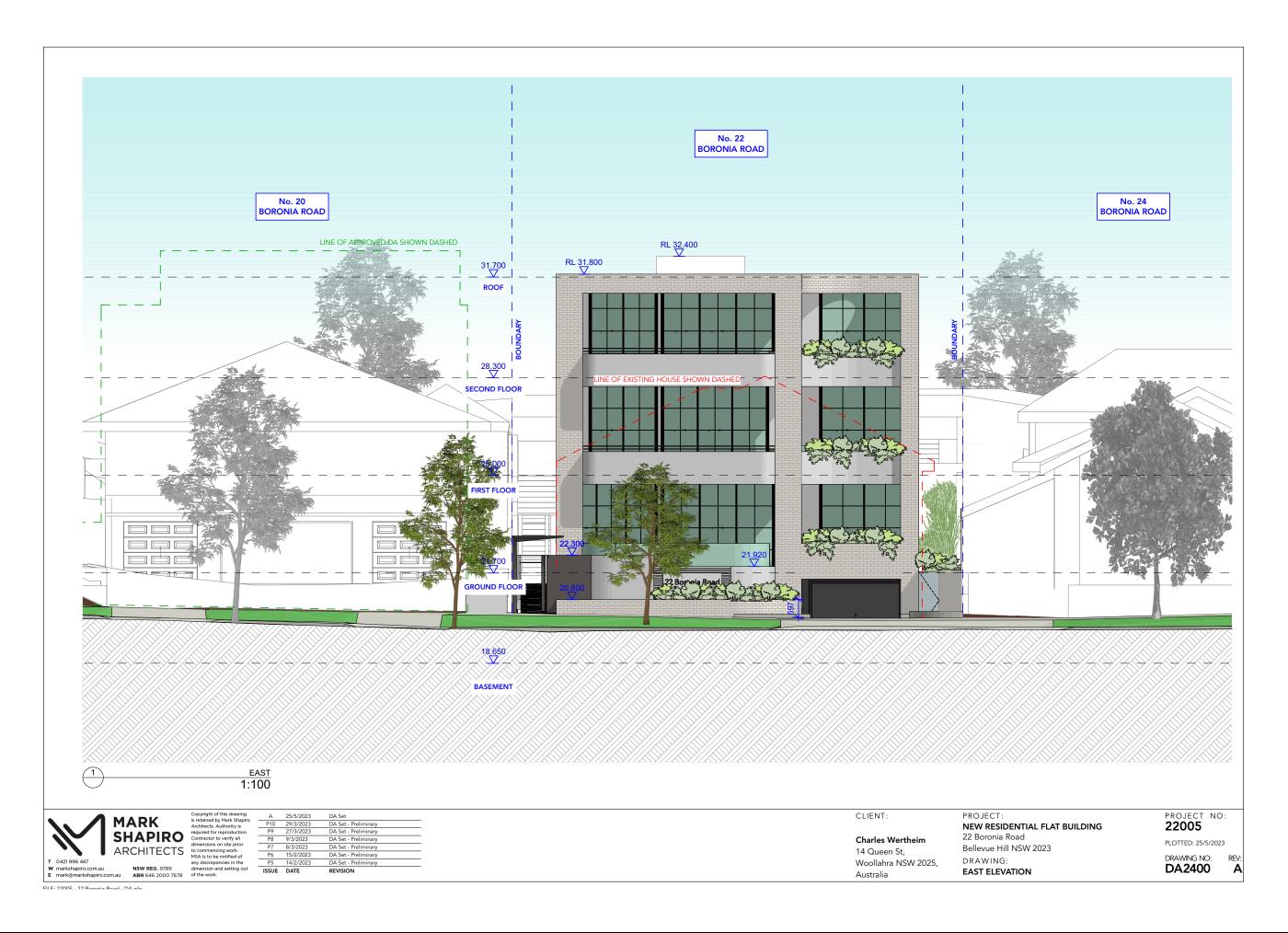


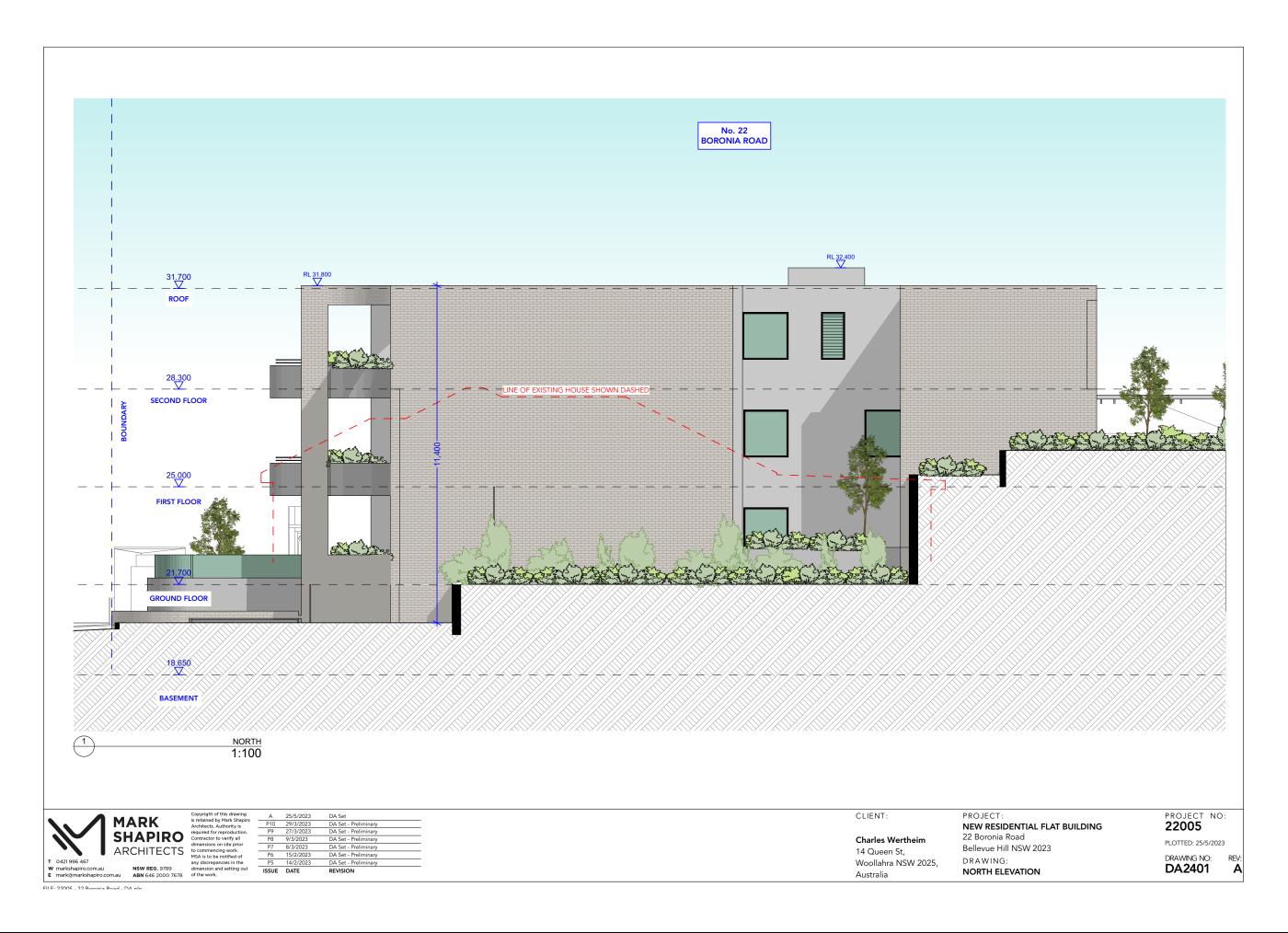


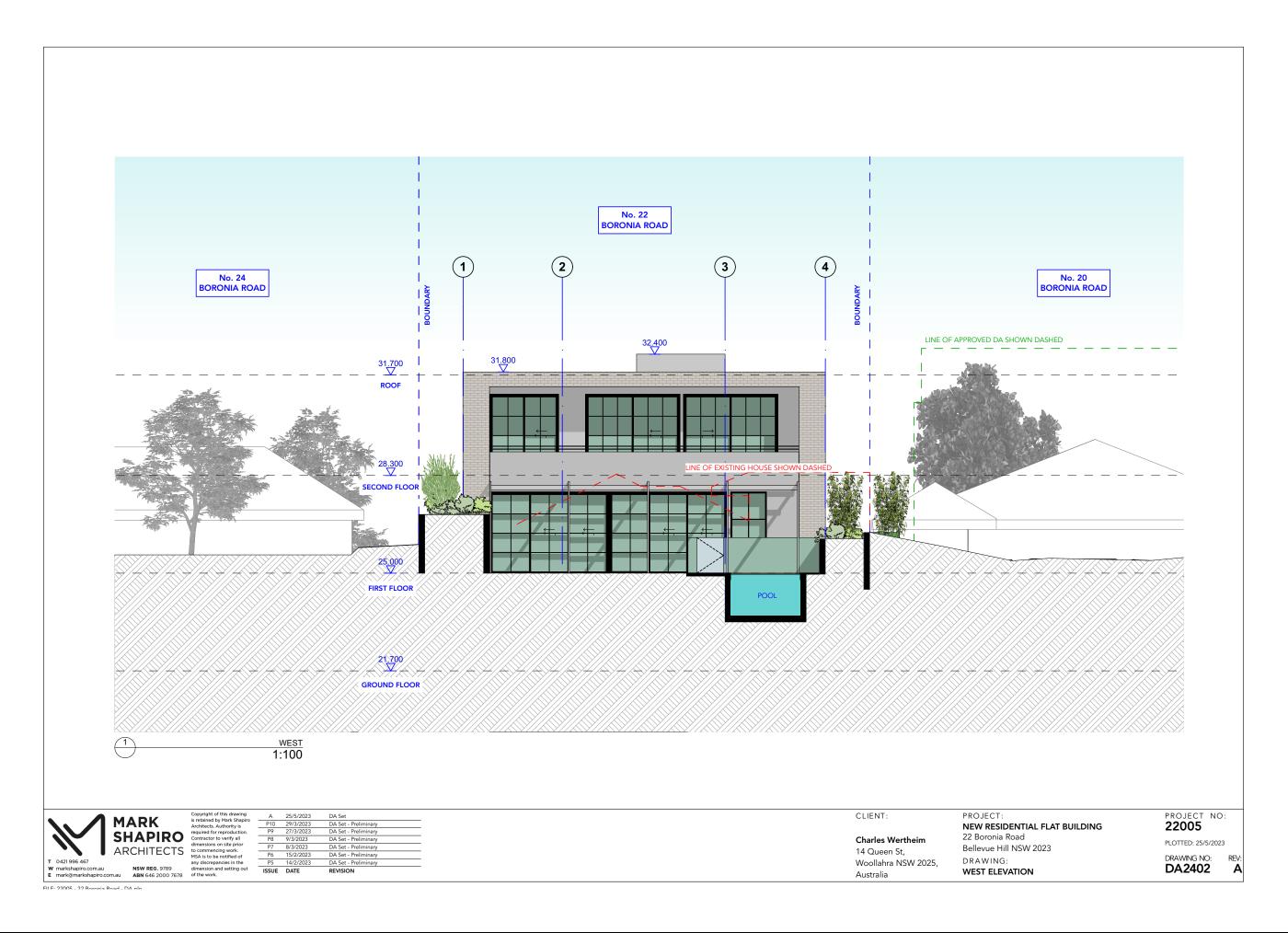


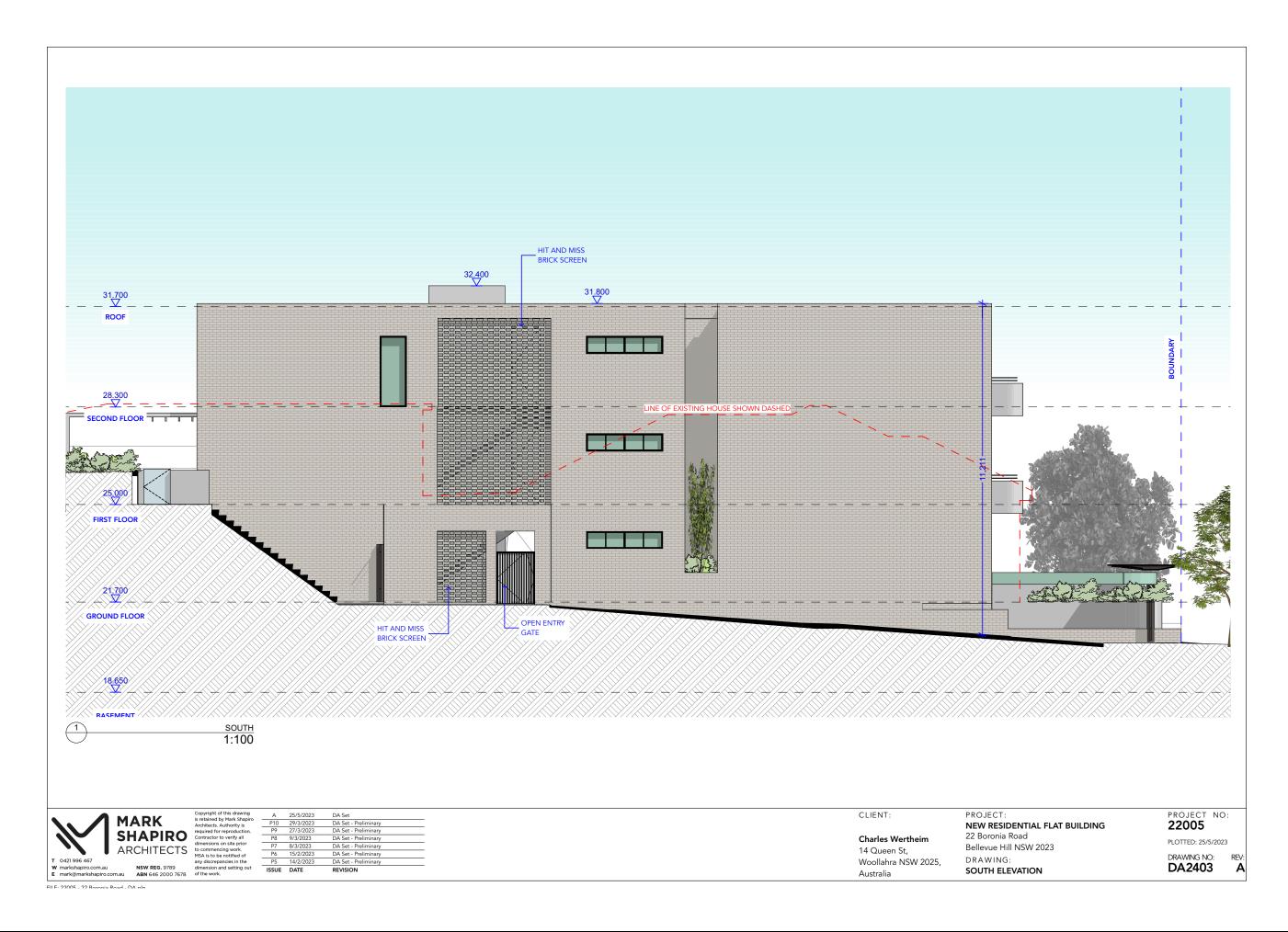


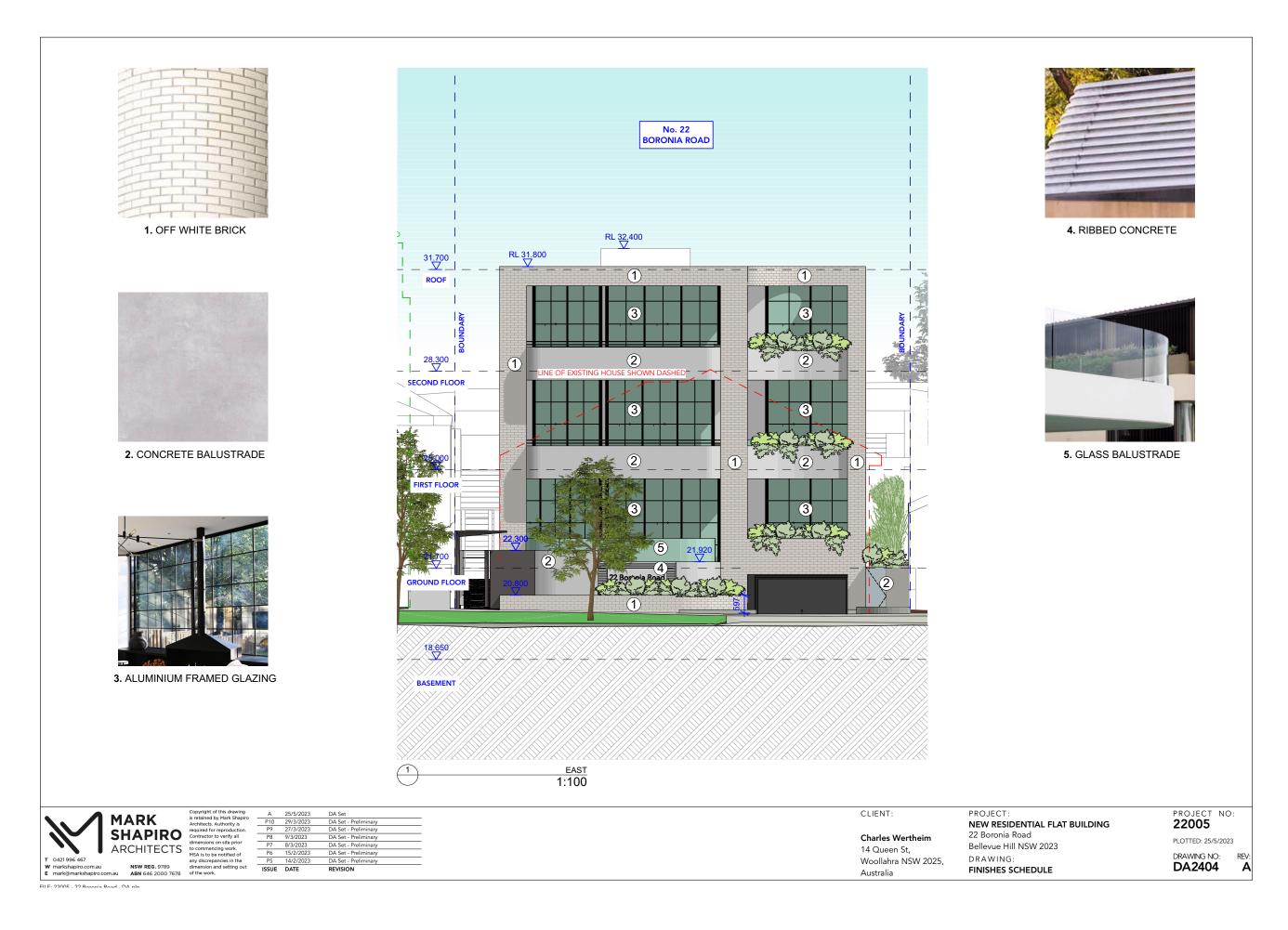


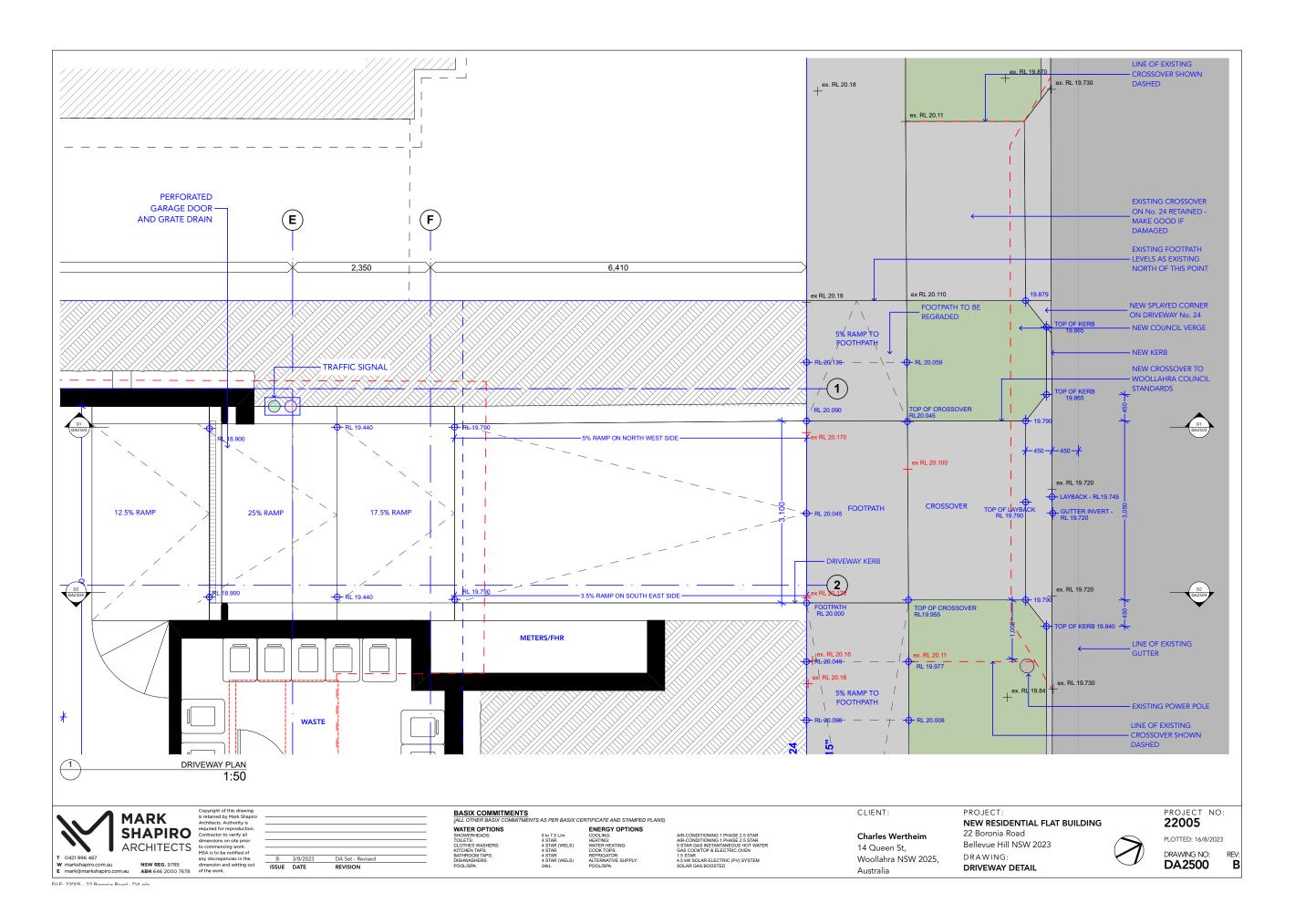


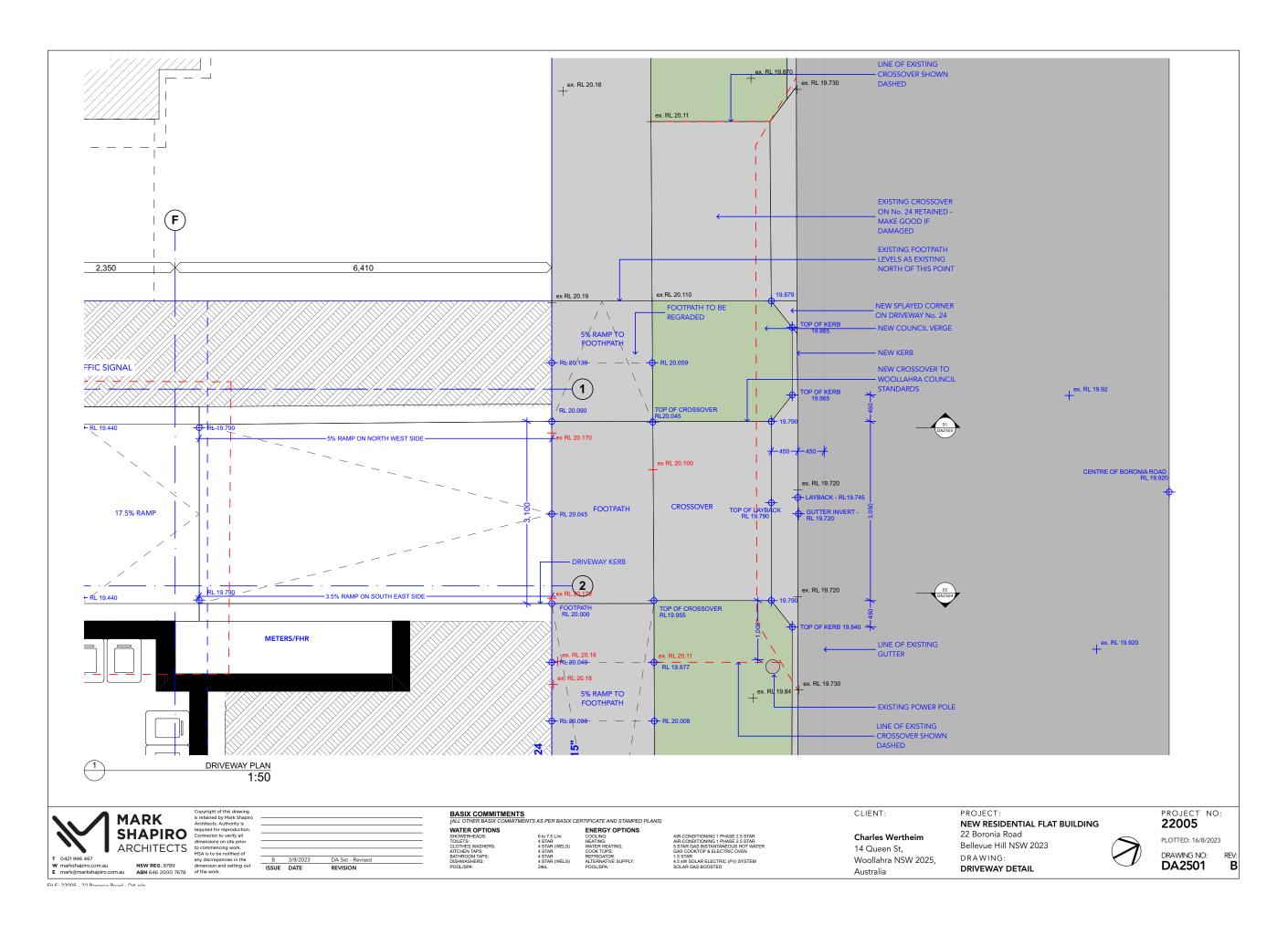


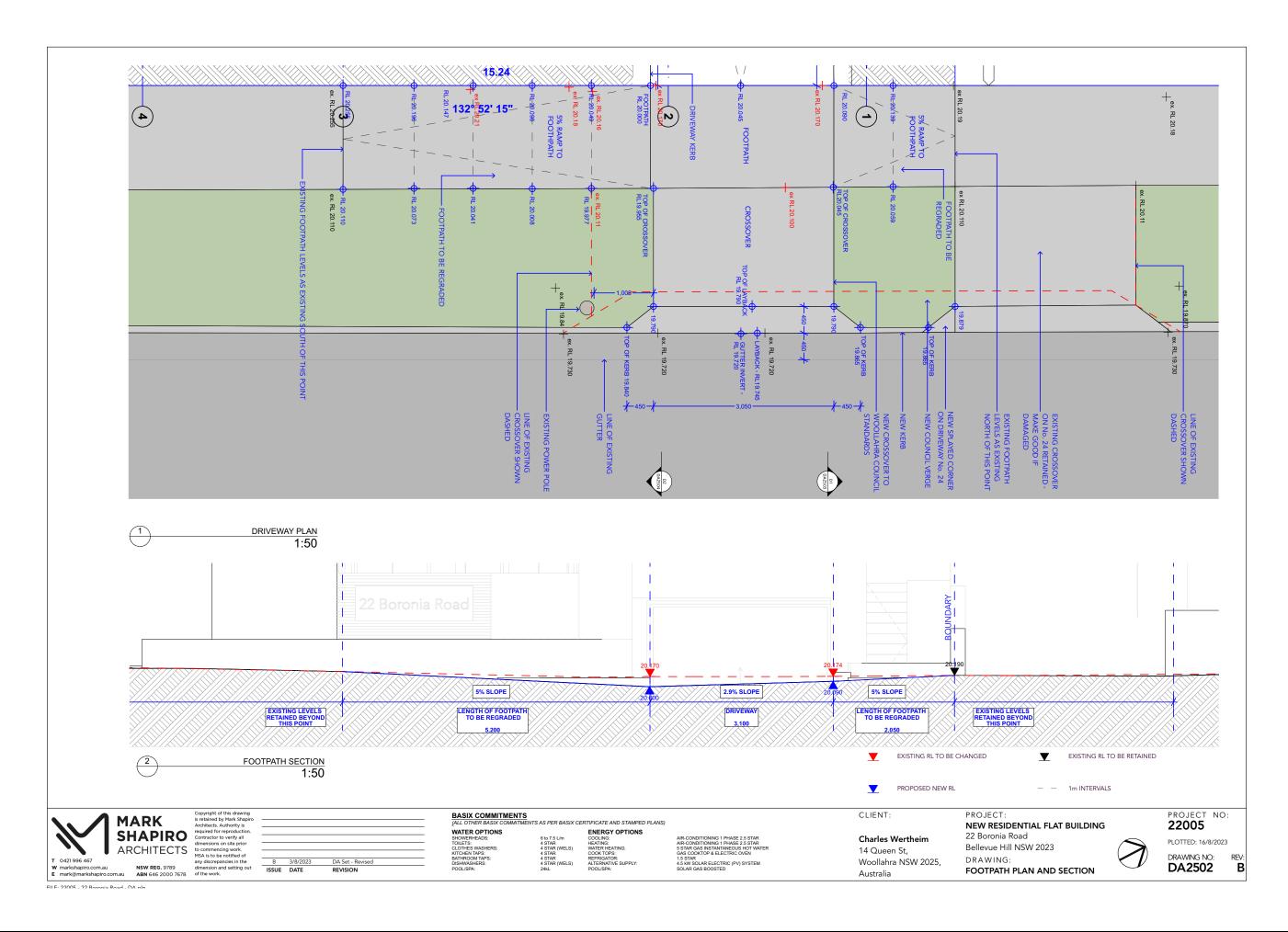


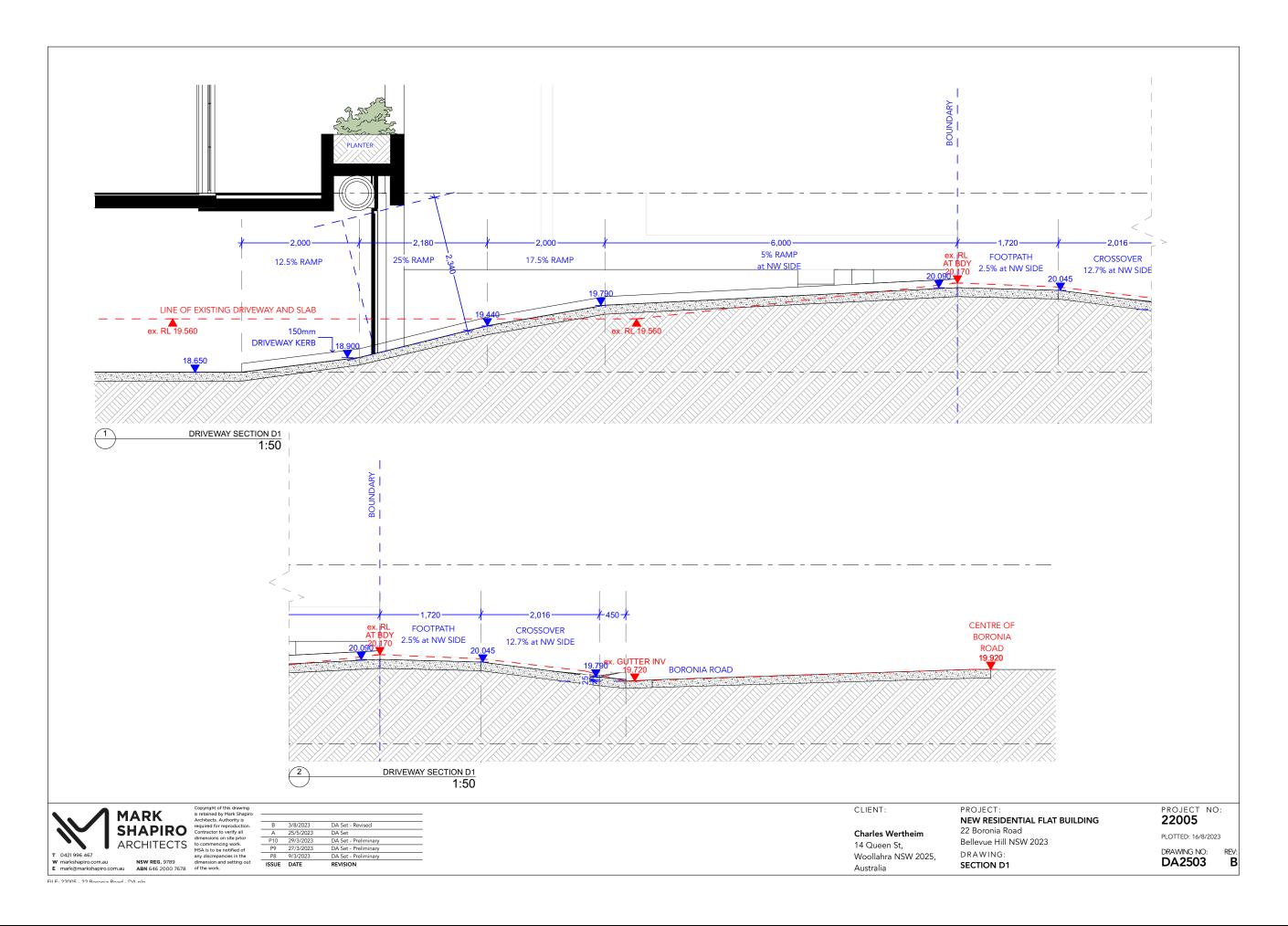


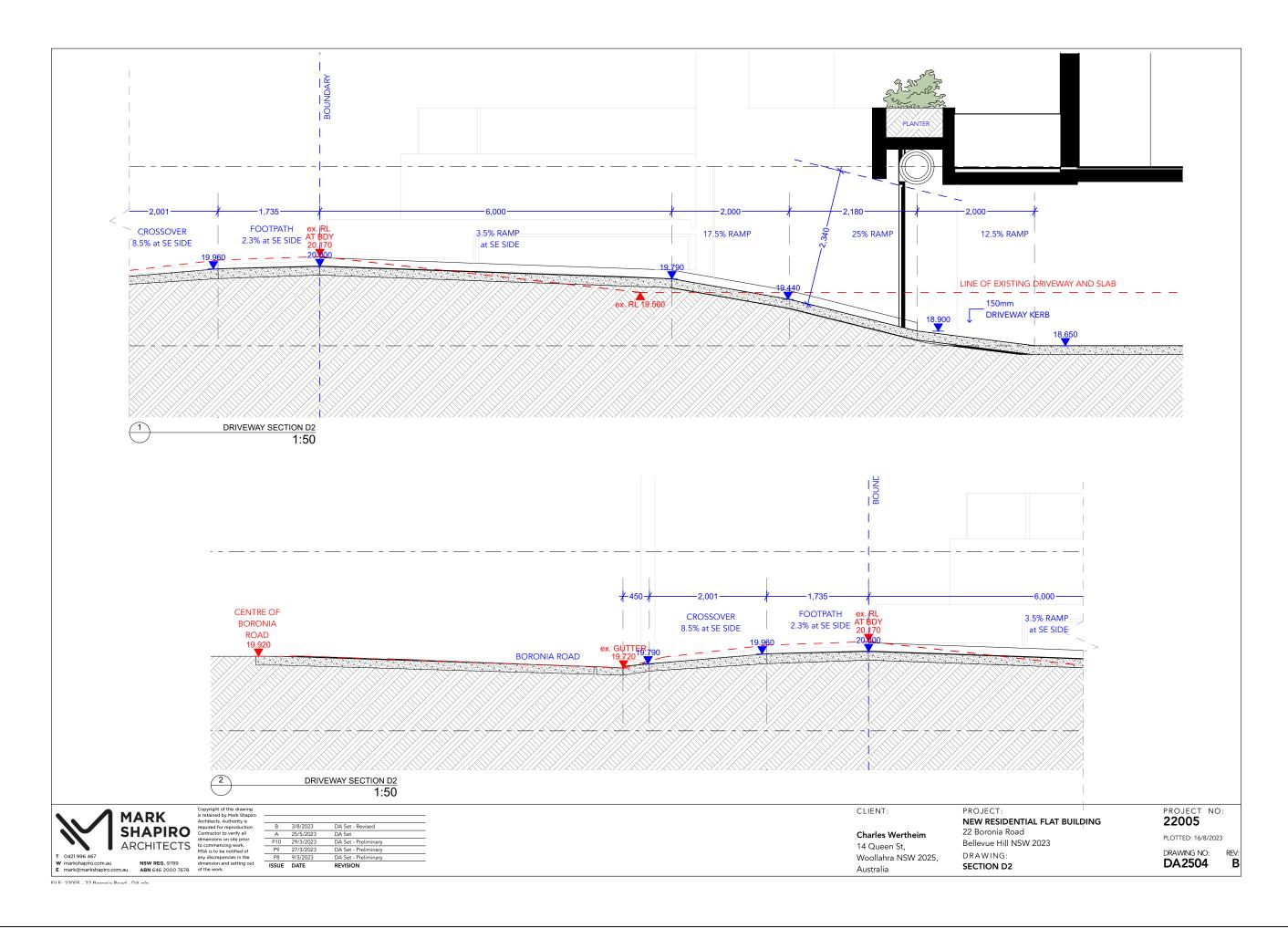


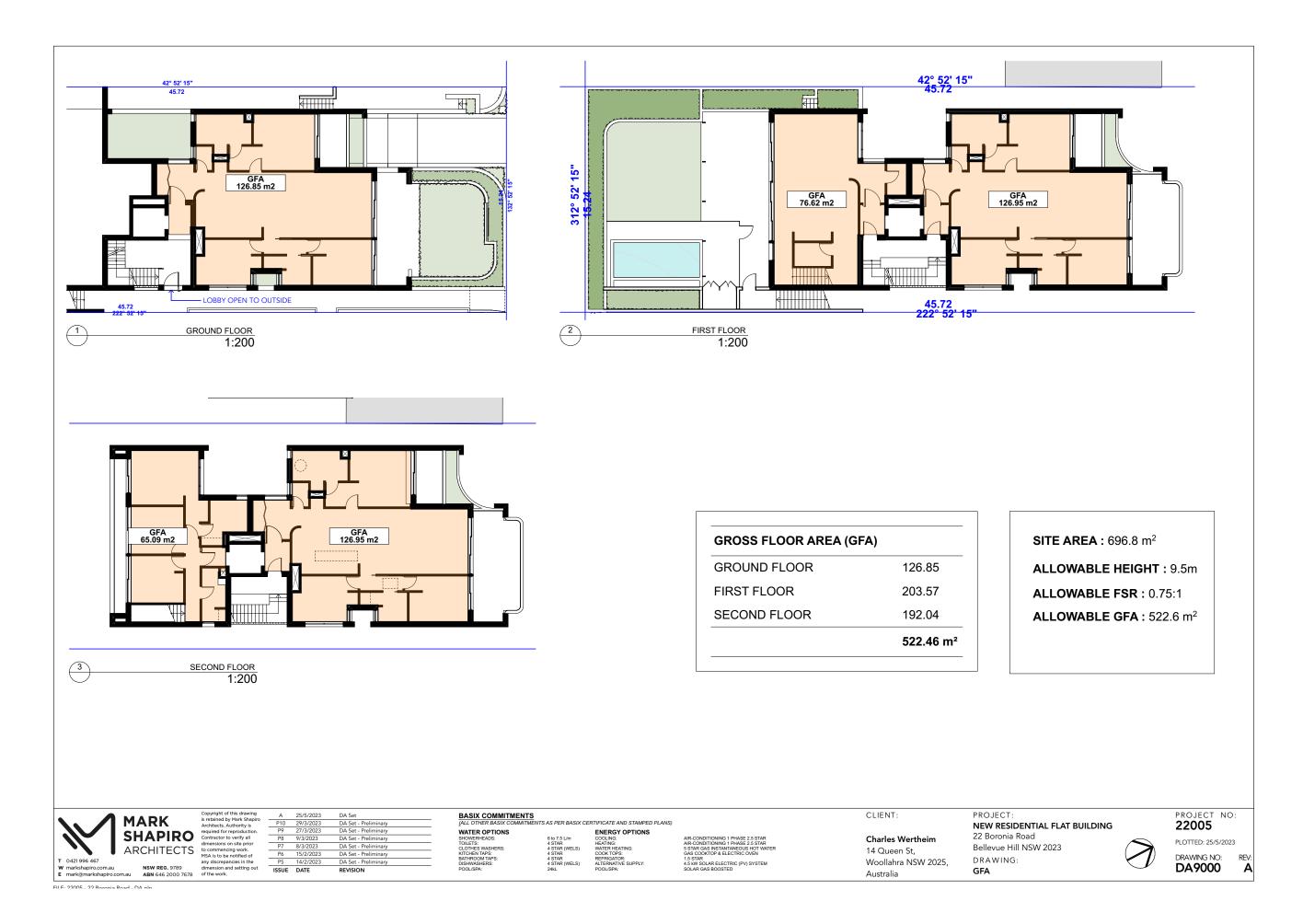


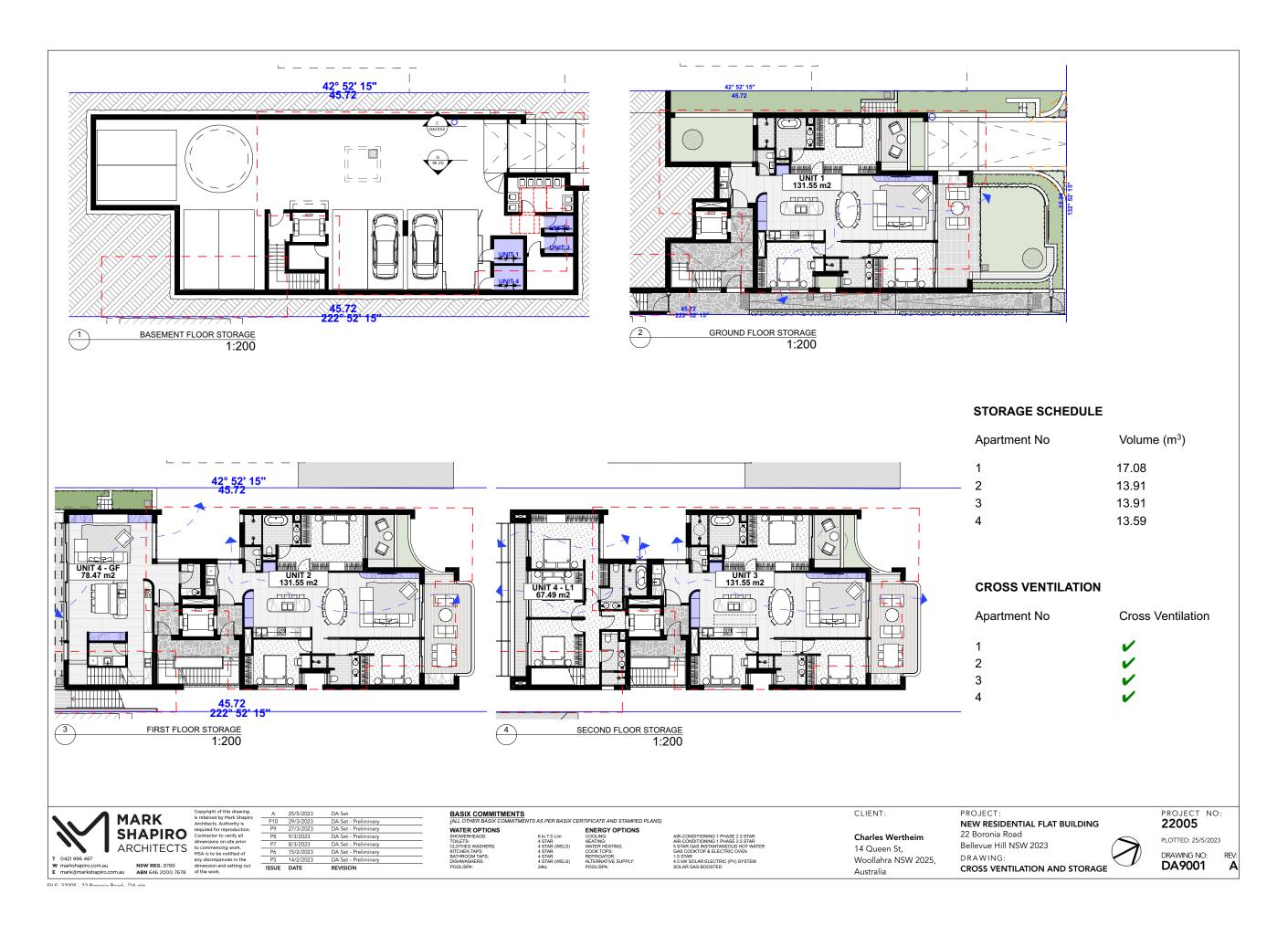


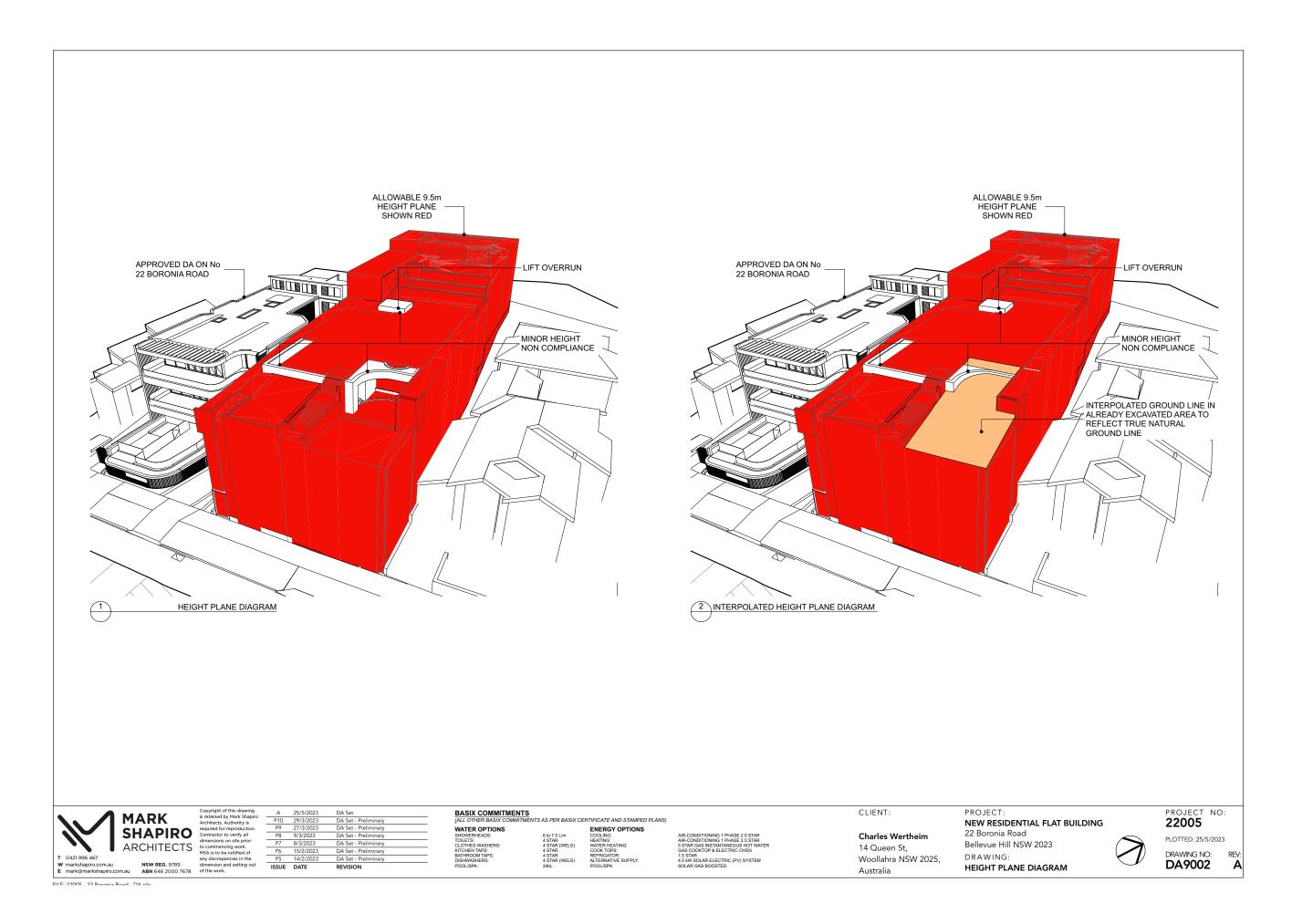


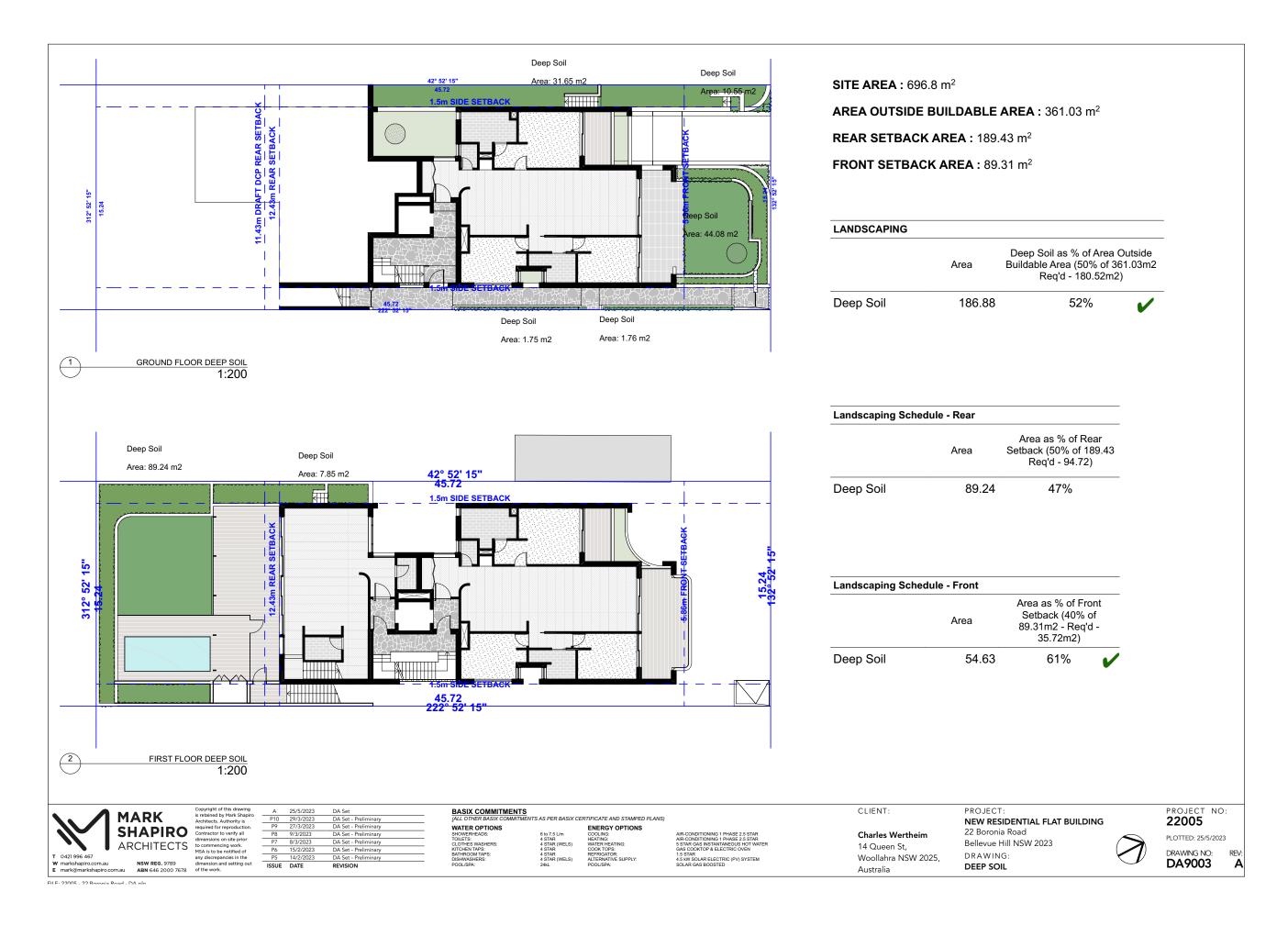


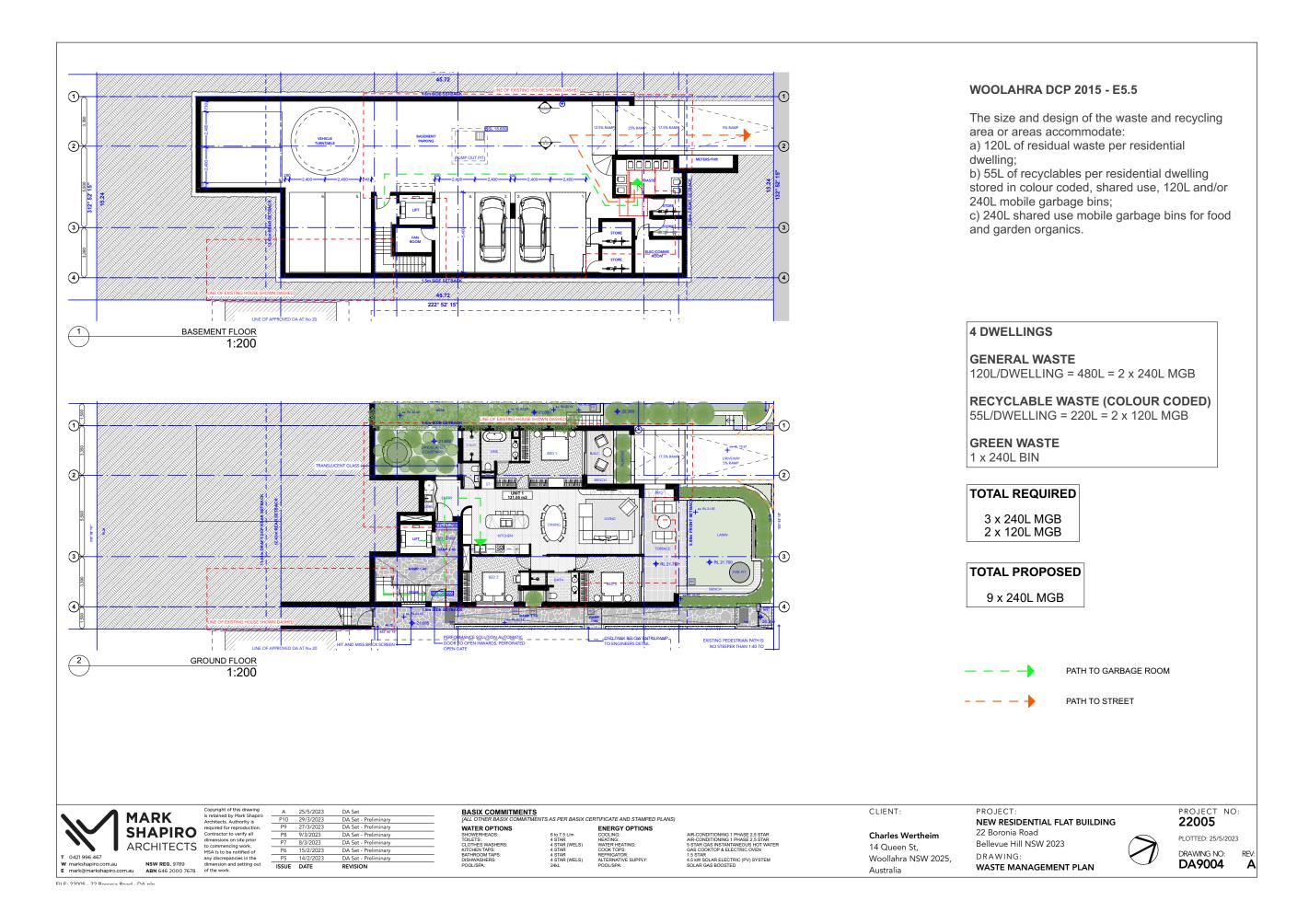


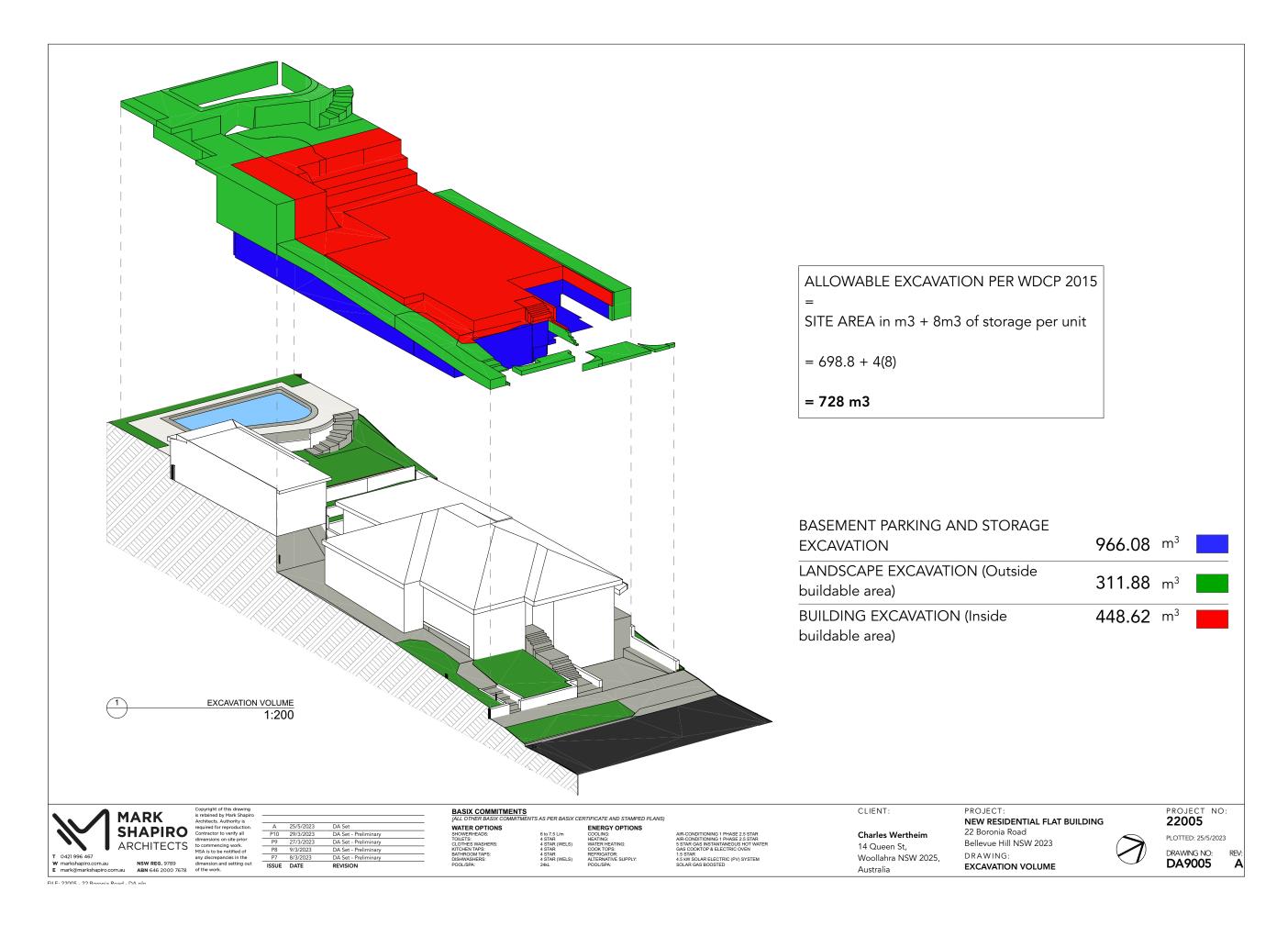


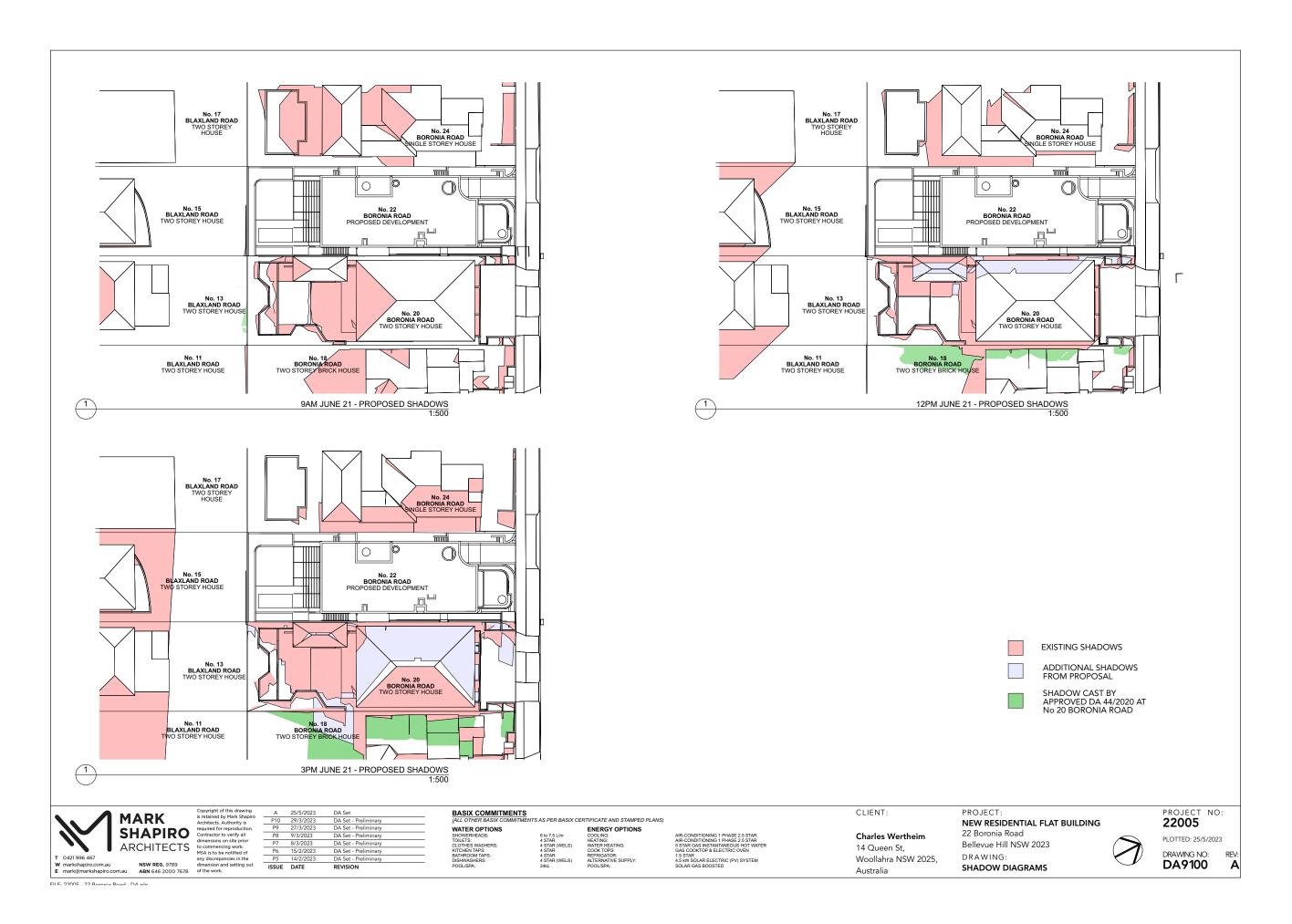


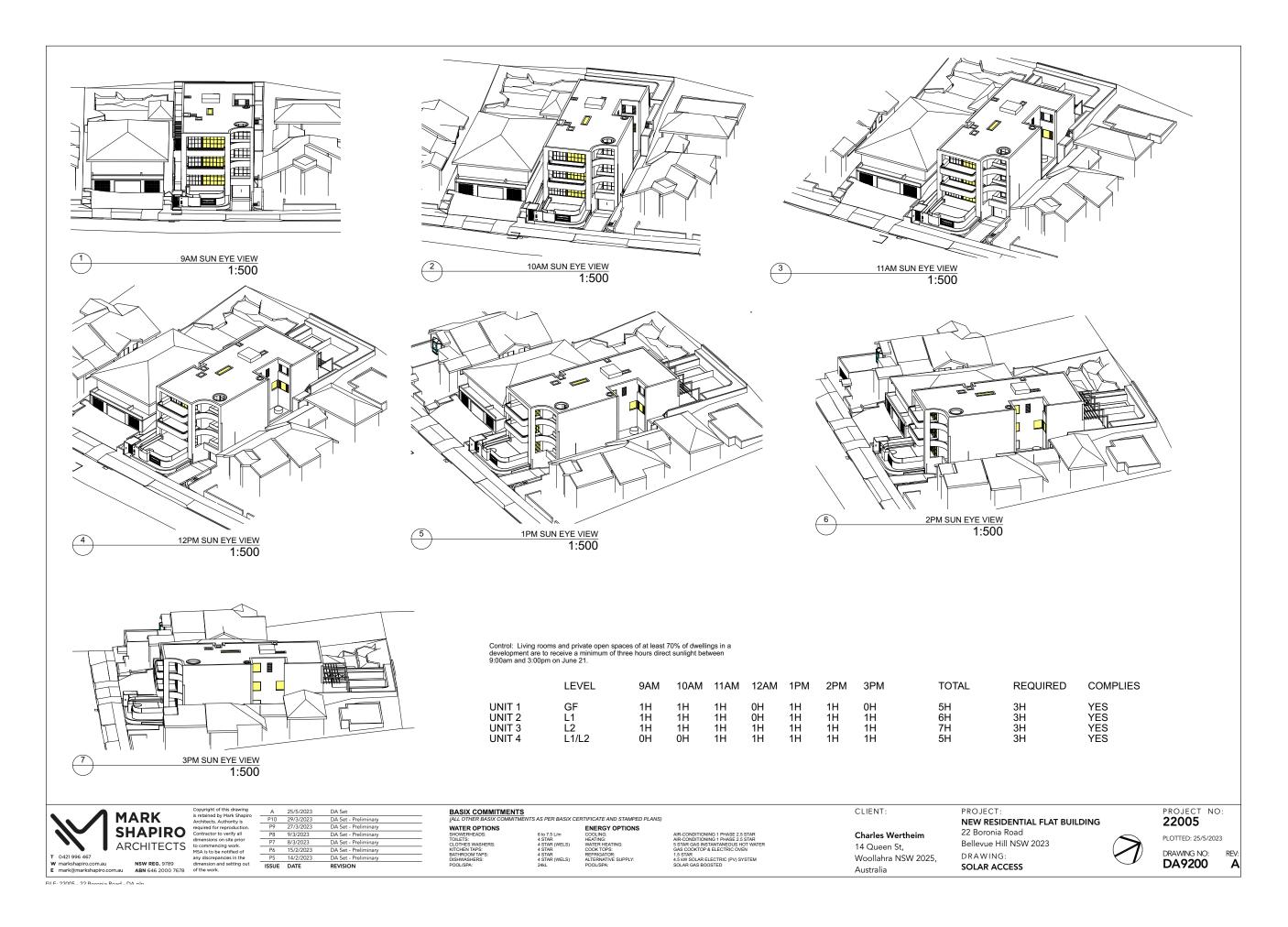


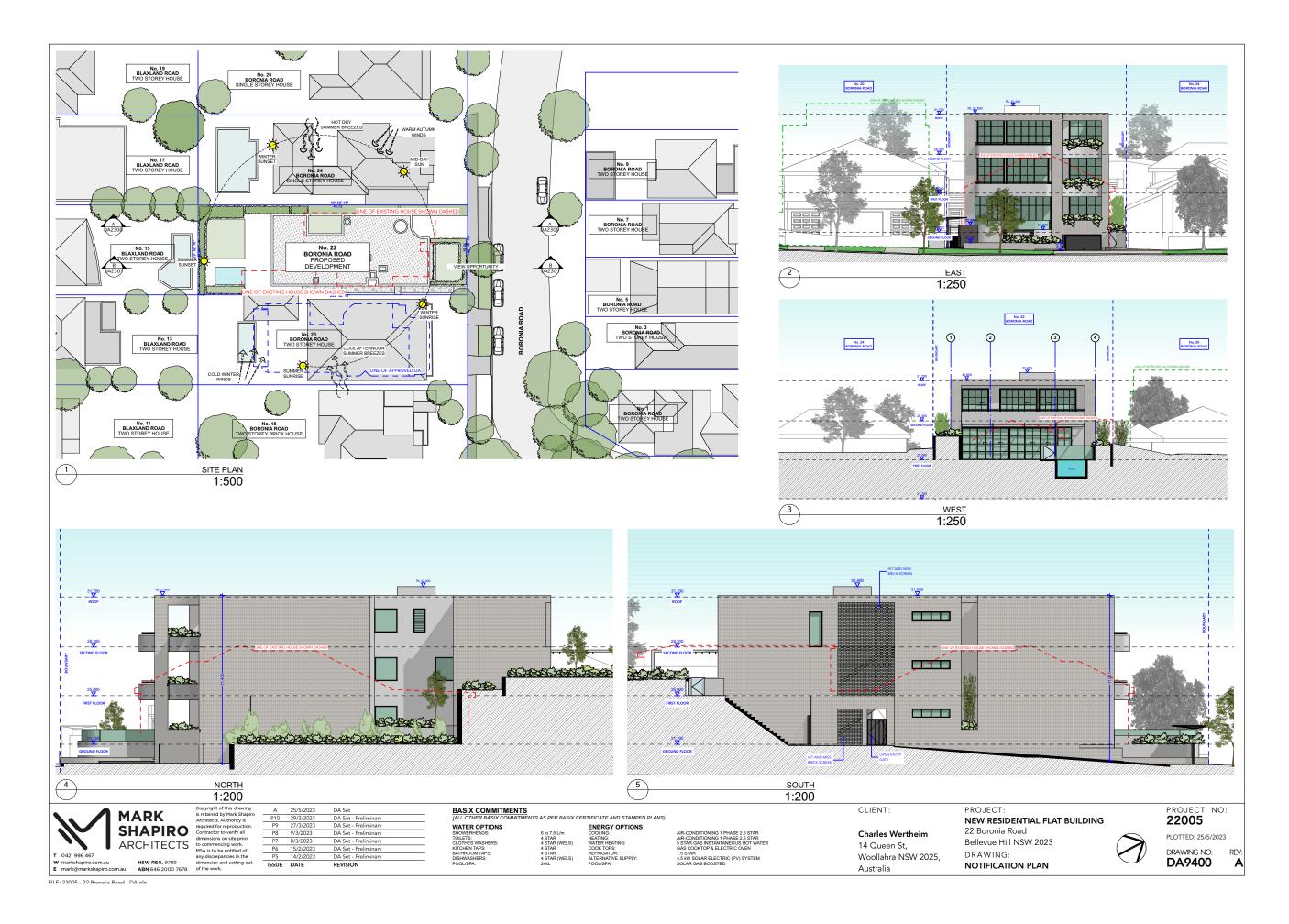




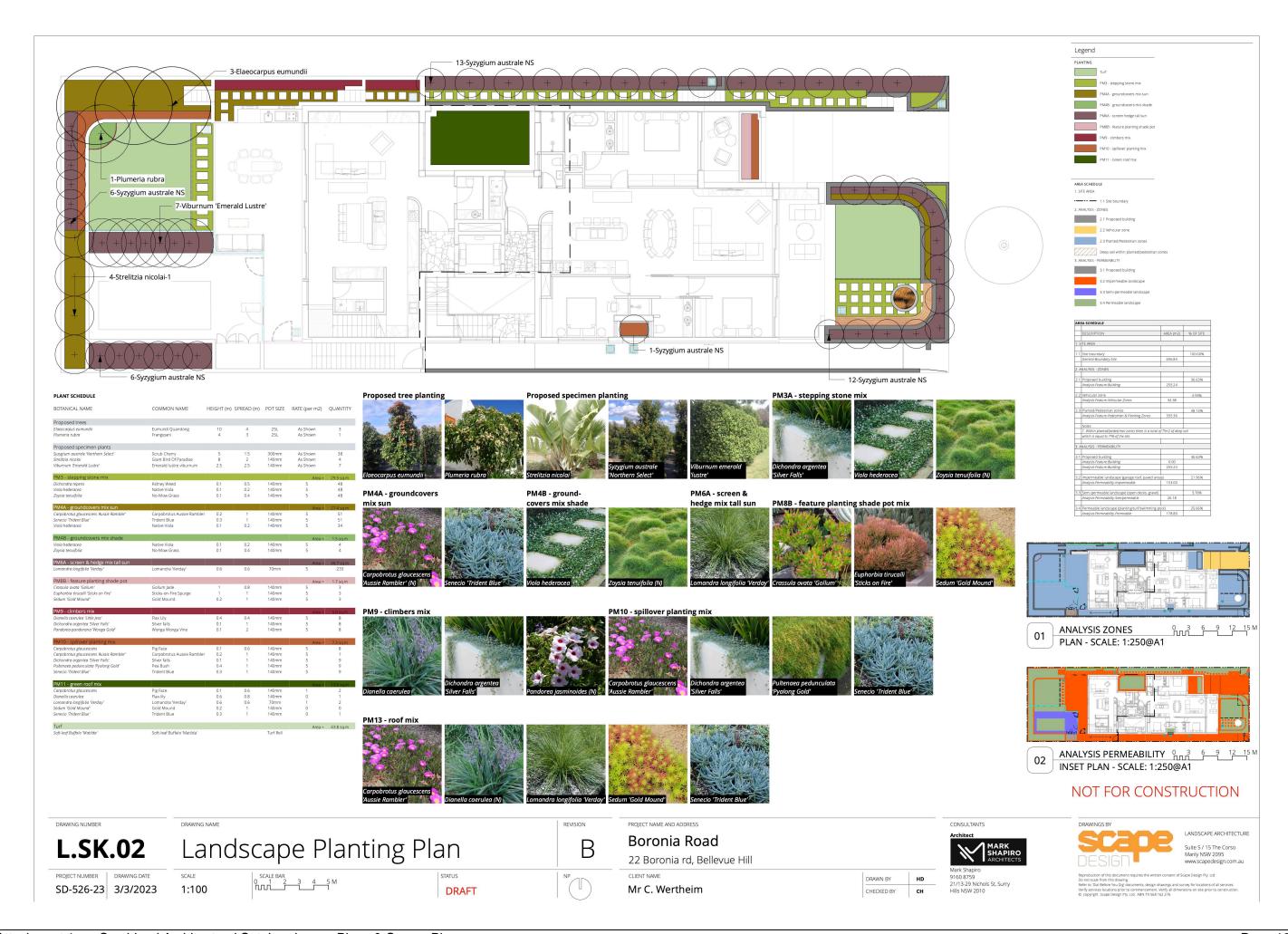


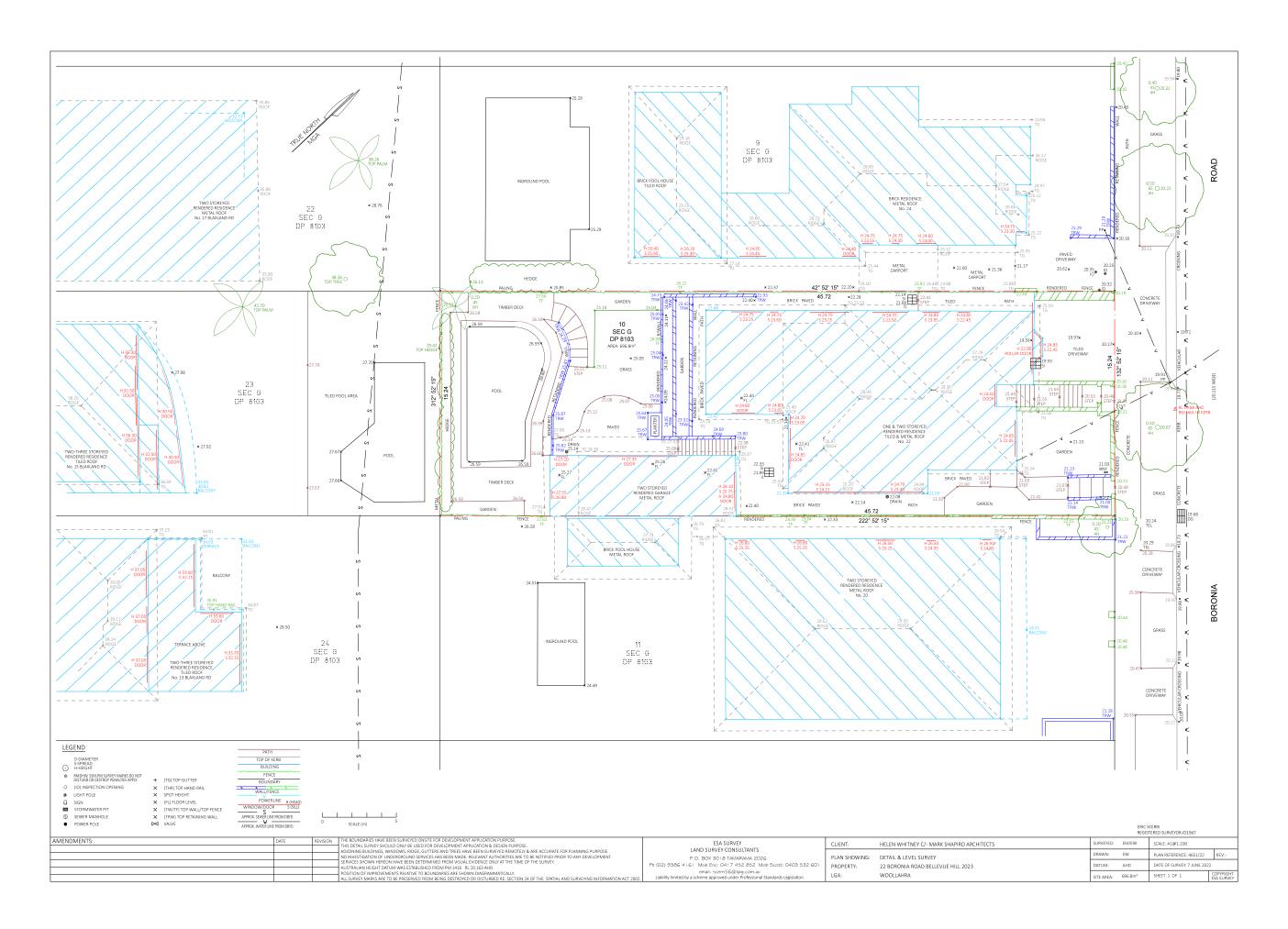












WOOLLAHRA LEP 2014 Clause 4.6 Exceptions to Development Standards – Height of Buildings

Proposed Demolition of Existing Dwelling and Construction of a Residential Flat Building at

No. 22 Boronia Road, Bellevue Hill

Prepared for:

Charles Wertheim

c/o Mark Shapiro Architects Suite 21, 13-29 Nichols Street Surry Hills NSW 2010

Prepared by:

GSA PLANNING

Urban Design, Environmental & Traffic Planners (A.B.N 89 643 660 628)
95 Paddington Street, Paddington NSW 2021
p: 02 9362 3364
e: info@gsaplanning.com.au

JOB NO. 22520 June 2023

© GSA PLANNING 2023





Attachment 2 Clause 4.6 Statements Page 164

WOLLAHRA LOCAL ENVIRONMENTAL PLAN (LEP) 2014 CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

APPLICANT'S NAME: Charles Wertheim

SITE ADDRESS: No. 22 Boronia Road, Bellevue Hill

PROPOSAL: Proposed Demolition of Existing Dwelling and Construction of a Residential

Flat Building

 (i) Name of the applicable planning instrument which specifies the development standard:

Woollahra Local Environmental Plan (LEP) 2014

(ii) The land is zoned:

R3 Medium Density Residential. The objectives of the R3 Medium Density Residential Zone are as stated:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.

(iii) The number of the relevant clause therein:

Clause 4.3 – Height of Buildings which is stated as follows:

- (1) The objectives of this clause are as follows—
 - (a) to establish building heights that are consistent with the desired future character of the neighbourhood,
 - (b) to establish a transition in scale between zones to protect local amenity,
 - (c) to minimise the loss of solar access to existing buildings and open space,
 - (d) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,
 - (e) to protect the amenity of the public domain by providing public views of the harbour and surrounding areas.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the <u>Height of Buildings Map</u>.
- (2A) Despite subclause (2) and clause 4.3A, the maximum height of a dwelling house, dual occupancy or semi-detached dwelling on land in Zone R3 Medium Density Residential is 9.5 metres.
- (2B) Despite subclause (2) and clause 4.3A, the maximum height of a building on a battle-axe lot on land in Zone R3 Medium Density Residential is 9.5 metres.

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning.

Clause 4.6 Exceptions to Development Standards –Height of Buildings No. 22 Boronia Road, Bellevue Hill - Job No. 22520

2. Overview

This Clause 4.6 Exception to Development Standards has been prepared in accordance with the most recent case law. In our opinion, the variation achieves the objectives of the zone and development standard and has demonstrated there are sufficient environmental planning grounds to justify contravening the development standard.

3. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates is Clause 4.3 of the LEP – Height of Buildings. This Clause operates in conjunction with the Height of Buildings Map which indicates a maximum building height of 9.5m applies to the subject site. Clause 4.3 is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

The proposal largely complies with the LEP height standard, with the exception of three areas at the top level (see **Figure 1 and Figure 2** on the following page). These are identified as follows:

- A portion of the built form and roof at the north western corner of the building will have a maximum height of approximately12.24m, measured from the topmost parapet at RL 31.80 AHD to the existing ground line immediately below). The area of additional height is up to a 2.74m (28.8%) variation.
- An L-shaped portion of the roof parapet at the front of the building (northern end eastern edge) will have a height of approximately 10.27m, measured from the parapet at RL 31.80 AHD to the existing ground line immediately below. The area of additional height is a 0.77m (8.1%) variation.
- The lift overrun has a maximum height of 10.05m, measured from the top of this structure at RL 32.40 AHD to the existing ground line below. The area of additional height is a 0.55m (5.7%) variation.

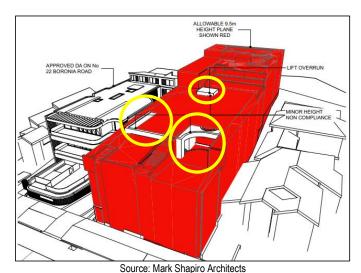


Figure 1: 9.5m LEP Height Plane Diagram (shown red) Area of height variation is circled

Clause 4.6 Exceptions to Development Standards –Height of Buildings No. 22 Boronia Road, Bellevue Hill - Job No. 22520

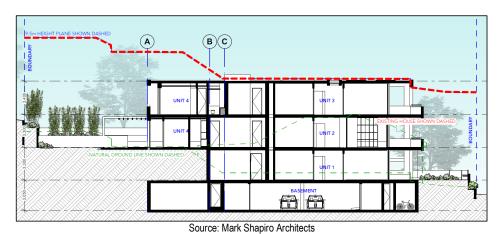


Figure 2: Section Showing Proposed Building Height, Relative to the LEP development standard (dotted red)

The proposed height variation is in part due to the drop in existing ground level, which was the result of previous excavation/building work to accommodate the existing garage. The variation is therefore largely considered a technical departure due to the artificially altered existing ground line.

The proposal presents as largely compliant when measured against what would be considered the natural ground line in this location. This is discussed in light of *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 (*Bettar*), where the interpretation of height was considered.

In *Bettar* the Court dealt with a site where a basement existed on some parts of the site and not others. The Court took the approach of measuring height with the intent, in part, of relating the development proposal to its context. The following pertinent comments were made:

It is relevant to consider the objectives of the building height development standard in considering how best to determine the maximum height of the building using the dictionary definitions in LEP 2012. As one of the purposes of the development standard is to relate the proposal to its context, it follows that **the determination of the existing ground level should bear some relationship to the overall topography** that includes the site... [emphasis added].

A similar approach can be taken in relation to the subject site. Part of the additional height is largely above the existing lower ground floor garage level, which deviates from the site's natural and perceived ground level. If the building height were measured from the natural ground line, the extent of non-compliance would appear less compared to utilising the existing ground line (see **Figure 3** on the following page).

The proposal will remove the existing garage and will reinstate a similar ground line to the existing ground line for the basement car park. When viewed in the streetscape and from surrounding properties, the majority of the height variation will not be readily perceived as exceeding the height standard as they remain the same height as other compliant elements of the roof.

Clause 4.6 Exceptions to Development Standards –Height of Buildings No. 22 Boronia Road, Bellevue Hill - Job No. 22520

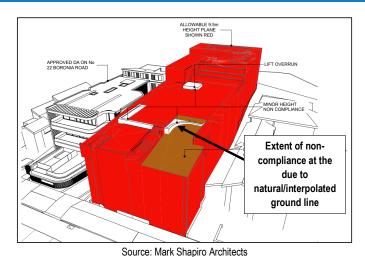


Figure 3: Height Plane Diagram with Interpolated Ground Floor Line

4. Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (*Initial Action*), Preston CJ notes at [87] and [90]:

Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.

However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

Objective (a) to provide an appropriate degree of flexibility in applying certain development standards

to particular development,

Objective (b) to achieve better outcomes for and from development by allowing flexibility in particular

circumstances.

Flexibility is sought in the application of the height development standard to the proposed development in the circumstance of this particular case. The majority of the building complies with the height standard. The additional height is due to the topography of the land and in one case, the need to provide a lift shaft to improve accessibility. The height variations are limited to small areas of the roof and parts of these areas will not be readily visible from the street. Where they are visible, they are integrated well into the portions of the building that comply with the LEP height.

The built form will positively contribute to the public domain when viewed from Boronia Road, with an articulated façade and a compatible height with nearby recently approved residential flat development at Nos. 18 and 20 Boronia Road. This is achieved through the proposal's compliance with the majority of building envelope requirements envisaged for the site, such as FSR and the majority of built form controls

Clause 4.6 Exceptions to Development Standards –Height of Buildings No. 22 Boronia Road, Bellevue Hill - Job No. 22520

of the DCP. This ensures the new building envelope is unlikely to cause significant overshadowing or loss of privacy to nearby properties.

The height variation allows for a high-quality residential flat building development to contribute to the emerging medium density residential character. The proposed height responds to the bulk and scale of nearby residential flat buildings and is a more appropriate built form for the site in comparison to the existing single dwelling. Flexibility in this circumstance will provide a better outcome for and from development. To refuse this application would prevent the orderly and economic use and development of the land. On this basis, the non-compliance is consistent with the objectives of Clause 4.6 and is acceptable in this instance.

5. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause states, inter alia:

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

5.1 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

It is our opinion that the proposal satisfies Test 1 established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant test will be considered below.

Clause 4.6 Exceptions to Development Standards –Height of Buildings No. 22 Boronia Road, Bellevue Hill - Job No. 22520

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard:

It is noted under Clause 4.6(4)(a)ii, 'achieved' has been replaced by the lesser test of 'consistent'. Despite the height non-compliance, the proposal is consistent with the desired medium density character of the area, as required in the LEP. The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls. The proposal is also consistent with the objectives of the LEP building height development standard's in particular Clause 4.3, which will now be discussed.

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

'Desired future character' is not defined in the LEP. In Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115 [63] ('SJD'), Preston CJ states, inter alia:

...the desired future character of the neighbourhood or area can be shaped not only by the provisions of WLEP, including the development standards themselves, but also other factors, including approved development that contravenes the development standard.

Accordingly, the desired future character is shaped by the text and context of the LEP and recent approvals in the vicinity. Each of these will now be discussed. The relevant clauses in the LEP which relate to urban character and built form are:

- a. The zoning of the land (Clause 2.2 and the Land Zoning Map);
- b. The zone objectives (Clause 2.3);
- c. The land use table (at the end of Part 2); and
- d. The development standards in Part 4:
 - Clause 4.1A Minimums lot sizes for dual occupancies, manor houses, multi dwelling housing and residential flat buildings, which prescribes a minimum lot size of 700m² for a residential flat building.
 - ii. Clause 4.3 Height of Buildings and Height of Buildings Map which prescribes a maximum height of 9.5m.
 - iii. Clause 4.4 Floor space ratio which prescribes a maximum floor space ratio of 0.75:1.

The R3 Medium Density Residential zoning permits a wide range of uses and built form on the site, which promotes the eclectic desired future character. The permissible uses are:

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Business premises; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Environmental protection works; Group homes; Home occupations (sex services); Hostels; Information and education facilities; Multi dwelling housing; Neighbourhood shops; Office premises; Oyster aquaculture; Places of public worship; Public administration buildings; Recreation areas; Residential flat buildings; Respite day care centres; Secondary dwellings; Semi-detached dwellings; Seniors housing; Shops; Tank-based aquaculture

The proposal will contribute to the mix of permissible uses in the R3 zone. The proposal is compatible with the envelope as well as bulk and scale of surrounding developments which include existing and approved three storey residential flat buildings at Nos. 12, 18, 20 and 28 Boronia Road. This demonstrates the external envelope remains contextually compatible. In other words, the height and envelope are consistent with these buildings and compatible with the area's desired future character as per the Court judgement of *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112. In this judgement, Clay AC notes at [69]:

The desired future character in my opinion must take into account the form of the buildings to the east which the Council approved under effectively the same controls as present. Those buildings exceed the height and floor space ratio controls. As the Applicant pointed out in submissions, this is not a case where

Clause 4.6 Exceptions to Development Standards –Height of Buildings No. 22 Boronia Road, Bellevue Hill - Job No. 22520

there is an adjacent development approved and constructed many years ago which sits as an anomaly in the street. The developments under construction represent the recently expressed attitude of the Respondent to the controls and what is desired in this part of Cross Street.

This approach was confirmed in the appeal of this case by Preston CJ that the desired future character should be informed by the nearby and future development and not limited by the development standards. Boronia Road is characterised by a mixture of single dwellings as well as two and three-storey residential flat buildings. As the proposed height variation is similar to and in some cases lower than the adjoining residential flat building approved at No. 20 Boronia Road, it will not significantly impact the streetscape (see **Figure 4**).



Source: Mark Shapiro Architects

Figure 4: Street Elevation Showing Relationship Between the Proposal and the Approval at No. 20 Boronia Road (dotted red)

Council's objectives for the area relate to a medium density residential character. The R3 Medium Density zoning encourages multi storey residential flat buildings while the allowable LEP building height of 9.5m enables built form up to three storeys in height. This is consistent with the height, bulk, and scale of existing and recently approved local developments. Due to the sloped topography and existing ground levels, the proposed variations occur largely within the roof form, and to a small portion of an articulated façade element. These areas are well integrated into the remaining portion of the roof form which has a compliant building height. Coupled with a compliant FSR, the proposal presents a compatible bulk and scale when viewed from Boronia Road.

The site is also located in the Bellevue Hill South Precinct under the DCP. This document contains specific desired future character objectives. These objectives and our responses are outlined below.

Objective	Response			
To respect and enhance the streetscape	The proposal will provide a new residential flat building			
character and key elements of the precinct.	which positively contributes to the transitioning character of the R3 Medium Density Residential Zone.			
To maintain the evolution of residential building styles through the introduction of well-designed contemporary buildings, incorporating modulation and a varied palette of materials.	The proposal will introduce a well-designed, contemporary residential flat building to the streetscape. The modulated built form and varied materials including white brick, glass and concrete balustrades, aluminium framed glazing, and ribbed concrete features will provide a unique built form.			
To establish a transition of development scale from the detached dwelling houses at the northern end of Bellevue Hill to the residential flat buildings that address the major streets - Birriga Road, Old South Head Road and Victoria Road – situated along the precinct ridgeline.	The proposal will be consistent with the emerging development in the street and will provide a transition of development scale.			
To design and site buildings to respond to the topography and minimise cut and fill.	The proposal responds to the existing topography by stepping down the site and limiting cut and fill to the basement area to accommodate car parking.			
To preserve significant views and vistas to surrounding areas from the streets and parks.	Views have been identified in the DCP from the western end of Bundarra Road towards the north and north-east, over the rear of the subject site. Due to the site's distance from these vantage points, the sloping terrain, and the proposed built form largely compliant building height, it is unlikely there will be an adverse impact on these views.			
To reinforce the landscape setting and maintain the existing tree canopy.	The proposal will reinforce existing trees and plantings along the boundary at the rear of the site. The provision of new trees and landscaped areas within the front and side setbacks will soften the appearance of the proposed built form when viewed from the public domain and surrounding development.			

Therefore, the proposal is compatible with the neighbourhood's desired future character and the heights of surrounding development. We therefore consider contravening the development standard to provide an improved dwelling on a site within the emerging context and topographical constraints is justified as sufficient environmental planning grounds.

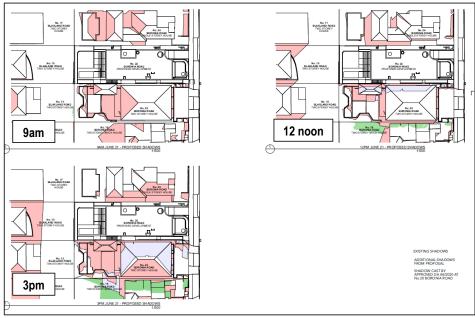
(b) to establish a transition in scale between zones to protect local amenity,

The subject site is located within the R3 Medium Density Residential zone and does not adjoin any other land use zones. However, the proposed residential flat building will establish a transition in scale between zones through the provision of a land use which is compatible with existing development in the surrounding area and permissible with consent within the zone. The extent of variation is limited to select areas within the top/roof level which will protect local amenity.

Clause 4.6 Exceptions to Development Standards –Height of Buildings No. 22 Boronia Road, Bellevue Hill - Job No. 22520

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

To assess the impact of the proposed development and height non-compliance in terms of overshadowing, shadow diagrams have been prepared from 9am to 3pm for the winter solstice (June 21). Notwithstanding the height non-compliance, the additional shadow as a result of a predominantly compliant building envelope. The diagrams demonstrate that the areas of height non-compliance will not result in a substantial decrease in solar access to the existing buildings and open space. This is due to the location of the exceedance, which primarily casts shadows onto the subject site itself, and not on the neighbouring properties or open spaces (see **Figure 5**).



Source: Mark Shapiro Architects

Figure 5: Street Elevation Showing Relationship Between the Proposal and the Approval at No. 20 Boronia Road (dotted red)

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

As outlined in the SEE, the building height variation is consistent with this objective as the sympathetic design will minimise impacts on neighbours' environmental amenity, similar to a compliant building height.

Views

As indicated in the SEE, the DCP has identified district views of Rose Bay from the western end of Bundarra Road towards the north and north-east. It is noted that these views are available from an elevated contour level (approximately RL 52.00 AHD and above). Nearby properties also at higher elevations to the south and south-east of the subject site appear to also have similar views. As the proposal's highest point is at RL 32.40 AHD, it remains well below this vantage point and the identified views will unlikely be affected.

Clause 4.6 Exceptions to Development Standards –Height of Buildings No. 22 Boronia Road, Bellevue Hill - Job No. 22520

While access to the site was not available, it is surmised that the property at No. 15 Blaxland Road (south of the site) may have horizontal district views across the rear of the subject site. These views are obtained from an elevated ground and first floor level. These levels are approximately 6m or more above the ground levels of the subject site. It also appears that there are no views from the ground floor rear private open space of No. 15 Blaxland Road (approx. RL 27.92 AHD). This is because any views would be screened by an existing hedge at the rear of the subject site, surveyed at RL 29.42 AHD.

Due to the site's distance from these vantage points, the sloping terrain, and largely compliant built form, and the limited locations of the non-compliant areas, the proposal is unlikely to create adverse impacts on public or private views.

Privacy

The areas of non-compliance will not likely create privacy impacts. This is because two of the three areas that are in breach form part of a non-trafficable roof or lift structure.

The remaining height breach is limited to part of the Unit 3 bedroom balcony and structure at the front of the building, located on Level 2. This balcony is set back and located at the same RL as the compliant larger balcony of Unit 3. Additionally, views from this balcony are restricted to the front of the development, with the side walls of the balcony preventing overlooking of adjoining properties. Therefore, the departure from the height standard will not result in additional loss of privacy.

Overshadowing

As discussed in the response to Objective (c) above, the additional height will not adversely impact solar access to adjoining or nearby properties. The extent of height non-compliance is not substantial, the proposal complies with the FSR standard under the LEP, as well as the majority of built form controls under the DCP (including solar access). Accordingly, in our opinion, overshadowing impacts are minimised.

Visual Intrusion

The proposed building height and areas of non-compliance will not be visually intrusive when viewed from the public domain and surrounding developments. This is due to the location in which these height variations occur. The lift overrun will not be visible from the public domain due to being set back towards the centre of the building and out of sightline.

While the remaining areas of non-compliance will be visible from the public domain, will not be readily noticeable as areas of additional height. The features are well integrated into the elements of the building that comply with the building height, and create a visually cohesive façade despite changes in the existing ground line. These areas of exceedance will not adversely affect the proposal's visual impact on the street, or create a sense of dominance.

Accordingly, the areas of height exceedance will have no adverse impact on the visual intrusion of the proposal.

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

The DCP has identified district views of Rose Bay from the western end of Bundarra Road towards the north and north-east. However, these views are available from a higher elevation than the top of the proposal. As the extent of non-compliance occurs within an otherwise mostly-compliant built form,

Clause 4.6 Exceptions to Development Standards –Height of Buildings No. 22 Boronia Road, Bellevue Hill - Job No. 22520

the building height breach will not have any effect on public views of the Harbour or surrounding areas. On this basis, the proposal is considered consistent with Objective (e).

5.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

There are a number of environmental planning grounds specific to the site and the height non-compliance which justify contravening the development standard in this instance. These include topographical constraints and existing excavated areas, consistency in the context, improved design outcomes, provision of equitable access, and environmental amenity. These will now be discussed

Topography and Existing Excavated Area

The steep topography results in varied existing ground lines through the site, which would result in portions of the building to exceed the height standard. Additionally, existing excavation to accommodate the current garage would inevitably create a greater level of non-compliance at the front. Notwithstanding, the extent of non-compliance is minor and the proposal will present a predominantly compliant built form with a three storey presentation to Boronia Road and two storeys to the rear.

Consistency in the Context

Consistency in the context is recognised as an environmental planning ground in Initial Action v Woollahra Municipal Council [2019] NSWLEC 1097 where Commissioner O'Neill states at [42] that:

I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act).

This report demonstrates the proposed development will remain compatible with surrounding developments, particularly the more recently approved residential flat buildings at Nos. 18 and 20 Boronia Road. The area of height variation is limited to mostly non-trafficable areas, and one small portion of building at the front of the building.

Council's objectives for the area relate to a medium density residential character. The R3 Medium Density zoning encourages multi storey residential flat buildings while the allowable LEP building height of 9.5m enables built form up to three storeys. Importantly, the proposal will have a compliant FSR, and a mostly compliant overall built form, ensuring a compatible bulk and scale when viewed from Boronia Road. In our opinion, the proposal achieves the objectives of the precinct by promoting the evolution of building stock and replacing a low density dwelling with medium density development.

Improved design outcomes

The areas of non-compliance are largely the result of architectural design elements. The roof parapet elements that exceed the development standard ensure a visually appealing and cohesive design when viewed from the street. They also seamlessly integrate into the remaining portions of the building which comply with the height standard. The non-compliant roof parapet and balcony supports at the north eastern corner also ensure the proposal has a consistent design appearance across all levels.

Strict compliance would unreasonably impact the design integrity of the building and internal amenity for the future occupants of the site, without noticeably benefitting surrounding properties or the public domain. To achieve a fully compliant building height would require lowering the ceiling heights and the floor levels, which may increase the extent of excavation required. It may also require either removing or setting back

Clause 4.6 Exceptions to Development Standards –Height of Buildings No. 22 Boronia Road, Bellevue Hill - Job No. 22520

part of the north western corner of the building at the top floor. This would create an awkward design detail that would be inconsistent with the otherwise sleek architectural expression of the building.

Equitable access

The proposed lift overrun is centrally located within the building in order to maximise functionality. The lift will provide equitable access to Units 2, 3 and 4, throughout all levels of the building. Strict compliance with the development standard would have significant impacts on the accessibility of Unit 4 as the lift overrun cannot be relocated within the compliant building height line without significant design changes and impacts on amenity and usability.

Environmental Amenity

Our assessment has demonstrated the proposal will maintain neighbours' privacy and views while providing adequate solar access, which would be similar to a compliant building height. The proposal also complies with the maximum FSR for the site and does not represent an overdevelopment of the site.

The height variation is an integral part of the architecturally designed residential flat building which will provide a high level of amenity of the future occupants. As demonstrated, the building has been designed to maintain neighbours' and local amenity and contribute positively to the streetscape and local character.

Accordingly, in our opinion, the non-compliance will be consistent with the existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the variation to the development standard, as required in Clause 4.6(3)(b).

6. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) guides the consent authority's consideration of this Clause 4.6 variation request. It provides that:

- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

The applicant submits that the consent authority can be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this written request and having regard to the site and locality.

In our opinion, the proposal achieves the objectives of the Height of Buildings Development Standard, as already demonstrated; and the R3 Medium Density Residential zone, as discussed below:

Objective: To provide for the housing needs of the community within a medium density residential

environment

Response: The proposal will increase the number of dwellings on the site and improve

occupant amenity within the medium density environment of the area.

Objective: To provide a variety of housing types within a medium density residential environment.

Response: Despite the building height non-compliance the proposal will provide a mix of

housing in the form of 4 x three-bedroom units, replacing the existing single

Clause 4.6 Exceptions to Development Standards –Height of Buildings No. 22 Boronia Road, Bellevue Hill - Job No. 22520

dwelling house.

Objective: To enable other land uses that provide facilities or services to meet the day to day needs of

Response: N/A

Response:

Objective: To ensure that development is of a height and scale that achieves the desired future character of

the neighbourhood.

The proposal provides a built form that is compatible with the height and scale of other three-storey residential flat buildings that have been approved in the street. The minor areas of height non-compliance remain compatible with these approvals and will not be readily discernable from the public domain. This is consistent with

the desired future character of the neighbourhood.

From this, we consider the proposal is in the public interest and should be supported.

7. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 55 of the Environmental Planning and Assessment Regulation 2021, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. While the proposal exceeds the development standard by over 10%, the Planning Circular provides for the Local Planning Panel to assume concurrence.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (Fast Buck\$ v Byron Shire Council (1999) 103 LGERA 94 at [100] and Wehbe at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

- whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- any other matters required to be taken into consideration by the Secretary before granting concurrence.

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The height non-compliance will enhance the amenity and functionality of the proposed residential flat building without significantly, unreasonably or unacceptably impacting neighbouring properties.

The public benefit of maintaining the development standard is not considered significant given that, regardless of the non-compliance, the built form will positively contribute to the public domain when viewed from Boronia Road, with an articulated façade and compatible built form with nearby development. The height variation allows for a high-quality residential flat building development to contribute to the medium density residential character. The proposed height is considered a desirable alternative to the existing low-density development on the site, additional excavation, or reduced floor-to-ceiling heights.

Clause 4.6 Exceptions to Development Standards - Height of Buildings No. 22 Boronia Road, Bellevue Hill - Job No. 22520

The proposal provides four new residential units, which will contribute to the variety of housing supply and is therefore considered to be in the public interest.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

8. Conclusion

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the compliance matrix prepared in light of *Initial Action* (see **Table 1** on the following page).

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it achieves the objectives of the standard and the objectives of the R3 Medium Density Residential Zone pursuant to the LEP. On that basis, the request to vary Clause 4.3 should be upheld.

Clause 4.6 Exceptions to Development Standards –Height of Buildings No. 22 Boronia Road, Bellevue Hill - Job No. 22520

	Table 1: Compliance Matrix							
Para (Initial Action)	Requirement	Section of this Report	Summary	Satisfied				
10	Is it a development standard (s.1.4)	1	Yes					
11	What is the development standard	1	Clause 4.3: Height of Buildings					
12	What is the control	1 & 2	9.5m					
14	First Precondition to Enlivening the Power – Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES				
15, 25	1st Positive Opinion – That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement.	5	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES				
16-22	First Aspect is Clause 4.6(3)(a) - That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in Wehbe.	5.1	The proposal satisfies Tests 1 of Wehbe: The objectives of the standard are achieved notwithstanding the non-compliance with the standard.	YES				
23-24	Second Aspect is Clause 4.6(3)(b) — The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: a) The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard." The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. b) The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.	5.2	 Sufficient environmental planning grounds include, inter alia: The steep topography results in varied existing ground lines through the site, resulting in in portions of the building to exceed the height standard. The area of height variation is limited to mostly non-trafficable areas, and one small portion of building at the front of the building. The extent of height variation will remain compatible in the context of existing and approved surrounding developments, including the more recently approved residential flat buildings at Nos. 18 and 20 Boronia Road. The non-compliant areas are integrated into the roof level, the majority of which complies with the height standard. The extent of non-compliance is relatively minor; The extent of height variation is in part due to the provision of equitable access in the form of a passenger lift; The extent of non-compliance is a better urban design outcome. Full compliance would necessitate reducing the compliant floor to ceiling heights or lowering the building (and increasing) 	YES				

Clause 4.6 Exceptions to Development Standards – Height of Buildings No. 22 Boronia Road, Bellevue Hill - Job No. 22520

Page 16

Attachment 2 Clause 4.6 Statements Page 179

			excavation) as well as alter one corner of the building at the street front which would create an incongruous element within the building, be inconsistent with the streetscape and unlikely benefit neighbours; The area of non-compliance maintains neighbours' privacy, and views whilst providing appropriate solar access; and The non-compliance contributes to the good design and amenity of the development	
26-27	2nd Positive Opinion — That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.	6	The proposed development achieves the objectives of the height standard as addressed under Test 1 of <i>Wehbe</i> . The proposal also achieves the objectives of the R3 Medium Density Residential Zone.	YES
28-29	Second Precondition to Enlivening the Power – That the concurrence of the Secretary has been obtained [Clause 4.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under Clause 4.6.	7	As the relevant matters for consideration under Clause 4.6 have been satisfied as outlined above, the Council can grant development consent.	YES

© GSA PLANNING 2023

This document is and shall remain the property George Karavanas Planning Pty Ltd (trading as GSA Planning). The document may only be used for the purposes for which it was commissioned and in accordance with the Letter of Instruction. Unauthorised use of this document in any form whatsoever is prohibited

Clause 4.6 Exceptions to Development Standards – Height of Buildings No. 22 Boronia Road, Bellevue Hill - Job No. 22520

Page 17

Attachment 2 Clause 4.6 Statements Page 180

WOOLLAHRA LEP 2014 Clause 4.6 Exceptions to Development Standards – Minimum Lot Size

Proposed Demolition of Existing Dwelling and Construction of a Residential Flat Building at

No. 22 Boronia Road, Bellevue Hill

Prepared for:

Charles Wertheim

c/o Mark Shapiro Architects Suite 21, 13-29 Nichols Street Surry Hills NSW 2010

Prepared by:

GSA PLANNING

Urban Design, Environmental & Traffic Planners (A.B.N 89 643 660 628)
95 Paddington Street, Paddington NSW 2021
p: 02 9362 3364
e: info@gsaplanning.com.au

JOB NO. 22520

© GSA PLANNING 2023



March 2023



Attachment 2 Clause 4.6 Statements Page 181

WOLLAHRA LOCAL ENVIRONMENTAL PLAN (LEP) 2014 CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

APPLICANT'S NAME: Charles Wertheim

SITE ADDRESS: No. 22 Boronia Road, Bellevue Hill

PROPOSAL: Proposed Demolition of Existing Dwelling and Construction of a Residential

Flat Building

 (i) Name of the applicable planning instrument which specifies the development standard:

Woollahra Local Environmental Plan (LEP) 2014

(ii) The land is zoned:

R3 Medium Density Residential. The objectives of the R3 Medium Density Residential Zone are as stated:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.

(iii) The number of the relevant clause therein:

Clause 4.1A – Minimum lot size for dual occupancies, manor houses, multi dwelling housing and residential flat buildings, which is stated as follows:

- (1) The objective of this clause is to achieve planned residential density in certain zones consistent with the desired future character of the neighbourhood.
- (2) Development consent may be granted to development on a lot in a zone shown in Column 2 of the table to this clause for a purpose shown in Column 1 of the table opposite that zone, if the area of the lot is equal to or greater than the area specified for that purpose and shown in Column 3 of the table.

Column 1	Column 2	Column 3
Dual occupancy (attached)	Zone R2 Low Density Residential	460 square metres
Dual occupancy (detached)	Zone R2 Low Density Residential	930 square metres
Dual occupancy (attached)	Zone R3 Medium Density Residential	460 square metres
Dual occupancy (detached)	Zone R3 Medium Density Residential	460 square metres
Manor house	Zone R3 Medium Density Residential	700 square metres
Multi dwelling housing	Zone R3 Medium Density Residential	700 square metres
Multi dwelling housing (terraces)	Zone R3 Medium Density Residential	700 square metres
Residential flat building	Zone R3 Medium Density Residential	700 square metres

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning.

Clause 4.6 Exceptions to Development Standards – Minimum Lot Size No. 22 Boronia Road, Bellevue Hill - Job No. 22520

2. Overview

This Clause 4.6 Exception to Development Standards has been prepared in accordance with the most recent case law. In our opinion, the variation is consistent with the objectives of the zone and development standard and has demonstrated there are sufficient environmental planning grounds to justify contravening the development standard.

3. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates is Clause 4.1A of the LEP – Minimum lot size for dual occupancies, manor houses, multi dwelling housing and residential flat buildings. This Clause operates in conjunction with the Lot Size Map which indicates a minimum 700m² applies to the subject site. Clause 4.1A is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

The proposed residential flat building at No. 22 Boronia Road, Bellevue Hill is located within the R3 Medim density Residential Zone with a lot size of 696.8m², which is a shortfall of 3.2m² and results in a negligible 0.46% departure from the development standard. Notwithstanding the shortfall, the proposal complies with Council's the floor space ratio (FSR) development standard under the LEP as well as landscaping, open space, and setbacks under the Woollahra Development Control Plan 2015 (DCP).

There are a number of sites in the street and locality that contain or have been approved for medium density housing on similarly sized lots. The single dwelling on the subject site is inconsistent with the emerging medium density residential development in the area and has opportunities to increase the intensity of the development to provide additional high quality housing within a highly sought after area.

The site is considered to be appropriate as the proposal meets the majority of Council's controls, is consistent with the objectives for the R3 Medium Density Residential Zone and the desired future character of the Bellevue Hill South Precinct.

4. Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (*Initial Action*), Preston CJ notes at [87] and [90]:

Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.

However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

Objective (a) to provide an appropriate degree of flexibility in applying certain development standards

to particular development,

Objective (b) to achieve better outcomes for and from development by allowing flexibility in particular

circumstances.

Flexibility is sought in the application of the minimum subdivision lot size development standard to the proposed development in the circumstance of this particular case. In our opinion, the lot size is

Clause 4.6 Exceptions to Development Standards – Minimum Lot Size No. 22 Boronia Road, Bellevue Hill - Job No. 22520

appropriate, and the proposal is consistent with Council's desired medium density character for the area. The proposal replaces a single dwelling with a residential flat building that responds to the existing and emerging character of the area, and makes a positive contribution to the streetscape. Additionally, the proposal is consistent with the desired future character objectives of the Bellevue Hill South Precinct, which includes a transition of development scale from detached dwelling houses at the northern end of Bellevue Hill to the residential flat buildings that address major streets.

The proposal demonstrates that the extent of the non-compliance is minor and is suitable for the development, accommodating a well-designed residential flat building that, complies with the majority of built form controls. It is noted that a number of medium density residential developments are existing, approved or being constructed in the area that appear to be on similarly sized lots. These include nearby properties at Nos. 18 and 20 Boronia Road.

Flexibility with the control will provide a better outcome for and from the development in this circumstance, as the site can readily accommodate a residential flat building with a built form envisaged by Council. The proposal will facilitate the replacement of an ageing single storey dwelling with a sophisticated residential flat building that is consistent with the objectives of the R3 Medium Density Residential Zone. Strict compliance with this development standard would prevent the orderly and economic use and development of the land.

5. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause states, inter alia:

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

5.1 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

Clause 4.6 Exceptions to Development Standards – Minimum Lot Size No. 22 Boronia Road, Bellevue Hill - Job No. 22520

It is our opinion that the proposal satisfies one of the five tests established in Wehbe and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant test will be considered below.

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard:

It is noted that under Clause 4.6(4)(a)ii, 'achieved' has been replaced by the lesser test of 'consistent'. Despite the lot size variation, the proposal is consistent with the desired medium density character of the area. The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls. Reasons why the proposed development is consistent with the objectives of the minimum lot size standard are explained below.

Clause 4.1A (1) of the Woollahra LEP states "the objective of this clause is to achieve planned residential density in certain zones consistent with the desired future character of the neighbourhood".

A similar objective can be found in the City of Sydney LEP 2012. In a recent appeal on a Commissioner's decision regarding the applicability of the objectives of the standard (Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61), Preston CJ found at [57]:

The Commissioner sought to ask whether the written request under cl 4.6 demonstrated that objective (b) of the development standard in cl 4.4.(2) is achieved, notwithstanding the development's noncompliance with the development standard. But the Commissioner did this by asking whether the written request demonstrated that the regulation or strategic management of the density of development, built form and land use intensity is maintained, notwithstanding the noncompliance. This was to ask the wrong question. It was a question that could never be answered in the affirmative. As Baron submitted, a written request seeking to justify the contravention of the floor space ratio development standard by one building could never establish that the regulation or strategic management of the density of development, built form and land use intensity of all buildings in the local area has been maintained.

This reasoning can also be applied to the objective for minimum lot size in the Woollahra LEP 2014. The focus should be on achieving the desired future character, not achieving 'planned residential density'. That part of the objective, read in isolation, goes to regulation and cannot be satisfied.

The R3 Medium Density Residential zoning permits a wide range of uses and built form on the site, which promotes the eclectic desired future character. The permissible uses are:

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Business premises; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Environmental protection works; Group homes; Home occupations (sex services); Hostels; Information and education facilities; Multi dwelling housing; Neighbourhood shops; Office premises; Oyster aquaculture; Places of public worship; Public administration buildings; Recreation areas; Residential flat buildings; Respite day care centres; Secondary dwellings; Semidetached dwellings; Seniors housing; Shops; Tank-based aquaculture

The desired future character is articulated in Section B.17 of the DCP – Bellevue Hill South Precinct. The relevant objectives and our responses are stated below:

Objective:

To respect and enhance the streetscape character and key elements of the precinct. Response: The proposal will provide a contemporary residential flat building which will positively contribute to the transitioning character of Boronia Road from low density dwelling houses to medium density residential development. The proposal will also help provide a transition of scale between medium density residential developments on neighbouring properties.

Clause 4.6 Exceptions to Development Standards - Minimum Lot Size No. 22 Boronia Road, Bellevue Hill - Job No. 22520

Objective: To maintain the evolution of residential building styles through the introduction of welldesigned contemporary buildings, incorporating modulation and a varied palette of

The proposal will introduce a well-designed contemporary residential flat building to the Response: streetscape. This is achieved through articulated facades and a varied palette of

materials and finishes not impacted upon by the lot size.

To establish a transition of development scale from the detached dwelling houses at the Objective:

northern end of Bellevue Hill to the residential flat buildings that address the major streets - Birriga Road, Old South Head Road and Victoria Road - situated along the precinct

The proposal is for a medium density residential flat building that is consistent with the Response: scale of existing and emerging development in the streetscape. The proposal will

contribute to the range of housing types on Boronia Road.

Objective: To design and site buildings to respond to the topography and minimise cut and fill. The proposal responds to the existing topography by limiting cut and fill to the basement Response: area to accommodate compliant car parking, and to portions of the remaining site to create level private open space.

Objective: To preserve significant views and vistas to surrounding areas from the streets and parks. Response: It appears significant views and vistas exist from the western end of Bundarra Road towards the north and north east over the subject site. Due to the distance from these vantage points, the sloping topography and the proposed built form being predominantly below the building height control, these views will not be impacted by the proposal.

Objective: To reinforce the landscape setting and maintain the existing tree canopy. Response: The proposal is not hindered by lot size and includes new planting throughout in the form

of lawn, shrubs and trees. This will positively contribute to the landscape setting of the site. Importantly, the street tree will be retained and new planting across the site will soften the appearance of the proposed built form when viewed from the public domain and surrounding development.

The proposal is located within the R3 Medium Density Residential Zone, which already accommodates increased development density. The subject site is surrounded by residential flat buildings that range between three and four storeys some of which also do not comply with the current lot size development standard (see Figure 1 on the following page). If development on the site were to remain as a single dwelling, it would be inconsistent with emerging development in the surrounding locality.

Clause 4.6 Exceptions to Development Standards - Minimum Lot Size No. 22 Boronia Road, Bellevue Hill - Job No. 22520



Figure 1: Lots Containing Existing or Approved
Residential Flat Buildings in the Locality (in blue)

Subject Site
Residential Flat
Buildings

In addition to the above, there have been numerous other applications in the LGA for residential flat buildings on land with non-compliant lot sizes which have been supported by Woollahra Council. We note that each development application is assessed on its own merits and the context of the individual site. However, it is relevant to consider similar breaches to the development standard that were accepted by Council, in the vicinity of the subject site as this contributes to the desired future character of the area. In Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115 [63], Preston CJ states, inter alia:

...the desired future character of the neighbourhood or area can be shaped not only by the provisions of WLEP, including the development standards themselves, but also other factors, including approved development that contravenes the development standard.

Accordingly, the desired future character is shaped by the text and context of the LEP and recent approvals in the vicinity. Based on Council's Clause 4.6 register and DA tracker, new residential flat buildings on sites with a non-compliant lot size that have been accepted by Council include the following:

- No. 20 Boronia Road, Bellevue Hill (DA 44/2020)
- No. 18 Boronia Road, Bellevue Hill (DA 399/2021)
- No. 3A Bundarra Road, Bellevue Hill (DA 253/2016)
- No. 47 Birriga Road, Bellevue Hill (DA 491/2016)
- No. 41 Birriga Road, Bellevue Hill (DA 304/2019)

Clause 4.6 Exceptions to Development Standards – Minimum Lot Size No. 22 Boronia Road, Bellevue Hill - Job No. 22520

- No. 2 Wentworth Street, Point Piper (DA484/2019)
- No. 26 Streatfield Road, Bellevue Hill (DA 356/2016)
- No. 23 Court Road, Double Bay (DA 97/2016)
- No. 7 Carlisle Street, Rose Bay (DA 422/2018)
- No. 588 Old South Head Road, Rose Bay (DA 228/2017)
- No. 20A Benelong Crescent, Bellevue Hill (510/2016)
- No. 22 Yarranabbe Road, Darling Point (DA 448/2016)
- No. 8-10 Norwich Road, Rose Bay (DA 406/2019)
- No. 41 Sailsbury Road, Rose Bay (DA 61/2020)
- No. 37 Carlotta Road, Double Bay (DA 458/2017)

Importantly, the extent of non-compliance does not affect the site's ability to accommodate a residential flat building. The proposal complies with the FSR development standard of the LEP, and the majority of built form, open space/landscaping, and parking controls of Council's DCP. The proposal provides a high level of amenity for future residents through compliance with a majority of the provisions under the Apartment Design Guide (ADG).

Accordingly, although the proposal will not meet the minimum lot size control, this is unlikely to have any significant adverse impacts as the design is contained within a predominantly compliant building envelope. The proposal is consistent with the medium density character of the area. Further, the proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls.

5.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

There are a number of environmental planning grounds that justify the lot size in this particular circumstance. In addition to consistency with the objectives of the zone and the development standard; environmental planning grounds include consistency with the character of the area, orderly and economic use of land, no opportunity for amalgamation, consistency with the precinct's objectives and acceptable environmental impacts. These will now be addressed.

Consistency with the Character of the Area

The extent of the lot size variation is very minor and will not hinder redevelopment of the site. The proposal will present as a contemporary three storey development above a basement car park which is consistent with the existing emerging type and scale of residential flat development in Boronia Road (see **Figure 2** on the following page). To the south east and north west of the site are residential flat buildings of varying sizes and styles and also of varying lot sizes, many of which fall short of the lot size development standard, in particular the most recent DAs for Nos. 18 and 20 Boronia Road. As such, the proposed built form aligns with the LEP desired future character of the area, as per *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] *NSWLEC 1112* (*SJD*).

Clause 4.6 Exceptions to Development Standards – Minimum Lot Size No. 22 Boronia Road, Bellevue Hill - Job No. 22520



Figure 2: The Proposal in the Streetscape

Orderly and Economic Use of Land

The proposed replacement of a single residence with a four-unit residential flat building which will increase the availability of housing in an area that is zoned for medium density development. Enforcing strict compliance would sterilise the site and result in retention of a single dwelling, which is inconsistent with adjoining development and the emerging character of the area. Strict compliance would also prohibit the site from providing high quality additional housing in a highly sought after area. Enforcing compliance would unnecessarily complicate future orderly and economic development of the land in accordance with the intentions of the zoning and the objects of the LEP.

Unable to Amalgamate

Although the site is appropriate for the proposal, it is important to note that it adjoins No. 20 Boronia Road, which has approval for a residential flat building (DA44/2020). The site also adjoins No. 24 Boronia Road. However, the owners of that property do not wish to amalgamate. This results in no opportunity for site amalgamation in order to increase the lot size. Accordingly, the best option for redevelopment on the site is a residential flat building to ensure a compatible future use.

Consistency with Objectives of Precinct

The proposal is consistent with the objectives of the Bellevue Hill South Precinct, which provides for a transition of development scale from detached dwellings to residential flat buildings. The proposal provides a three storey residential flat building above a basement which provides an appropriate transition in scale between existing and emerging development.

The proposal will result in a built form which is consistent with the surrounding and desired density of the area. In *Initial Action v Woollahra Municipal Council* [2019] NSWLEC 1097, Commissioner O'Neill states at [42] that:

Clause 4.6 Exceptions to Development Standards – Minimum Lot Size No. 22 Boronia Road, Bellevue Hill - Job No. 22520

I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act).

The lot size is proportionally consistent with the surrounding lot size non-compliances which have been previously approved under the current LEP. Additionally, the design of the proposal will contribute to the evolving character of the Bellevue Hill South Precinct.

Other Matters for Consideration

It should also be noted that the proposal improves the amenity of the subject site while maintaining the amenity of neighbouring development; is consistent with the objectives of the R3 Medium Density Residential Zone and the relevant DCP built form and amenity provisions; and results in an improved streetscape outcome for the site. While these factors may not strictly constitute environmental planning grounds, they should be considered in the assessment of the minimum lot size breach. Regardless of the lot size variation, the proposal will not result in unacceptable environmental impacts in regard to views, privacy, or solar access. The proposed built form is orientated toward the street and has a compliant built form in regard to FSR and a majority of the DCP provisions. The proposal also complies with the provisions under the ADG. As such, the proposal is unlikely to result in adverse environmental impacts for future occupants of the subject site or adjoining development and will not constitute an over development of the site.

Accordingly, in our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).

6. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) guides the consent authority's consideration of this Clause 4.6 variation request. It provides that:

- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

The applicant submits that the consent authority can be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this written request, and having regard to the site and locality.

In our opinion, the proposal is consistent with the objectives of the minimum lot size for dual occupancies, manor houses, multi dwelling housing and residential flat buildings development standard, as already demonstrated; and the R3 Medium Density Residential, as discussed below:

Objective: To provide for the housing needs of the community within a medium density residential environment.

Response: The proposal will provide a contemporary residential flat building to contribute to the evolving medium density streetscape of Boronia Road.

Clause 4.6 Exceptions to Development Standards – Minimum Lot Size No. 22 Boronia Road, Bellevue Hill - Job No. 22520

Objective: To provide a variety of housing types within a medium density residential environment.

Response: The proposal will provide a mix of housing within the locality through the introduction of

four new dwellings with basement parking and open space areas.

Objective: To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Response: N/A

Objective: To ensure that development is of a height and scale that achieves the desired future character of the

neighbourhood.

Response: The proposal provides a built form that predominantly complies with the building height

(with some exception) and FSR development standards of the LEP, is compatible with existing and emerging development in the area and achieves the desired future character

of the neighbourhood.

From this, we consider the proposal is in the public interest and should be supported.

7. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 55 of the Environmental Planning and Assessment Regulation 2021, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. Since the conditions in the table do not apply in this case, the concurrence of the Secretary can be assumed.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The minimum lots size non-compliance will enhance the amenity and functionality of the proposed residential flat building without significantly, unreasonably or unacceptably impacting neighbouring properties.

The public benefit of maintaining the development standard is not considered significant given that, regardless of the non-compliance, the proposal will appear consistent in the streetscape.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

Clause 4.6 Exceptions to Development Standards – Minimum Lot Size No. 22 Boronia Road, Bellevue Hill - Job No. 22520

8. Conclusion

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the compliance matrix prepared in light of *Initial Action* (see **Table 1** on the following page).

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the development objectives of the R3 Medium Density Residential Zone pursuant to the LEP. On that basis, the request to vary Clause 4.1A should be upheld.

	Table 1: Compliance Matrix				
Para (Initial Action)	Requirement	Section of this Report	Summary	Satisfied	
10	Is it a development standard (s.1.4)	1	Yes		
11	What is the development standard	1	Clause 4.1A: Minimum lot size for dual occupancies, manor houses, multi dwelling housing and residential flat buildings		
12	What is the control	1 & 2	700m ²		
14	First Precondition to Enlivening the Power – Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES	
15, 25	1st Positive Opinion – That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement.	5	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES	
16-22	First Aspect is Clause 4.6(3)(a) - That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in Wehbe.	5.1	The proposal satisfies Test 1 of Wehbe: The objectives of the standard are achieved notwithstanding the non-compliance with the standard.	YES	
23-24	Second Aspect is Clause 4.6(3)(b) — The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: a) The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. b) The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.	5.2	Sufficient environmental planning grounds include, inter alia: The extent of lot size variation is minor; The proposal is consistent with the desired future character of the Precinct and the context of the surrounding area; The proposed lot size is similar to other allotments on which existing or approved residential flat buildings are located; The proposal is within a predominantly compliant building envelope; There are other examples of smaller sized lots in the vicinity of the site which comprise residential flat buildings; and Strict compliance would inhibit the orderly and economic use and development of the site.	YES	
26-27	2nd Positive Opinion – That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.	6	The proposed development is consistent with the objectives of the Minimum Lot Size standard as addressed under Test 1 of Wehbe. The proposal is also consistent with the objectives of the R3 Medium Density Residential Zone.	YES	

Clause 4.6 Exceptions to Development Standards –Minimum Lot Size No. 22 Boronia Road, Bellevue Hill - Job No. 22520

Page 13

Attachment 2 Clause 4.6 Statements Page 193

28-29	Second Precondition to Enlivening the Power –	7	As the relevant matters for consideration under Clause 4.6 have	
	That the concurrence of the Secretary has been obtained [Clause 4.6(4)(b)]. On appeal, the		been satisfied as outlined above, the Council can grant development	YES
	Court has the power to grant development consent, subject to being satisfied of the relevant		consent.	IES
	matters under Clause 4.6.			

© GSA PLANNING 2023

This document is and shall remain the property George Karavanas Planning Pty Ltd (trading as GSA Planning). The document may only be used for the purposes for which it was commissioned and in accordance with the Letter of Instruction. Unauthorised use of this document in any form whatsoever is prohibited

Clause 4.6 Exceptions to Development Standards – Minimum Lot Size No. 22 Boronia Road, Bellevue Hill - Job No. 22520

Page 14

Attachment 2 Clause 4.6 Statements Page 194

28 August 2023

REFERRAL RESPONSE - TREES & LANDSCAPING

FILE NO: Development Applications: 210/2023/1

ADDRESS: 22 Boronia Road BELLEVUE HILL 2023

PROPOSAL: Demolition of existing dwelling, and construction of a new residential

flat building containing four units and basement parking, swimming

pool, and associated landscaping.

FROM: Sam Knight

TO: Mr M D'Alessio

I refer to the following documents received for this report:

- Survey Plan, drafted by ESA Survey, dated 7 June 2022
- Architectural Drawings, drawn by Mark Shapiro Architects, dated 25 May 2023
- Arboricultural Impact Assessment Report, written by Abnoba Arbor, dated 20 March 2023
- Landscape Plans, designed by Scape Design, dated 3 March 2023

A site inspection was carried out on 21 August 2023.

Relevant Control:

- Woollahra Local Environment Plan 2014
- Woollahra Development Control Plan 2015
- Woollahra Street Tree Master Plan 2014 Part 1, Part 2 (Precinct Plans), Part 3 (appendices)
- Significant Tree Register 1991 Volume 1 Significant Trees Under Private Ownership, Volume 2 Significant Trees Under Private Ownership, Volume 3 Significant Trees, Volume 4 Significant Trees in Public Parks
- The comments and recommendations within this Referral Response have taken into consideration the guidelines established within Australian Standard AS 4373 – Pruning of amenity trees and Australian Standard AS 4970 – Protection of trees on development sites
- Apartment Design Guide Tools for improving the design of residential apartment development, Part 4, 4P – Planting on Structures, written by NSW Department of Planning, Industry and Environment, dated July 2015

SUMMARY

The proposal is for demolition of existing dwelling, and construction of a new residential flat building containing four units and basement parking, swimming pool, and associated landscaping.

A total of 11 trees have been identified within and adjacent to the site that will be impacted by the proposal. All trees are recommended or retention and protection.

The Tree and Landscape team has determined that the development proposal is satisfactory in terms of tree preservation and landscaping, subject to compliance with the below conditions.

COMMENTS

Inspection of the site and a review of the plans and documentation has revealed 11 trees within and adjacent to the site will be affected by the proposal.

The following tree numbering has been adopted from the Arboricultural Impact Assessment prepared by Abnoba Arbor dated 20 March 2023.

<u>Tree 1</u> – has been identified as a Water Gum located outside the site on Council land. the tree was noted in fair health and condition. The tree provides a moderate contribution to the landscape amenity and canopy cover of the immediate area.

The plans indicate works are proposed within the Tree Protection Zone of the tree which has been calculated in accordance with the *Australian Standard AS 4970 – Protection of trees on development sites*' as being 3.8 metres (radius from tree trunk). This includes demolition of the existing front boundary wall and garden beds and construction of a new wall and landscaping. The works have been calculated as being Minor Encroachments as defined by AS4970 and within acceptable limits subject to tree sensitive constriction methods and tree protection measures being implemented during the works.

<u>Tree 2</u> – has been identified as a Magnolia located adjacent to the easter corner of the site within 20 Boronia Rd. the tree was noted in good health condition. the tree is positioned in a raised garden bed with a retaining wall that separate the subject site. This has likely restricted roots from growing into the subject site.

Therefore, provided the section of wall adjacent to the tree is retained inside, the proposed works are not expected to impact on the tree. This has been detailed in the condition below for inclusion into the DA consent.

<u>Tree 3-10</u> – have been identified a hedge of Pine trees located adjacent to the western boundary of the site within 24 Boronia Rd. The trees were noted in good health and condition.

The plans indicate new landscaping including a new masonry boundary wall is proposed within the TPZ of these trees which has been calculated as being 2.3 metres (radius from tree trunks). To ensure these trees are not damaged during the works, the footings of the new wall must utilise pier footings that can be repositioned around any tree roots greater than 40mm diameter. All landscape works within eh TPZs must also be undertaken under the supervision of a Project Arborist ensuring tree sensitive construction methods are implemented during the works. This has been detailed in the conditions below for inclusion into the DA consent.

<u>Tree 11</u> – has been identified as a Bangalow Palm located in the western corner of the rear yard. The palm was noted in good health and condition. The palm provides minimal amenity and canopy cover tot eh immediate area.

The applicants Arborist Report has recommended retention of this tree. However, given the low value of the palm, it is recommended that it is removed and replaced with a tree that will provide greater canopy cover the area.

Attachment to report 24100332 (Title Trees & Landscape Referral).DOCX

RECOMMENDATIONS

Council's Tree and Landscape Officer has determined that the development proposal is satisfactory in terms of tree preservation and landscaping, subject to compliance with the following Conditions of Consent.

CONDITIONS OF CONSENT

Please note that the standard conditions of consent are generally modified by the Technical Services Department to suit a particular development application. Please ensure all Technical Services conditions of consent are cut and pasted from this document only, and not inserted as standard conditions using the automatically generated (F3) function.

A. General Conditions

A.1 Tree Preservation & Approved Landscaping Works

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

- a) The following trees shall be retained
 - · Trees on Council Land

Council Ref No.	Species	Location	Dimension (metres)	Tree Value
1	Tristaniopsis laurina	Street tree	6 x 6	\$5000

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

b) The following trees may be removed:

Council Ref No.	Species	Location	Dimension (metres)
11	Archontophoenix cunninghamiana	Rear Yard	9 x 3

Note: Tree/s to be removed shall appear coloured red on the construction certificate plans.

Note: The species marked (*) is exempt from the WMC DCP 2015 and can be removed without requiring consent from Council.

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

B.1 Establishment of Tree Protection Zone (TPZ) Fence

Tree Protection Zones shall be established around all trees to be retained and in accordance with Section 4 of the *Australian Standard Protection of Trees on Development Sites* (AS 4970- 2009). Tree protection zones must also comply with the following requirements;

a) Tree Protection Zone areas

Council Ref No.	Species	Tree Location	Fence Radius from Centre of Trunk (Metres)
1	Tristaniopsis laurina	Street tree	2m
2	Magnolia grandiflora	Adjacent eastern boundary – within front	Boundary line

Attachment to report 24100332 (Title Trees & Landscape Referral).DOCX

		yard of 24 Boronia Rd	
3 – 10	Cupressus spp.	Adjacent western boundary – within rear yard of 20 Boronia Rd	2m from boundary line

Note: Where this condition relates to street trees and the fence cannot be placed at the specified radius, the fencing shall be positioned so that the entire verge (nature strip) area in front of the subject property, excluding existing driveways, footpaths and bus stops is protected.

Note: Where this condition relates to trees on private property the radial distance of fencing shall be positioned only within the subject property.

- b) Tree Protection Zones shall be fenced with a 1.8 metre high chainmesh or weldmesh fence and secured to restrict access. The fence shall be established prior to any materials being bought onto the site and before the commencement of works including demolition. The area within the fence shall be mulched and maintained to a depth of 75mm. The soil within the TPZ shall be kept in a moist condition for the duration of the construction works. Unless approved by the site arborist there shall be no access within the TPZ.
- c) A sign identifying the Tree Protection Zone shall be erected on each side of the protection fence indicating the existence of a TPZ. Signage must be visible from within the development site.
- d) No excavation, construction activity, grade changes, storage of materials, stockpiling, siting of works sheds, preparation of mixes or cleaning of tools is permitted within Tree Protection Zones, unless specified in this consent.
- g) Temporary access within the TPZ for pedestrian and machinery movements shall only be permitted with the approval of the site arborist or unless specified in this consent.
- h) The site supervisor must be made aware of all tree protection requirements associated with these conditions of consent by the project arborist. Any subsequent site personnel and contractors to the site must be made aware of all tree protection requirements by the site foreman.
- The project arborist shall provide written certification of compliance with the above condition.

B.2 Permissible work within Tree Protection Zones

The following works are permissible within the Tree Protection Zone:

Council Ref No.	Species	Radius from Trunk (metres)	Approved works
1	Tristaniopsis laurina	3.8m	New front boundary wall and associated landscape works.
2	Magnolia grandiflora	2m	Landscape works.
3-10	Cupressus spp.	2.3m	New boundary wall and associated landscape works.

The project arborist shall provide written certification of compliance with the above condition.

B.3 Demolition and Construction Management Plan

The Demolition and Construction Management Plan shall be reviewed and certified by

Attachment to report 24100332 (Title Trees & Landscape Referral).DOCX

the Project Arborist that appropriate tree protection measures have been accounted for. The Demolition and Construction Management Plan shall be prepared in accordance with all tree protection measures specified within this consent. Considerations by the Project Arborist shall include but not be limited to:

- Drawings and method statement showing details and the location of hoarding and scaffold and any pruning required to accommodate the hoarding and scaffolding;
- The movement and positioning of heavy machinery, lifting cranes, pier drilling gantry etc;
- Site construction access, temporary crossings and movement corridors on the site defined;
- d) Contractors car parking;
- e) Phasing of construction works;
- f) The space needed for all foundation excavations and construction works;
- g) All changes in ground level;
- h) Space for site sheds and other temporary structures such as toilets;
- Space for sorting and storing materials (short or long term), spoil and fuel and the mixing of cement and concrete; and
- j) The effects of slope on the movement of potentially harmful liquid spillages towards or into tree protection areas.

B.4 Arborists Documentation and Compliance Checklist

The site arborist shall provide written certification that all tree protection measures and construction techniques relevant to this consent have been complied with. Documentation for each site visit shall include:

- A record of the condition of trees to be retained prior to and throughout development
- Recommended actions to improve site conditions and rectification of noncompliance
- Recommendations for future works which may impact the trees

All compliance certification documents shall be kept on site by the Site Foreman.

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

Stage of arboricultural inspection and supervision	Compliance documentation and photos shall be included
Prior to the demolition of any building or construction and prior to the commencement of any development work	 Project Arborist to hold pre construction site meeting with the principal contractor to discuss methods and importance of tree protection measures and resolve any issues in relation to feasibility of tree protection requirements that may arise. Project Arborist to mark all trees approved for removal under DA consent. The project arborist shall install or supervise the installation of tree protection fencing, trunk protection, ground protection and traffic height control beam.
During any development work	The project arborist shall supervise all demolition and excavation works

Attachment to report 24100332 (Title Trees & Landscape Referral).DOCX

	within the Tree Protection Zones or specified distances of nominated trees listed in this consent. The project arborist shall ensure pier holes within the Tree Protection Zones or specified distances of nominated trees listed in this consent are positioned to avoid the severance of and damage to roots greater than 50mm diameter.
	The project arborist shall inspect the installed irrigation system to plants in garden beds. The arborist shall certify there is an appropriate distribution of water to planted and existing trees.
	Project Arborist to approve relocation of tree protection for landscaping. All landscaping works within the TPZ of trees to be retained are to be undertaken in consultation with the project Arborist to minimise the impact to trees.
Prior to any occupation or use of the building	Ensure all trees conditioned to be planted as part of this consent have been planted in accordance with the details prescribed in this consent.
Prior to the issue of a Final Occupation Certificate	The project arborist shall supervise the dismantling of tree protection measures.
	After all demolition, construction and landscaping works are complete the project Arborist shall assess that the subject trees have been retained in the same condition and vigour. If changes to condition are identified the project Arborist should provide recommendations for remediation.

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

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

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

C.1 Tree Management Plan

The Construction Certificate plans and specifications shall show the following information:

Attachment to report 24100332 (Title Trees & Landscape Referral).DOCX

- a) Trees to be numbered in accordance with these conditions:
 - shaded green where required to be retained and protected
 - shaded red where authorised to be removed
 - shaded yellow where required to be transplanted
 - shaded blue where required to be pruned
- References to applicable tree management plan, arborists report or transplant method statement.

This plan shall be kept on site until the issue of the final occupation certificate.

C.2 Modification of details of the development (section 4.17 (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:

- The section of retaining wall along the eastern boundary within 2 metres of Tree 2 must be retained inside.
- b) The design of the western boundary wall within the TPZ of trees 3-10 shall include pier footings that can be relocated if any tree roots greater than 40mm in diameter are identified during the works.
- c) The Landscape Plan shall be amended as follows:
 - i) The planting of the 4x *Strelitzia nicolai* is not supported. An alternative species shall be selected.
 - ii) All new tree planting within the site must be a minimum container size of 100 litres at the time of planting.
- **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 4.15 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.

C.3 Payment of Long Service Levy, Security, Contributions and Fees

The Certifying Authority must not issue any certificates under section 6.4 of the *Act* 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.

Description	Amount	Indexed	Council Fee Code
SECURITY under section 4.17(6) of the Environmental Planning and Assessment Act 1979			1979
Tree Damage Security Deposit – making good any damage caused to any public tree	\$5000	No	T114
INSPECTION FEES under section 608 of the Local Government Act 1993			
Public Tree Management Inspection Fee	\$221.34	No	T45
Security Administration Fee	\$190	No	T16

Attachment to report 24100332 (Title Trees & Landscape Referral).DOCX

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

Nil

E. Conditions which must be satisfied during any development work

E.1 Tree Preservation

All persons must comply with Chapter E.3 – Tree Management of Council's Development Control Plan (DCP) 2015, other than where varied by this consent. The DCP applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.

General Protection Requirements

- The TPZ must be maintained during all development work unless otherwise specified within these conditions of consent.
- b) Excavation must cease where tree roots with a diameter exceeding 50mm are exposed. The *principal contractor* must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.
- 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 arborist. The arborist is to supply a detailed report to the appointed certifier.

Note: Trees must be pruned in accordance with Australian Standard AS 4373 "Pruning of Amenity Trees" and WorkCover NSW Code of Practice Amenity Tree Industry.

E.2 Replacement/Supplementary trees which must be planted

Any replacement or supplementary tree shall be grown in accordance with Tree stock for landscape use (AS 2303:2018). The replacement tree shall be planted in *deep soil landscaped area* and maintained in a healthy and vigorous condition. If the replacement tree is found to be faulty, damaged, dying or dead before it attains a size whereby it becomes a prescribed tree in accordance with Chapter E.3 of Council's Development Control Plan, it must be replaced with another of the same species which complies with the approved Landscape Plans.

The project arborist shall document compliance with the above condition.

E.3 Hand excavation within tree root zones

Excavation undertaken within the specified radius from the trunks of the following trees shall be hand dug.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
1	Tristaniopsis laurina	Street tree	3.6m
3 – 10	Cupressus spp.	Adjacent western boundary – within rear yard of 20 Boronia Rd	2.3m

Attachment to report 24100332 (Title Trees & Landscape Referral).DOCX

Small hand tools such as mattocks or using compressed air or water jetting only shall be used. Roots with a diameter equal to or in excess of 50mm shall not be severed or damaged unless approved in writing by the project arborist.

Mechanical excavation is permitted beyond this radius when root pruning by hand along the perimeter line is completed. Exposed roots to be retained shall be covered with mulch or a geotextile fabric and kept in a moist condition and prevented from drying out.

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 5 or recognised equivalent).

The project arborist shall document compliance with the above condition.

E.4 Footings in the vicinity of trees

Footings for any structure within the specified radius from the trunks of the following trees shall be supported using an isolated pier and beam system.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
1	Tristaniopsis laurina	Street tree	3.6m
3 – 10	Cupressus spp.	ressus spp. Adjacent western boundary – within rear yard of 20 Boronia Rd	

Excavations for installation of piers shall be located so that no tree root with a diameter equal to or in excess of 50mm is severed or damaged. The smallest possible area shall be excavated which allows construction of the pier. The beam is to be placed a minimum of 100mm above ground level and is to be designed to bridge all tree roots with a diameter equal to or in excess of 50mm.

The project arborist shall document compliance with the above condition.

E.7 Installation of stormwater pipes and pits in the vicinity of trees

Excavation for the installation of stormwater pipes and pits within the specified radius from the trunks of the following trees shall be hand dug.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
1	Tristaniopsis laurina	Street tree	3.6m
3 – 10	Cupressus spp.	Adjacent western boundary – within rear yard of 20 Boronia Rd	2.3m

Any roots greater than 40mm diameter uncovered for the installation of stormwater pipes and pits shall not be severed and remain in situ bridging across the excavated trench. Pipes shall be guided under any roots greater than 40mm bridging across excavated trenches. Stormwater pits shall be positioned so that no roots greater then 40mm diameter are severed.

Attachment to report 24100332 (Title Trees & Landscape Referral).DOCX

The project arborist shall document compliance with the above condition.

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 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.

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

Nil

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

H.1 Landscaping

The *principal contractor* or *owner* must provide to *PCA* a works-as-executed landscape plan and certification from a qualified landscape architect/designer, horticulturist and/or arborist as applicable to the effect that the works comply with this consent.

Note: This condition has been imposed to ensure that all Landscaping work is completed prior to the issue of the Final Occupation Certificate.

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

Nil

J. Miscellaneous Conditions

Nil

K. Advisings

K.1 Pruning or Removing a Tree Growing on Private Property

The provisions of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 and the Woollahra Development Control Plan 2015 (DCP), Chapter E3 –Tree Management, 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 Woollahra DCP from Council's website www.woollahra.nsw.gov.au or call Council on 9391 7000 for further advice.

Sam Knight Tree Officer

Attachment to report 24100332 (Title Trees & Landscape Referral).DOCX



22 September 2023

REFERRAL RESPONSE - HERITAGE

FILE NO: Development Applications: 210/2023/1

ADDRESS: 22 Boronia Road BELLEVUE HILL 2023

PROPOSAL: Demolition of existing dwelling, and construction of a new residential

flat building containing four units and basement parking, swimming

pool, and associated landscaping.

FROM: Vanessa Wood - Heritage Officer

TO: Mr M D'Alessio

DOCUMENTATION

The following documentation provided by the applicant has been examined for this referral response:

- Revised Architectural Drawings by Mark Shapiro Architects, dated 3 August 2023
 - o Including Cover Letter, dated 15 August 2023
- Survey Plan by ESA Survey, dated 7 June 2022
- Statement of Environmental Effects by GSA Planning, dated June 2023
- Demolition Report by Ruth Daniell, dated 16 January 2023
- AHIMS Search by unknown, undated
- Aboriginal Heritage Due Diligence Assessment by Kayandel Archaeological Services, dated August 2023

SITE INSPECTION / RESEARCH

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

Review of the following documents and photographic evidence:

- Council's property system, to establish dates of earlier building and development applications for the subject and surrounding properties.
- Council's photography files relevant to the immediate area
- Council's heritage inventory sheets
- Council's aerial photography and mapping database
- Google Maps street view

STATUTORY AND POLICY DOCUMENTS

The following statutory and policy documents are relevant to the application:

- National Parks & Wildlife Act 1974
- Woollahra LEP 2014
- Woollahra DCP 2015

ASSESSMENT OF HERITAGE IMPACT

Compliance with the relevant legislative framework and planning controls

SIGNIFICANCE OF SUBJECT PROPERTY/TO THE CONSERVATION AREA

Attachment to report 24100332 (Title Heritage Referral).DOCX



The property is not a listed heritage item and is not located within a Heritage Conservation Area

The Demolition Report provides the following Statement of Significance of the subject property:

No. 22 Boronia Road does not satisfy the heritage assessment criteria for heritage listing as it fails to demonstrate importantly the assessment criteria to the level required.

The analysis both documentary and physical, and the assessment of significance using the NSW Heritage Office Criteria has not determined sufficient cultural significance to indicate that the property is worthy of heritage listing at a local level which as a consequence would require its retention in full or in part.

This is confirmed by Council's research and heritage studies, which does not list the property as a heritage item.

The Demolition Report provides the following conclusion:

The building at No. 22 Boronia Road can be demolished without the loss of a potential heritage item.

The Demolition Report submitted with the development application includes historical research on the development of the property over time. The construction of the dwelling is not associated with any known prominent architect and has no distinctive landmark qualities or other features that would make it potentially significant or rare. The report has assessed the potential heritage significance of the existing dwelling and has concluded that the property does not meet the criteria for identification as a place of local significance.

Considering the above, the findings of the Demolition Report are considered to be accurate.

National Parks and Wildlife Act 1974

National Parks and Wildlife Act 1974

The site is in an area of Potential Aboriginal Heritage Sensitivity. Therefore, an Aboriginal Heritage Impact Assessment was required as part of the DA to ascertain whether potential Aboriginal cultural heritage will be impacted by the proposal.

Anyone proposing to carry out an activity that may harm an Aboriginal object or a declared Aboriginal place must investigate, assess and report on the harm that may be caused by the activity they propose.

The 'Due Diligence Code of Practice for the protection of Aboriginal Objects in NSW' (2010) prescribes that an extensive search must be undertaken if AHIMS has shown that there are Aboriginal sites or places in the search area.

The Office of Environment & Heritage (OEH) disclosures for AHIMS searches are copied below:

 You must do an extensive search if AHIMS has shown that there are Aboriginal sites or places recorded in the search area.

Attachment to report 24100332 (Title Heritage Referral).DOCX



- If you are checking AHIMS as a part of your due diligence, refer to the next steps of the Due Diligence Code of practice.
- The information derived from the AHIMS search is only to be used for the purpose for which
 it was requested.
- AHIMS records information about Aboriginal sites that have been provided to Office of Environment and Heritage and Aboriginal places that have been declared by the Minister;
- It is not be made available to the public.
- Information recorded on AHIMS may vary in its accuracy and may not be up to date.
- Location details are recorded as grid references and it is important to note that there may be errors or omissions in these recordings.
- Some parts of New South Wales have not been investigated in detail and there may be fewer records of Aboriginal sites in those areas. These areas may contain Aboriginal sites which are not recorded on AHIMS.
- Aboriginal objects are protected under the National Parks and Wildlife Act 1974 even if they
 are not recorded as a site on AHIMS.

The Applicant has provided an Aboriginal Heritage Impact Assessment (the 'report') prepared in accordance with the 'Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW' published by the Department of Environment, Climate Change and Water and dated 13 September 2010 and in accordance with Attachment 10 of Council's DA guide available at: https://www.woollahra.nsw.gov.au/__data/assets/pdf_file/0009/248238/DA-Guide-Attachment-10-Aboriginal-Heritage-Impact-Assessment.pdf

Qualified Aboriginal heritage consultants from Kayandel Archaeological Services prepared the report. The site was inspected in July 2023 on foot.

There is no evidence that consultation was undertaken with the La Perouse Local Aboriginal Land Council.

There has been consideration of relevant previous Aboriginal heritage investigations, as detailed in Section 4 of the report.

The AHIMS of the OEH was consulted on 20 December 2022 and the extensive search is attached in Section 4 and Appendix II of the report. None of these sites are within the study area. 82 registered Aboriginal sites are within a 6km x 6km search radius.

The report identifies the following potential for unexpected findings within the area:

The activity is not within an Aboriginal place and no previous investigations meeting the requirements of this code have identified Aboriginal objects;

In terms of site's disturbance, the report states that:

- 1. The activity **will** disturb the ground surface, but **will not** disturb any culturally modified trees;
- 2.
- a. the Subject Area does **not** have any previously confirmed site records or other associated landscape feature information on AHIMS;
- b. there **are no** identified sites adjacent to the Subject Area;
- c. There **are** landscape features that are likely to indicate the presence of Aboriginal objects;

Attachment to report 24100332 (Title Heritage Referral).DOCX



- 3. The carrying out of the proposed activity **cannot** be avoided at the relevant landscape features identified over the Subject Area; and,
- 4. The desktop assessment and visual inspection completed determined that the likelihood of Aboriginal objects being present is **low**.

The report's recommendations conclude that:

- 1. Works as currently specified in Section 1.2 (see Appendix I) can proceed with caution, subject to the recommendations included below;
- 2. This due diligence assessment must be kept by the Proponent so that it can be presented, if needed, as a defence from prosecution under Section 86(2) of the National Parks and Wildlife Act 1974;
- 3. All relevant staff and contractors should be made aware of their statutory obligations for heritage under the *National Parks and Wildlife Act 1974*, which may be implemented as a heritage induction;
- 4. Should the design and/or extent of the proposed development be altered, further archaeological assessment may be required. This may include the need to complete an Aboriginal Cultural Heritage Assessment Report (ACHAR), the full Aboriginal Cultural Heritage Consultation Requirements (ACHCR), sub-surface investigations under the Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (DECCW, 2010a) and applying for an AHIP from Heritage NSW;
- 5. If sandstone is uncovered during works it should be inspected by a qualified archaeologist specialising in Aboriginal heritage for any evidence of rock engraving;
- 6. If unrecorded Aboriginal object or objects are identified in the Subject Area during works, then all works in the immediate area must cease and the area should be cordoned off. Heritage NSW must be notified by ringing the Enviroline 131 555 so that the site can be adequately assessed and managed;
- 7. In the unlikely event that skeletal remains are identified, work must cease immediately in the vicinity of the remains and the area must be cordoned off. The proponent must contact the local NSW Police who will make an initial assessment as to whether the remains are part of a crime scene, or possible Aboriginal remains. If the remains are thought to be Aboriginal, Heritage NSW must be contacted by ringing the Enviroline 131 555. A Heritage NSW officer will determine if the remains are Aboriginal or not; and a management plan must be developed in consultation with the relevant Aboriginal stakeholders before works recommence; and,
- 8. If, during the course of development works, suspected historic cultural heritage material is uncovered, work should cease in that area immediately. Heritage NSW (Enviroline 131 555) should be notified and works only recommence when an approved management strategy has been developed.

Given the above, it is concluded that an unexpected findings condition of consent will need to be imposed as part of the DA consent.

Woollahra LEP 2014

The subject site is not a heritage item in Woollahra Local Environment Plan 2014 'the LEP' and is not within a heritage conservation area.

Clause 1.2 Aims of Plan Subclause 1.2. (2) (f) – to conserve built and natural environmental heritage

Attachment to report 24100332 (Title Heritage Referral).DOCX



Significance of items in the vicinity

There are no listed heritage items in close proximity that would be adversely affected by the proposal.

Consideration

The dwelling has no heritage significance and does not make any contribution to the heritage significance of Bellevue Hill. The property is not heritage listed and is not located within a heritage conservation area.

A Demolition Report has been submitted with the development application and includes historical research on the development of the property over time. The construction of the dwelling is not associated with any known prominent architect and has no distinctive landmark qualities or other features that would make it potentially significant or rare. The report has assessed the potential heritage significance of the existing dwelling and has concluded that it does not meet the criteria for identification as a place of local significance. The findings of the report are considered to be accurate. Accordingly, the property is not of heritage value and therefore no objection is raised to the proposed demolition of the existing building.

As the property is not listed as a heritage item and is not located within a heritage conservation area, the design of the proposed new development will not result in any adverse impacts on heritage items/areas of value. There are no heritage items located within the vicinity of the site that will be adversely impacted and the proposal will not affect any significant views. As such, there are no concerns raised on heritage grounds regarding the design of the proposed new development.

The Demolition Report submitted with application satisfies the requirements for an archival recording for buildings with little or no significance.

CONCLUSION

National Parks & Wildlife Service Act, 1979

Appropriate conditions of consent to manage Aboriginal heritage will be provided below.

Woollahra LEP 2014

Clause 1.2 (2) (f) The development does conserve the built heritage of Woollahra.

RECOMMENDATION

The proposal is generally acceptable, subject to conditions, as it complies with the relevant statutory and policy documents and would have a satisfactory impact.

Consent, subject to conditions.

Stone, bricks, joinery and decorative architectural elements to be demolished, which include windows and doors, chimney pieces, sandstone, plaster medallions, fireplaces, timber flooring, decorative ceilings and ceiling roses must be salvaged and where possible reused on the project. Salvaged building materials surplus to the project must either be stored on site for future reuse, or transferred to an established second building material dealer for recycling.

Attachment to report 24100332 (Title Heritage Referral).DOCX



2. Aboriginal Objects - Unexpected Findings

If unexpected Aboriginal objects or bones are found during any activity associated with this consent, you must:

- a) Not further disturb or move these objects or bones.
- b) Immediately cease all work at the particular location.
- c) In the case of suspected human remains, notify NSW Police.
- d) Notify the Heritage NSW Environment Line on 131 555 and the La Perouse LALC on (02) 9311 4282 as soon as practicable and provide available details of the objects or remains and their location.
- e) Not recommence any work at the particular location unless authorised in writing by Heritage NSW. Additional assessment and approval pursuant to the *National Parks* and Wildlife Act 1974 may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

Note: The Definition of Aboriginal object as per the Woollahra Local Environmental Plan 2014: any deposit, object or other material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of an area of New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.

Standard Condition: B10 (Autotext BB10)

3. Skeletal Remains

If any skeletal remains suspected of being human are found during construction works, work must cease immediately and no further disturbance of the site must occur. The NSW Police and the Department of Premier and Cabinet, Community Engagement, Heritage must be notified and details of the remains and their precise location are to be provided.

Standard Condition: B9

4. Aboriginal Heritage Due Diligence Responsibilities

Nothing in this approval allows to cause harm to an Aboriginal object as defined in the *National Parks & Wildlife Act 1974*. Under the *National Parks & Wildlife Act 1974*, it is an offence to harm Aboriginal 'objects' (consisting of any material evidence of the Aboriginal occupation of NSW) without a valid Aboriginal Heritage Impact Permit under Section 90 of the Act. This applies whether the harm occurs either knowingly [s86(1)] or unknowingly [s86(2)].

It is a defence to the strict liability offence of harm to an Aboriginal object under s86(2) if a process of Due Diligence was followed which reasonably determined that the proposed activity would not harm an Aboriginal object.

Standard Condition: B12 (Autotext BB12)

5. Aboriginal Heritage Induction

- All construction staff and contractors must be made aware of their statutory obligations for Aboriginal heritage under the National Parks and Wildlife Act 1974;
- b) An Aboriginal heritage induction is to be delivered by the La Perouse Local Aboriginal Land Council or by a heritage consultant with Aboriginal heritage expertise, if a representative of the Local Land Council is not able to provide the induction), to explain what Aboriginal heritage may be found and outline the unexpected findings procedures; and

Attachment to report 24100332 (Title Heritage Referral).DOCX



c) Documentary evidence demonstrating compliance with a. and b. above being submitted to Council and the Principal Certifier.

Standard Condition: B13 (Autotext BB13)

6. Sandstone

If sandstone is uncovered during works, it is to be inspected by a qualified archaeologist specialising in Aboriginal heritage for any evidence of rock engraving. Based on this inspection, a determination will be made as to whether further archaeological monitoring/investigation is required, or whether bulk excavation can continue under the recommended 'unexpected finds' protocol.

Vanessa Wood - Heritage Officer

Attachment to report 24100332 (Title Heritage Referral).DOCX

Completion Date: 15 December 2023

REFERRAL RESPONSE - TRAFFIC

FILE NO: Development Applications: 210/2023/1 ADDRESS: 22 Boronia Road BELLEVUE HILL

PROPOSAL: Demolition of existing dwelling, and construction of a new residential

flat building containing four units and basement parking, swimming

pool, and associated landscaping.

FROM: Ms E Fang
TO: Mr M D'Alessio

I refer to the memo from the Planning Department dated 1 September 2023 requesting comments in relation to the above.

1. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environmental Effects, referenced 22520, prepared by GSA Planning, dated June 2023;
- Transport Impact Statement, referenced 23.081r01v02, prepared by Traffix, dated 11 April 2023;
- Traffic Response to Request for Information, referenced 23.081r02v03, prepared by Traffix, dated 8 August 2023;
- Revised Architectural Drawings, Rev B, referenced 22005, prepared by Mark Shapiro Architects, dated 3 August 2023.

2. ISSUES

Nil.

ASSESSMENT

3.1 Parking Provision

The parking provision for the proposed development has been assessed in accordance with Council's DCP 2015 Chapter E1 Parking and Access:

Table 1: Car Parking Provision

Residential Component	Quantity	DCP Maximum Requirement per Dwelling	DCP Maximum Permitted Parking
3 bedroom	4	2	8
Visitors	4	0.25	1.25 (1)
Total permitted			9
Proposed provision			8

The proposed provision of eight (8) parking spaces complies with DCP's maximum requirement and is considered acceptable.

Attachment to report 24100332 (Title Traffic Engineering Referral).DOCX

Table 2: Bicycle and Motorbike Parking Provision

BICYCLE			
	Quantity	DCP Minimum Requirement	DCP Minimum Required Parking
Residential Residents	4 dwellings	1 per dwelling	4
Residential Visitors	4 dwellings	1 per 10 dwellings	0.4 (0)
Total required	_		4
MOTORBIKE			
	Quantity	DCP Minimum Requirement	DCP Minimum Required Parking
Car Spaces	8	1 per 10 car spaces	0.8 (1)
Total required			1

In response, the proposal includes four (4) storage rooms that can accommodate four (4) bicycle parking spaces, which complies with DCP's minimum requirement. The non-provision of motor bike parking will result in a shortfall of one (1) space than DCP's requirement, however given the nature and scale of the development, motor bike parking demand is minor and can be accommodated in the car parking spaces allocated to each unit. The marginal shortfall is therefore considered acceptable.

3.2 Traffic Generation

Traffic generation from the proposed development has been calculated in accordance with RMS Guide to Traffic Generating Developments 2002, and RMS Guide to Traffic Generating Developments Updated traffic surveys TDT 2013/04a.

Existing Development

Low Density Dwellings

- Weekday peak hour vehicle trips: 1 dwelling x 0.95-0.99 per dwelling = 0.95-0.99 trips
- Daily vehicle trips: 1 dwelling x 10.7 per dwelling = 10.7 trips

Proposed Development

Medium Density Residential - Larger Units

- Weekday peak hour vehicle trips: 4 dwellings x 0.5-0.65 per dwelling = 2-2.6 trips
- Daily vehicle trips: 4 dwellings x 5.0-6.5 per dwelling = 20-26 trips

Based on the above calculations, the additional traffic generated by the proposal is minor and is unlikely to generate unacceptable adverse impact on the surrounding road network in terms of safety and efficiency.

3.3 Mechanical Parking Installations

A turntable is proposed to assist with vehicular manoeuvrability. Swept path diagrams show successful movements for B85 vehicles and are considered acceptable.

Queuing analysis is provided which demonstrates 98th percentile queue can be accommodated within site boundary. On-site waiting bay is therefore not required.

Attachment to report 24100332 (Title Traffic Engineering Referral).DOCX

2 of 10

It is also noted that traffic light system is proposed to manage traffic flow between Ground Floor and Basement. Should the development be approved, conditions will be imposed to ensure priorities be given to vehicles entering the basement to minimise disruptions to traffic along frontage road.

3.4 Access Driveway

The maximum grade of the access ramp is 5% for the first 6m into the carpark, which complies with the gradient requirement stipulated in AS/NZS 2890.1:2004. The gradient should be clearly depicted on the architectural drawings to ensure compliance.

The 3.1m-wide access driveway complies with the width requirement for a Category 1 access facility and is deemed satisfactory.

3.5 Sight Splay

A 2m x 2.5m sight splay is provided along both sides of the driveway, which is considered acceptable. Any structure within the splay area including landscape should be below 600m to ensure sufficient visibility.

4. RECOMMENDATION

Council's Traffic Engineer has determined that the proposal is satisfactory, subject to the following conditions:

A. GENERAL CONDITIONS

A. 1. Approved Plans and Supporting Documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with both the architectural plans to which is affixed a Council stamp "Approved" and supporting documents listed below unless modified by any following condition.

Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author	Date
23.081r01v02	Transport Impact Statement	TRAFFIX	11 April 2023
23.081r02v03	Traffic Response to Request for Information	TRAFFIX	8 August 2023

Notes:

- Warning to Principal Certifier You must always insist on sighting the original Council stamped approved plans. You must 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
- These plans and supporting documentation may be subject to conditions imposed under section 4.17(1)(g) of the Act modifying or amending the development.

Condition Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

B. BEFORE DEMOLITION WORK COMMENCES

B. 1. Construction Management Plan

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

An application for the CMP must be submitted for approval, and all associated application fees must be paid.

The CMP must be submitted as a self-contained document that outlines the nature of the construction project and as applicable, include the following information:

- a) Detail the scope of the works to be completed including details of the various stages, e.g. demolition, excavation, construction etc. and the duration of each stage.
- b) Identify local traffic routes to be used by construction vehicles.
- c) Identify ways to manage construction works to address impacts on local traffic routes, particularly during school pick-up and drop-off hours.
- d) Identify other developments that may be occurring in the area and identify ways to minimise the cumulative traffic impact of these developments. Should other developments be occurring in close proximity (500m or in the same street) to the subject site, the developer/builder is to liaise fortnightly with the other developers/builders undertaking work in the area in order to minimise the cumulative traffic and parking impacts of the developments.
- e) Detail how construction workers will travel to and from the site and parking arrangements for those that drive.
- f) Identify any proposed road closures, temporary traffic routes, loss of pedestrian or cyclist access, or reversing manoeuvres onto a public road, and provide Traffic Control Plans (TCPs) prepared by an accredited RMS Red or Orange card holder to manage these temporary changes.
- g) Detail the size (including dimensions), numbers and frequency of arrival of the construction vehicles that will service the site for each stage of works.
- h) Provide for the standing of vehicles during construction.
- i) If construction vehicles are to be accommodated on the site, provide a scaled drawing showing where these vehicles will stand and the vehicle swept path to show that these vehicles can access and egress the site in a forward direction (including dimensions and all adjacent traffic control devices, such as parking restrictions, pedestrian facilities, kerb extensions, etc.).
- j) If trucks are to be accommodated on Council property, provide a scaled drawing showing the location of any proposed Works Zone (including dimensions and all adjacent traffic control devices, such as parking restrictions, pedestrian facilities, kerb extensions, etc.).
- k) Show the location of any site sheds and any anticipated use of cranes and concrete pumps and identify the relevant permits that will be required.
- I) If a crane/s are to be accommodated on site, detail how the crane/s will be erected and removed, including the location, number and size of vehicles involved in the erection/removal of the crane/s, the duration of the operation and the proposed day and times, any full or partial road closures required to erect or remove the crane/s and appropriate Traffic Control Plans (TCPs) prepared by an approved RMS Red or Orange Card holder.
- m) Make provision for all materials, plant, etc. to be stored within the

- development site at all times during construction.
- n) State that any oversized vehicles proposed to operate on Council property (including Council approved Works Zones) will attain a Permit to StandPlant on each occasion (Note: oversized vehicles are vehicles longer than 7.5m or heavier than 4.5T.)
- o) Show the location of any proposed excavation and estimated volumes.
- p) When demolition, excavation and construction works are to be undertaken on school days, all vehicular movements associated with this work must only be undertaken between the hours of 9.30am and 2.30pm, in order to minimise disruption to the traffic network during school pick up and drop off times
- q) Show the location of all Tree Protection (Exclusion) zones (Note: storage of building materials or access through Reserve will not be permitted without prior approval by Council).

Notes

- A minimum of eight weeks will be required for assessment. Site work must not commence until the Construction Management Plan is approved.
- · Failure to comply with this condition may result in fines and proceedings to stop work.
- Council and NSW Police approval is required prior to a partial or full temporary road closure.
 If you are seeking a partial or full temporary road closure you must comply with the relevant conditions of this consent and you must also gain the approval of the Eastern Suburbs Police Area Command.
- If you partial or full close a road without compliance with Council and NSW Police requirements Council Rangers or the Police can issue Penalty Infringement Notices or Court Attendance Notices leading to prosecution.
- Traffic Supervisors at the Eastern Suburbs Police Area Command can be contacted on eastsubtraffic@police.nsw.gov

Condition Reason: To facilitate the efficient operation of construction projects, minimise traffic disruption, and protect the public, and the surrounding environment, during site works and construction.

B. 2. Works (Construction) Zone – Approval and Implementation

If the Construction Management Plan relies upon a Works Zone, before any site work commences, a Works Zone application must be made.

If the works zone is approved, all fees for the Works Zone must be paid before it can be installed.

All Works Zone signs must have been erected by Council to permit enforcement of the Works Zone by Council's Rangers and NSW Police before commencement of any site work. Signs are not erected until full payment of Works Zone fees is made.

Notes

- A minimum of four to six weeks must be allowed (for routine applications) from the date of
 making an application to the Traffic Committee (Woollahra Local Traffic Committee)
 constituted under clause 20 of the Transport Administration (General) Regulation 2018 to
 exercise those functions delegated by Transport for New South Wales under section 31(3) of
 the Transport Administration Act 1988.
- The enforcement of the Works Zone is at the discretion of Council's Rangers and the NSW Police Service. Any breach of the Works Zone must be reported to either Council or the NSW Police Service.

Condition Reason: To facilitate the efficient operation of construction projects

Attachment to report 24100332 (Title Traffic Engineering Referral).DOCX

5 of 10

and to minimise traffic disruption.

C. ON COMPLETION OF REMEDIATION WORK

Nil.

D. BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

1. **Parking Facilities**

Before the issue of any construction certificate, the construction certificate plans and specifications required under clause 7 of the Development Certification and Fire Safety Regulation, must include detailed plans and specifications for all bicycle, car and commercial vehicle parking in compliance with AS/NZS 2890.1: Parking Facilities - Off-Street Car Parking.

The plans must satisfy the following requirement(s):

- a) Sight distance requirements must comply with Clause 3.2.4 and Figure 3.3 of AS2890.1:2004;
- b) Traffic light system be incorporated to manage traffic flow between the ground floor and basement level. Priorities should be given to vehicles entering the car park to minimise conflicts with traffic along the frontage road;
- c) The maximum gradient of the access driveway should be 1 in 20 (5%) as per Clause 3.3 of AS/NZS 2890.1 and should be clearly depicted in the architectural drawings;
- d) A 2m x 2.5m sight splay be provided along both sides of the access driveway, as per Clause 3.2.4 and Figure 3.2 of AS/NZS2890.1:2004. Any structure within the splay area including landscape should be lower than 600mm to ensure visibility.

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

The Principal Certifier 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.

Condition Reason: To ensure parking facilities are designed in accordance with the Australian Standard.

D 2. **Road and Public Domain Works**

Before the issue of any construction certificate, a separate application under Section 138 of the Roads Act 1993 is to be made to, and be approved by Council, for the following infrastructure works. The infrastructure works must be carried out at the applicant's expense:

a) The removal of the existing vehicular crossing including layback and gutter and the construction of a 3.05 metres wide vehicular crossing in accordance with Council's Crossing Specification, standard driveway drawing RF2_D

Attachment to report 24100332 (Title Traffic Engineering Referral).DOCX

6 of 10

and to the satisfaction of Council's Assets Engineers. The new vehicular crossing must be constructed at a right angle to the street kerb in plain concrete where the centreline of the new crossing must align with the centreline of the internal driveway at the property boundary. Design longitudinal surface profiles along each side/edge for the proposed driveway, starting from the road centreline to the parking slab must be submitted for assessment.

Condition Reason: To ensure the design of the road, footpaths, driveway crossings and public stormwater drainage works are detailed and approved under section 138 of the Roads Act 1993 and to ensure the works are completed to Council's satisfaction.

E. BEFORE BUILDING WORK COMMENCES

Nil.

F. DURING BUILDING WORK

F 3. Compliance with Construction Management Plan

While site work is being carried out, all development activities and traffic movements must be carried out in accordance with the approved Construction Management Plan (CMP). All controls in the CMP must be maintained at all times. A copy of the CMP must be kept on-site at all times and made available to the Principal Certifier on request.

Notes:

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

Condition Reason: To ensure compliance with the Construction Management Plan.

G. BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

G 36. Positive Covenant for Mechanical Parking Installation & Work-As-Executed Certification of Mechanical Systems

Before the issue of any occupation certificate for the whole of the building, mechanical parking installations are to be certified by a professional engineer with works-as-executed drawings supplied to the Principal Certifier detailing:

- a) Compliance with conditions of development consent relating to mechanical parking installation including traffic light system;
- b) That the works have been constructed in accordance with the approved design;
- c) A positive covenant pursuant to Section 88E of the Conveyancing Act 1919 must be created on the title of the subject property, providing for the indemnification of Council from any claims or actions and for the on-going maintenance of the turntable and traffic signal system incorporated in the development. The wording of the Instrument must be in accordance with Council's standard format and the Instrument must be registered at the Land and Property Information NSW.

Attachment to report 24100332 (Title Traffic Engineering Referral).DOCX

- The PCA must supply a copy of the WAE Plans to Council together with the occupation certificate for the whole of the building.
- The occupation certificate for the whole of the building must not be issued until this condition has been satisfied.

Condition Reason: To ensure the certification and ongoing maintenance of the mechanical parking installations and to indemnify Council from any claims or actions.

H. OCCUPATION AND ONGOING USE

1. **Provision of Off-street Public and Visitor Parking**

During the occupation and ongoing use, in compliance with AS 2890.1: Parking facilities - Off-street car parking, unimpeded public access to off-street parking must be maintained as follows:

Use	Number of spaces
Car Parking (residents)	8
Bicycle Parking	4

- Where there is a potential for the trespass of private motor vehicles upon private parking servicing the owner of the site may seek to enter into a free parking area agreement with Council. Council may under such agreement enforce parking restrictions under section 650 of the Local Government Act 1993.
- Further information can be obtained from Council's Compliance Team by calling 9391 7000 or from the Office of Local Government at www.olg.nsw.gov.au or call 4428 4100.

Condition Reason: To ensure adequate on-site parking is maintained.

Н 2. **Parking Permits**

During the occupation and ongoing use, future tenants and residents of the proposed development will not be eligible for resident or visitor parking permits.

Condition Reason: To minimise the impact of the development upon on street car parking.

Н 62. **On-going Maintenance of the Mechanical Parking Installations**

During the occupation and ongoing use, the Owner must ensure the ongoing maintenance of the mechanical parking installations in accordance with this condition and any positive covenant. The Owner must:

- a) keep the system clean and free of silt rubbish and debris;
- b) maintain renew and repair as reasonably required from time to time the whole of the system so that it functions in a safe and efficient manner;
- c) carry out the matters referred to in paragraphs (a) and (b) at the Owners

Attachment to report 24100332 (Title Traffic Engineering Referral).DOCX

8 of 10

expense;

- d) not make any alterations to the system or elements thereof without prior consent in writing of the Council and not interfere with the system or by its act or omission cause it to be interfered with so that it does not function or operate properly;
- e) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the land with regard to compliance with the requirements of this covenant;
- f) comply with the terms of any written notice issued by Council in respect to the requirements of this clause within the time stated in the notice; and
- g) where the Owner fails to comply with the Owner's obligations under this covenant, permit the Council or its agents at all times and on reasonable notice at the Owner's cost to enter the land with equipment, machinery or otherwise to carry out the works required by those obligations.

The Owner

- a) indemnifies the Council from and against all claims, demands, suits, proceedings or actions in respect of any injury, damage, loss, cost, or liability (Claims) that may be sustained, suffered, or made against the Council arising in connection with the performance of the Owner's obligations under this covenant; and
- b) releases the Council from any Claim it may have against the Council arising in connection with the performance of the Owner's obligations under this covenant.

Notes:

This condition is supplementary to the owner(s) obligations and Council's rights under any positive covenant.

Condition Reason: To ensure the ongoing maintenance of the mechanical parking installations.

I. BEFORE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

Nil.

J. BEFORE SUBDIVISION WORK COMMENCES

Nil.

K. BEFORE ISSUE OF A SUBDIVISION CERTIFICATE (subdivision works)

Nil.

L. BEFORE ISSUE OF A SUBDIVISION CERTIFICATE (no subdivision works)

Nil.

M. BEFORE ISSUE OF A STRATA CERTIFICATE

Nil.

Attachment to report 24100332 (Title Traffic Engineering Referral).DOCX

9 of 10

Completion Date: 21 February 2024

REFERRAL RESPONSE - DEVELOPMENT ENGINEERING

FILE NO: Development Applications: 210/2023/1
ADDRESS: 22 Boronia Road BELLEVUE HILL 2023

PROPOSAL: Demolition of existing dwelling, and construction of a new residential

flat building containing four units and basement parking, swimming

pool, and associated landscaping.

FROM: Ms S Lin
TO: Mr M D'Alessio

1. ISSUES

None

Please refer to comments and conditions from Council's Traffic Engineers separately.

2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environment Effects, referenced 22520, prepared by GSA Planning, dated June 2023.
- Revised Architectural Plans, referenced 22005 Rev B, prepared by Mark Shapiro Architects, dated 03/08/2023.
- Survey, referenced 4651/22, prepared by ESA Survey, dated 07/06/2022.
- Revised Stormwater Management Plan, referenced 220537 Rev C, prepared by Smart Structure Australia, dated 16/08/2023.
- Revised Geotechnical Report, referenced P2810_01 rev1, prepared by Morrow, dated 03/07/2023.
- Structural Report, referenced SHI-220537-2, prepared by Smart Structures Australia, dated 17/08/2023.

3. ASSESSMENT

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

a. Site Drainage comments

The submitted concept stormwater plans are considered satisfactory in principle subject to refinements at the CC stage. Stormwater treatment system and OSD have been proposed to comply with Chapter E2.2.3 and Chapter 2.2.4 of Council's DCP. However, it is noted that there are some stormwater runoff bypassing the OSD, therefore condition will be imposed to ensure the total permissible site discharge including any stormwater runoff that is bypassing the OSD will not exceed 23.69 L/s. Stormwater runoff from the site will be connected to the existing kerb inlet pit (KIP) located within the frontage of the site in Boronia Road.

Attachment to report 24100332 (Title Development Engineers Referral).DOCX

Council's Infrastructure & Sustainability Services Division is satisfied that adequate provision could be made for the disposal of stormwater from the land it is proposed to develop and complies with Chapter E2 "Stormwater and Flood Risk Management" DCP.

b. Flooding & Overland Flow comments

Council's Drainage Engineer has determined that the development proposal is generally satisfactory and doesn't require any flood specific conditions.

c. Impacts on Council Infrastructure comments

The applicant seek approval to provide a new basement parking as part of this proposal and alter the internal driveway from its existing location. In this regard, the applicant is required to construct a new vehicular crossing and reconstruct the existing footpath along the site frontage for the proposed development. Additionally, stormwater discharge from the site will be connected to the existing kerb inlet pit on Boronia Road. Detailed design and construction for these infrastructure works will be subject to separate s138 application which will be conditioned accordingly.

d. Traffic comments

Refer to comments and conditions by Council's Traffic Engineer separately.

e. Vehicle Access & Accommodation comments

The proposed vehicular access and car parking layout are considered generally satisfactory. Conditions will be imposed to ensure all parking spaces comply with the minimum dimension requirements stipulated in AS2890.1 and driveway ramp is designed to provide adequate ground clearance for B99 vehicles. Details of the proposed turntable should also be included in the detailed plans.

f. Geotechnical, Hydrogeological and/or Structural comments

A Geotechnical Report, ref P2810_01 rev1, prepared by Morrow, dated 03/07/2023, has been submitted in support of the application. The proposal involves excavation to a depth of approximately 6m below ground level for the proposed basement.

The report identified that the subsurface conditions from the subject site as:

- a) Fill comprising silty sand to a depth of 0.2m (BH1) and 0.4m (BH2).
- b) Depth of natural sand with various density from a depth beneath the fill to a target depth of 1.5m (BH1) and 12m (BH2).
- c) Sandstone bedrock was not encountered beneath the natural sand.
- d) Groundwater was observed during the field investigation.

The report made comments and recommendations on the following:

- Shoring and support,
- Vibration Monitoring,
- Excavation method,
- Further Geotechnical input.

In addition, the applicant has also submitted a structural report and preliminary structural drawings providing methodology to address the proposed excavation. It is noted from the report that the proposed shoring system will be designed using 450mm diameter contiguous piles with temporary hollow bar anchors or braces to be installed through each pile for additional lateral stability. As no owner consent from neighbouring properties has been submitted to support the anchor option, condition will be imposed to emphasise that this development consent does not give approval to any anchor works over, on or under adjoining properties.

Council's Infrastructure & Sustainability Services Division has no objections to the proposed excavation on technical grounds subject to the imposition of conditions. Notwithstanding this, Council's Planning Officer is also to undertake an assessment of the proposed excavation against the relevant excavation objectives and controls prescribed under the LEP and DCP.

4. RECOMMENDATION

Council's Development Engineer has determined that the proposal is satisfactory, subject to the following conditions:

A. General Conditions

A.5 Approved Plans & Supporting documents

Reference	Description	Author/Drawn	Date(s)
220537	Stormwater Management Plan	SMART Structures Australia	
D00 Rev B			20/07/2023
D01 Rev C			16/08/2023
D02 Rev B			20/07/2023
D03 Rev B			20/07/2023
D10 Rev B			20/07/2023
D15 Rev B			20/07/2023
D16 Rev A			25/01/2023
D17 Rev B			20/07/2023
D18 Rev B			20/07/2023
P2810_01 rev1	Geotechnical Report	Morrow	03 July 2023
SHI-220537-2	Structural Design Certificate	SMART Structures Australia	17/08/2023

A.8 Ancillary Aspect of the Development (S80A(2) of the Act)

A.31 No Underpinning works

This development consent does <u>NOT</u> give approval to any works outside the boundaries of the subject property including any underpinning works to any structures on adjoining properties and Council's property.

A.32 Vehicular Access and Garaging

Driveways and vehicular access ramps shall be designed to provide adequate ground clearance to the underside of B99 vehicles. In all respects, the proposed vehicular access including any parking spaces must be designed and constructed to comply with the minimum requirements of AS2890.1, AS2890.2, AS2890.6 and the Council's DCP.

- Conditions which must be satisfied prior to the demolition of any building or construction
- B.7 Public Road Assets prior to any work/demolition
- Conditions which must be satisfied prior to the issue of any construction certificate

C.5 Security Deposits

Property Damage Security Deposit (S138)	\$96,530	No	T115
Infrastructure Works bond (S138)	\$15,300	No	T113
Public Road and Footpath Infrastructure Inspection Fee (S138 Fee)	\$645	No	T45

C.13 Road and Public Domain Works

A separate application under Section 138 of the *Roads Act* 1993 is to be made to, and be approved by Council as the road authority, for the following infrastructure works prior to the issuing of any Construction Certificate. The infrastructure works must be carried out at the applicant's expense:

- a) The removal of the existing vehicular crossing including layback and gutter and the construction a new 3.05 metres wide vehicular crossing plus the reconstruction of the layback wing of the neighbouring crossing in accordance with Council's standard drawing RF2_D, Crossing Specification, driveway detail plan by Mark Shapiro, referenced DA2500-B, dated 03/08/2023 and to the satisfaction of Council's Assets Engineers. The new vehicular crossing must be located at a minimum distance of one (1) metre from the existing power pole. Design longitudinal profiles along each edge/side of the proposed crossing, starting from the centreline of the road to the parking slab must be submitted for assessment,
- b) The reconstruction of the existing 1.8m wide concrete footpath for the full frontage of the site in Boronia Road in accordance with Council's Specification for Roadworks, Drainage and Miscellaneous Works and to the satisfaction of Council's Assets Engineers, A maximum crossfall of 3% must be provided for the concrete footpath from the property boundary towards the top of kerb. A design longitudinal surface profile (scale 1:100) and cross sections (scale 1:50) at every 5 metres intervals must be submitted for assessment.
- The reinstatement of all damaged kerb and gutter and road pavement to Council's Specification and to the satisfaction of Council's Assets Engineers,
- d) Where a grass verge exists, the balance of the area between the footpath and the kerb 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 Couch turf.
- e) The stormwater connection to the existing kerb inlet pit located within the site frontage in Boronia Road in accordance with Council's Specification for Roadworks, Drainage and Miscellaneous Works and to the satisfaction of Council's Assets Engineers,
- f) The developer shall be responsible for carrying out all service investigations to allow a gravity connection.

- g) A bond of \$15,300 will be used as security to ensure the satisfactory completion of the infrastructure works. The security or bank guarantee must be the original unconditional bank guarantee with no expiry date.
- Council may use all or part of the Infrastructure Bond as well as the Property Damage Security Deposit to meet the cost of removing or completing the works if they do not meet Council's requirements.
- The Deposit/Bond will not be released until Council has inspected the site and is satisfied that the Works have been completed in accordance with Council approved drawings and to Council requirements.

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. lard Condition: C13 (Autotext CC13)

- C.21 Provision for Energy Supplies
- C.25 Soil and Water Management Plan Submissions & Approval
- C.36 Professional Engineering Details

C.37 Engineer Certification

This development consent does NOT give approval to any works outside the boundaries of the subject property including any underpinning works to any structures on adjoining properties and Council's property.

Any structural design is not to incorporate any temporary or permanent underpinning works or ground anchors, bolts, etc which encroach outside the boundaries of the subject property. Engineer certification to this effect shall be submitted to the Certifying Authority prior to issue of any Construction Certificate.

C.40 Geotechnical and Hydrogeological Design, Certification and Monitoring

Prior to the issue of the Construction Certificate, the applicant must submit, for approval by the Principal Certifier, a detailed geotechnical report prepared by a geotechnical engineer with National Engineering Register (NER) credentials in accordance with Council's DCP and Councils document "Guidelines for Preparation of Geotechnical and Hydrogeological Reports". The report must include 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:

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,

- 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 details of cut-off walls or similar controls prior to excavation such that any temporary changes to the groundwater level, during construction, will be kept within the historical range of natural groundwater fluctuations. Where the historical range of natural groundwater fluctuations is unknown, the design must demonstrate that changes in the level of the natural water table, due to construction, will not exceed 0.3m at any time,
- d) Provide tanking of all below ground structures to prevent the entry of all ground water such that they are fully tanked and no on-going dewatering of the site is required.
- e) Provide a Geotechnical and Hydrogeological Monitoring Program that:
 - will detect any settlement associated with temporary and permanent works and structures,
 - will detect deflection or movement of temporary and permanent retaining structures (foundation walls, shoring bracing or the like),
 - will detect vibration in accordance with AS 2187.2-1993 Appendix J including acceptable velocity of vibration (peak particle velocity),
 - will detect groundwater changes calibrated against natural groundwater variations,
 - · details the location and type of monitoring systems to be utilised,
 - details the pre-set acceptable limits for peak particle velocity and ground water fluctuations,
 - details recommended hold points to allow for the inspection and certification
 of geotechnical and hydrogeological measures by the professional engineer,
 and
 - details a contingency plan.

Standard Condition: C40 (Autotext: CC40)

C.41 Ground Anchors

This development consent does <u>NOT</u> give approval to works or structures over, on or under adjoining properties, public roads and/or footpaths. Prior written consent must be obtained from all relevant adjoining property owner(s) for the use of any Ground Anchors extending beyond the boundaries of the subject property.

The use of permanent ground anchors under Council land is not permitted. Temporary ground anchors under Council's land 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 website. Approval may be granted subject to conditions of consent. Minimum 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 (Autotext: CC41)

C.45 Parking Facilities

The Construction Certificate plans and specifications required by clause 139 of the Regulation, must include detailed plans and specifications for all bicycle and car vehicle parking in compliance with AS2890.3:2015 Parking Facilities - Bicycle Parking Facilities and AS/NZS 2890.1:2004: Parking Facilities - Off-Street Car Parking which includes the following requirement:

- a) Other conditions imposed by Council's Traffic Engineer.
- Details including dimensions, type, model and manufacturers specification of the proposed turntable should be provided in the detailed plans,
- c) All parking spaces shall have minimum dimensions of 2.4m x 5.4m, clear of any obstructions, to comply with AS2890.1. If the side boundary of a parking space is a wall, or if there are obstructions such as columns restricting door opening, 300mm shall be added to the width of the space,
- d) Driveway and vehicular access ramp shall be designed to provide adequate ground clearance to the underside of B99 vehicles.

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

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

Standard Condition: C45 (Autotext: CC45)

C.51 Stormwater Management Plan

Prior to issue of the Construction Certificate, the applicant must submit, for approval by the Principal Certifier, detailed stormwater management plans prepared by a suitably qualified and experienced civil engineer, which include the following:

- General design in accordance with stormwater management plans, referenced 220537 prepared by SMART Structures Australia, dated 16/08/2023, other than amended by this and other conditions,
- b) The Permissible Site Discharge (PSD) for the proposed development must not exceed 23.69 L/s which includes any stormwater runoff that is bypassing the onsite detention (OSD) system. In this regard, the discharge orifice from the OSD system must be further reduced with additional storage to be provided, as determined by using the Drains model, to compensate for the stormwater runoff from the bypassing area so that the total discharge leaving the site is limited to 23.69 l/s for storms up to and including the 1% AEP events,
- c) In order to prevent any backwater effects, invert level of the proposed OSD discharge orifice must be designed so that it is set above the HGL of the downstream drainage system where the top of kerb level at the connecting kerb

- inlet pit is to be used as the tailwater level when connecting into the road drainage system.
- The discharge of stormwater from the site, by direct connection, to Council's existing kerb inlet pit located within the frontage of the site on Boronia Road,
- e) The installation of a pumpout system with a minimum storage capacity of 3.4m³ to comply with Section 8 of AS3500.3,
- f) The installation of stormwater filtration /treatment system which includes but not limited to the installation of 6m³ rainwater tank, 2 x 690PSorb StormFilter and 2 x OceanGuard 200 by Ocean Protect to achieve the minimum the water quality targets stipulated in Chapter E2.2.3 of Council's DCP,
- g) All below ground structures are to be fully tanked to ensure subsoil drainage/seepage water is not collected and discharged to the kerb and gutter in accordance with Chapter E2.2.5 and 2.2.10 of the Council's DCP. Notation to this requirement shall be clearly depicted on the drawings,
- h) Internal stormwater drainage including but not limited to gutters and downpipes, pipes and pits are to be designed for rainfall intensities up to and including the 1% AEP event if an unimpeded overland flow path to the street drainage system is not available. Design details and calculations must be included in the stormwater management plans,
- i) Dimensions of all drainage pits and access grates must comply with AS3500.3,
- i) Compliance the objectives and performance requirements of the BCA,
- k) Any rainwater tank (See Note below) required by BASIX commitments including their overflow connection to the Stormwater Drainage System, and
- General compliance with the Council's Woollahra DCP 2015 Chapter E2 Stormwater and Flood Risk Management.

On-site Stormwater Detention (OSD) Requirements:

The minimum Site Storage Requirements ("SSR") for the required on-site stormwater detention (OSD) system must be 13.94m³ or determined by a Drains model whichever is greater and the Permissible Site Discharge (PSD) for the proposed development must not exceed 23.69 L/s.

The Stormwater Management Plan must also 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 Australian Government publication, *Australian Rainfall and Run-off*, 2019 edition or most current version thereof. It must include:

- a) All pipe layouts, dimensions, grades, lengths and material specification,
- b) Location of proposed rainwater tanks,
- c) All invert levels reduced to Australian Height Datum (AHD),
- d) Location and dimensions of all drainage pits,
- e) Point and method of connection to Councils drainage infrastructure, and
- f) Overland flow paths over impervious areas.

On-site Stormwater Detention (OSD) details:

- a) Any potential conflict between existing and proposed trees and vegetation.
- b) Internal dimensions and volume of the proposed detention storage.

- c) Diameter of the outlet to the proposed detention storage basin.
- d) 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.
- e) Details of access and maintenance facilities.
- f) Construction and structural details of all tanks and pits and/or manufacturer's specifications for proprietary products.
- g) 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.

Rainwater Reuse System details:

- a) Any potential conflict between existing and proposed trees and vegetation,
- b) Internal dimensions and volume of the proposed rainwater storage,
- Plans, elevations and sections showing the rainwater tanks, finished surface level and adjacent structures,
- d) Details of access and maintenance facilities,
- e) Construction and structural details of all tanks and pits and/or manufacturer's specifications for proprietary first flush products,
- f) Details of the emergency overland flow-path (to an approved Council drainage point) in the event of a blockage to the rainwater tanks.

For the proposed stormwater connection to the Council's drainage infrastructure, 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* (2012).

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: C.51 (Autotext CC51)

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

D.4 Dilapidation Reports for existing buildings

Dilapidation surveys and dilapidation reports shall be conducted and prepared by a *professional engineer* (structural) for all buildings and/or structures that are located within the likely "zone of influence" of any excavation, dewatering and/or construction induced vibration as determined applicable by a Structural Engineer.

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

No. 20 Boronia Road No. 24 Boronia Road No. 15 Blaxland Road The dilapidation reports must be completed and submitted to the *Certifying Authority* for approval. A copy of the approved reports shall be 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 (Autotext DD4)
- D.6 Adjoining buildings founded on loose foundation materials
- D.14 Erosion and Sediment Controls Installation
- E. Conditions which must be satisfied during any development work
- E.7 Maintenance of Vehicular and Pedestrian Safety and Access
- **E.11 Maintenance of Environmental Controls**
- E.12 Compliance with Geotechnical/Hydrogeological Monitoring Program
- E.13 Support of Adjoining Land Owners
- **E.14 Vibration Monitoring**
- E.15 Erosion and Sediment Controls Maintenance
- E.17 Disposal of Site Water during Construction
- E.19 Site Cranes
- E.20 Check Surveys boundary location, building location, building height, stormwater drainage system and flood protection measures relative to AHD
- E.24 Compliance with Council's Specification for Roadworks, Drainage and Miscellaneous Works Road Works and work within the Road and Footway
- F. Conditions which must be satisfied prior to any occupation or use of the building (Part 4A of the Act and Part 8 Division 3 of the Regulation)
- F.7 Commissioning and Certification of Systems and Works
- F.9 Commissioning and Certification of Public Infrastructure Works
- F.24 Vehicle Access and Manoeuvring Construction & Certification

Prior to the issue of any Occupation Certificate, the applicant must submit, for approval by the Principal Certifying Authority, certification from a Chartered Traffic Engineer relating to the construction of vehicular access and manoeuvring for the development. This certification must be based on a site inspection of the constructed vehicle access, manoeuvring and vehicle accommodation areas, with dimensions and measurements as necessary, and must make specific reference to the following:

 a) That the as-constructed carpark complies with the approved Construction Certificate drawings,

- That a maximum gradient of 5% has been provided for the first 6 metres from the property boundary to the basement,
- That finished driveway gradients and transitions will not result in scraping to the underside of B99 vehicles,
- d) All parking spaces are open type with no partitions,
- That the as-constructed vehicular path and parking arrangements comply in full with AS2890.1 in terms of minimum dimensions provided,
- f) That the headroom clearance of minimum 2.2 metres has been provided between the basement floor and any overhead obstruction to comply with Clause 5.3.1 of AS2890.1.
- That Aisle widths throughout basements comply with AS2890.1,
- G. Conditions which must be satisfied prior to the issue of any Subdivision Certificate
- G.4 Electricity Substations Dedication as road and/or easements access
- Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (S109C (1) (c))
- H.13 Road Works (including footpaths)

H.20 Positive Covenant and Works-As-Executed Certification of Stormwater Systems

Prior to issue of any Occupation Certificate, stormwater drainage works are to be certified by a professional engineer with works-as-executed drawings prepared by a registered surveyor and submitted, for approval by the Principal Certifying Authority, certifying:

- a) compliance with conditions of development consent relating to stormwater,
- b) the structural adequacy of the on-site stormwater detention (OSD) and rainwater retention and pumpout systems,
- that an OSD system with the required storage has been constructed in accordance with the approved stormwater plans,
- that a pumpout system with required storage has been constructed in accordance with the approved stormwater plans,
- that a rainwater tank with required storage has been constructed in accordance with the approved stormwater plans,
- that stormwater from rainwater tank have been connected for non-potable use such as car washing and garden irrigation etc,
- g) that only one stormwater outlet pipe has been constructed in accordance with the approved stormwater plans,
- that a stormwater treatment system has been constructed in accordance with the approved plans and meets the water quality targets stipulated in the Council's DCP,
- that subsoil drainage/seepage water is NOT collected and discharged into the kerb and gutter in accordance with the approved stormwater drawings,
- j) pipe invert levels and surface levels to Australian Height Datum, and
- k) contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.

A positive covenant pursuant to section 88E of the *Conveyancing Act 1919* must be created on the title of the subject property, providing for the indemnification of Council from any claims or actions and for the on-going maintenance of the stormwater treatment system, on-site detention system, on-site retention system, including any pumps and sumps incorporated in the development. The wording of the Instrument must be in accordance with Council's standard format and the Instrument must be registered with the NSW Land Registry Services.

Note: The required wording of the Instrument can be downloaded from Council's website www.woollahra.nsw.gov.au. The PC must supply a copy of the WAE plans to Council together with the Occupation Certificate.

Note: Occupation Certificate must not be issued until this condition has been satisfied. Standard Condition: H20 (Autotext HH20)

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

I.29 Ongoing Maintenance of the On-site Stormwater Detention (OSD), Stormwater Treatment and Rainwater Systems

The owner(s) must in accordance with this condition and any positive covenant:

- Permit stormwater to be temporarily detained, treated and retained and reused by the systems.
- b) keep the systems clean and free of silt rubbish and debris:
- c) maintain renew and repair as reasonably required from time to time the whole or part of the system so that it functions in a safe and efficient manner;
- d) carry out the matters referred to in paragraphs (b) and (c) at the Owners expense;
- e) not make any alterations to the system or elements thereof without prior consent in writing of the Council and not interfere with the system or by its act or omission cause it to be interfered with so that it does not function or operate properly;
- f) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the land with regard to compliance with the requirements of this covenant;
- g) comply with the terms of any written notice issued by Council in respect to the requirements of this clause within the time stated in the notice; and
- h) where the Owner fails to comply with the Owner's obligations under this covenant, permit the Council or its agents at all times and on reasonable notice at the Owner's cost to enter the land with equipment, machinery or otherwise to carry out the works required by those obligations.

The Owner

- a) indemnifies the Council from and against all claims, demands, suits, proceedings or actions in respect of any injury, damage, loss, cost, or liability (Claims) that may be sustained, suffered, or made against the Council arising in connection with the performance of the Owner's obligations under this covenant except if, and to the extent that, the Claim arises because of the Council's negligence or default; and
- b) releases the Council from any Claim it may have against the Council arising in connection with the performance of the Owner's obligations under this covenant except if, and to the extent that, the Claim arises because of the Council's negligence or default.

Note: This condition has been imposed to ensure that owners are aware of require maintenance

requirements for their stormwater systems.

Note: This condition is supplementary to the owner(s) obligations and Council's rights under any positive

covenant. Standard Condition: I29

J. Miscellaneous Conditions

Nil

K. Advisings

K.23 Dilapidation Report K.24 Roads Act Application

LOCAL PLANNING PANEL DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No. D2

FILE No. DA278/2023/1

ADDRESS 79 Bellevue Road BELLEVUE HILL

COUNCIL WARD Bellevue Hill
SITE AREA 501.9m²

ZONING R2 Low Density Residential

PROPOSAL Demolition of existing building and construction of new dual

occupancy development with associated landscaping and strata sub-

division

TYPE OF CONSENT Local development

COST OF WORKS \$2,253,167.00

DATE LODGED 10/08/2023

APPLICANT Mrs S Levy

OWNER Mrs S Levy

AUTHOR Mr C Hartas

TEAM LEADER Mr T Wong

SUBMISSIONS One (1)

RECOMMENDATION

1. REASON FOR REPORT TO LOCAL PLANNING PANEL (LPP)

Refusal

The application is to be determined by the Woollahra Local Planning Panel (LPP) as it falls under the category of:

- Departure from development standards
 - (a) Development that contravenes a development standard imposed by an environmental planning instrument by more than 10%

2. REASONS FOR RECOMMENDATION

The application has been assessed within the framework of the matters for consideration under section 4.15 of the Environmental Planning and Assessment Act 1979 and is recommended for refusal because:

- It is considered to be unsatisfactory with planning provisions contained in WLEP 2014 and WDCP 2015
- It will have adverse effects on the amenity of adjoining properties and/or local built and natural environment such that refusal is justified
- The site is not suitable for the proposed development
- The proposal is not in the public interest

3. LOCALITY PLAN



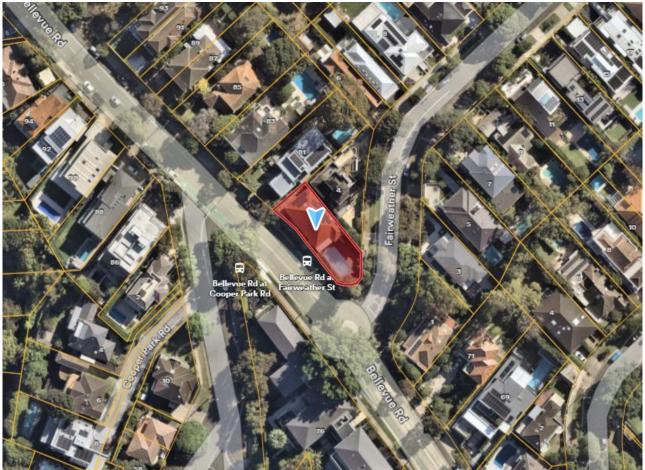


Image 1. Aerial View - Subject site highlighted red. Source: Nearmap

4. PROPOSAL

The proposal involves demolition of the existing dwelling and construction of a new 3 storey dual-occupancy development, including: relocation of an existing bus stop along Bellevue Road; off-street parking for two (2) vehicles [one (1) per dwelling]; landscaping works; new front retaining wall and excavation and strata subdivison. A detailed description of the proposed works is provided below.



Figure 1. Photomontage of the proposed development. Source: Submitted Architectural Plans



Image 2. Existing Dwelling. Source: WMC

Specifically, the proposal comprises the following:

Demolition

The existing dwelling and associated structures are proposed to be demolished.





Images 3-5. Existing Dwelling. Source: WMC

Proposed Works				
Lower Ground Floor	Upper Ground Floor	Upper Ground Roof/Upper Floor/ Upper Floor Roof		
 Site Works New 2.3m stone boundary wall. Relocate existing bus stop. New Council gully pit. New 5.4m vehicle crossing. Lower part of existing western boundary wall. Contiguous pile wall along northern boundary and part of eastern boundary. Landscaping works. 	Site Works Landscaping works, including rear hard paved area to accommodate clothes drying and bin storage.	 Upper Ground Roof 2x skillion roof Non-trafficable concrete roof. 2x AC units behind northern parapet. Upper Floor Roof Metal deck roof. Fixed skylights to stairwell. Operable skylights to WIR. Solar panels. 2x aluminium curved awning 450mm deep. 		
 Dwelling annotated as No. 79 Internal lift. Stairs & under stair storage. Bed 2 with WIR. Bed 3. Study. Bathroom. Single garage 	Dwelling annotated as No. 79 Southern terrace with retractable awning and solid concrete balustrade Open plan living/dining/kitchen. Powder room. Internal lift. Stairs.	Dwelling annotated as No. 79 Bed 1 with associated WIR and ensuite. Internal lift. Stairs.		
 Dwelling annotated as No. 2 Internal lift. Stairs & under stair storage. Bed 2 with WIR. Bed 3. Study. Bathroom. Single garage 	Dwelling annotated as No. 2 Southern terrace with retractable awning and solid concrete balustrade. Open plan living/dining/kitchen. Powder room. Internal lift. Stairs. Pedestrian entrance from Fairweather Street and associated portico.	Dwelling annotated as No. 2 Bed 1 with associated WIR and ensuite. Internal lift. Stairs.		

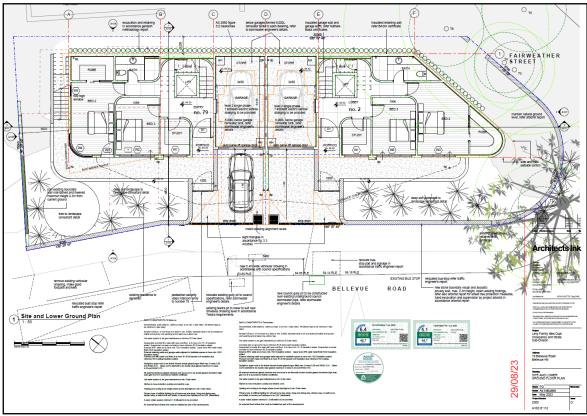


Figure 2. Site and lower ground floor plan. Source: Submitted Architectural Plans

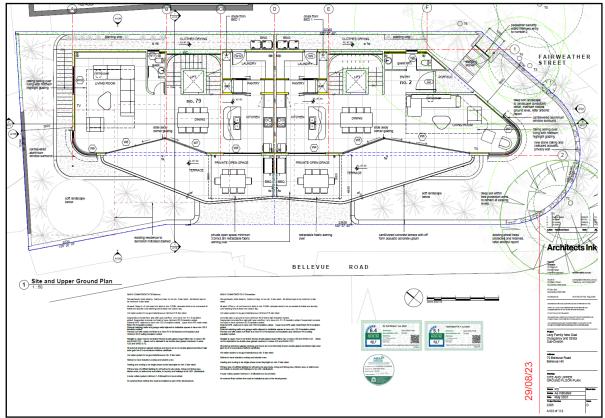


Figure 3. Site and upper ground floor plan. Source: Submitted Architectural Plan

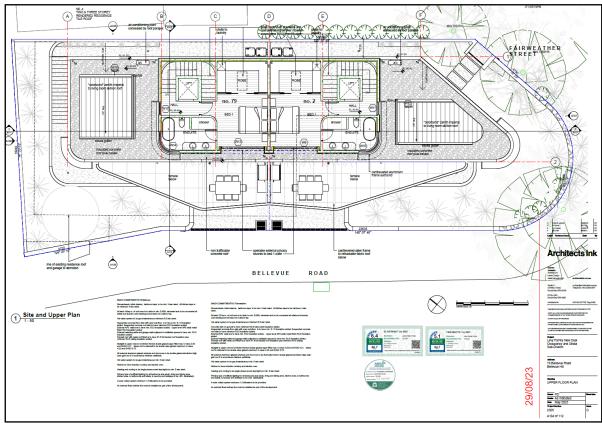


Figure 4. Upper floor plan. Source: Submitted Architectural Plan

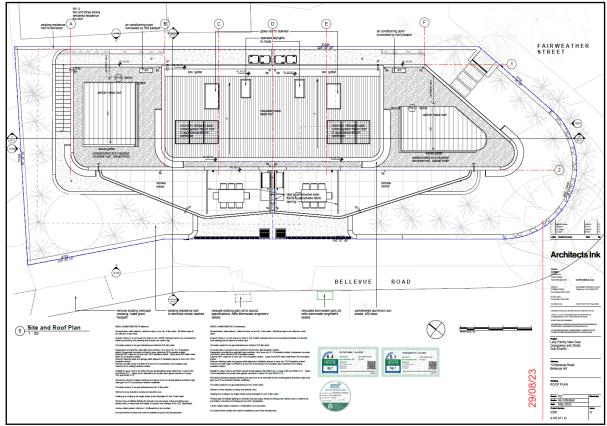


Figure 5. Roof plan. Source: Submitted Architectural Plan

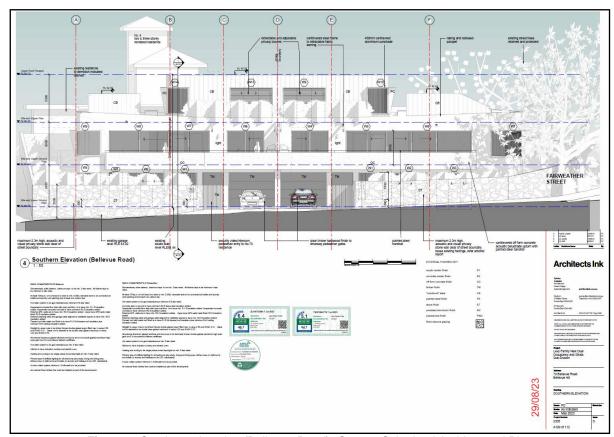


Figure 6. Southern elevation (Bellevue Road). Source: Submitted Architectural Plan

5. ISSUES

5.1 Exceptions to Development Standards in Woollahra Local Environmental Plan 2014

Clause	Development Standard	Departure from Control	Conclusion
Part 4.4E	Floor Space Ratio	80.7m ² or 32.15% departure from the	Unsatisfactory
	-	250.95m ² development standard	

5.2 Primary Issues

Issue	Conclusion	Section
Non-compliance with the Floor Space Ratio development standard	Unsatisfactory. The DA is recommended for refusal.	14.6
Clause 4.6 Request is not well founded.	Unsatisfactory. The DA is recommended for refusal.	14.6
Non-compliance with Deep Soil Landscaped Area requirements.	Unsatisfactory. The DA is recommended for refusal.	14.11 & 15.2.
Non-compliance with minimum private open space requirement.	Unsatisfactory. The DA is recommended for refusal.	15.2
Streetscape	Unsatisfactory. The DA is recommended for refusal.	Throughout this report.
Loss of on-street car parking	Satisfactory. Council's Development Engineer supports the proposed parking and access arrangement and it complies with the relevant parts of the Woollahra DCP 2015. If approval were recommended, relevant conditions have been recommended by Council's Development Engineer.	15.2
Objector concerns	Acknowledged. The DA is recommended for refusal.	Throughout this report.

PROPERTY DETAILS AND REFERRALS

6. SITE AND LOCALITY

Physical features

The subject site is located at 79 Bellevue Road, Bellevue Hill and is legally described as Lot A DP308639. The subject site is an irregular shaped lot with frontages to Bellevue Road and Fairweather Street (see figure below). Vehicle access is provided by way of a driveway crossing off Bellevue Road to a double garage, whilst pedestrian access is provided from Fairweather Street

The site is trapezoidal in shape with a frontage to Bellevue Road (south -western) of 33.355m, a curvilinear frontage to Fairweather Street of 19.15m, a north-eastern boundary of 32.36m and a north-western boundary of 15.24m. The site measures 501.9m² in extent.

Topography

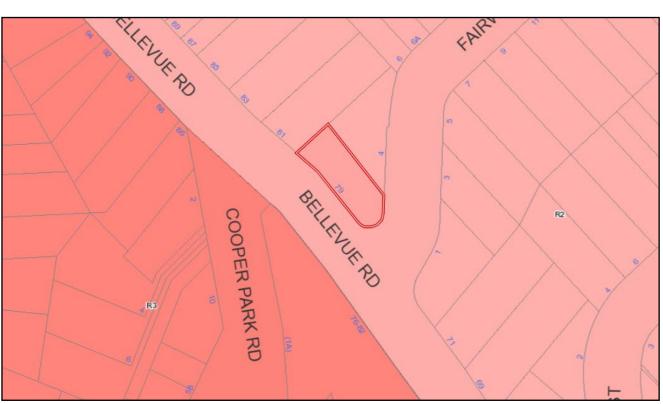
The submitted Survey Plan indicates a fall of approximately 3.8m from the eastern corner down to the western corner.

Existing buildings and structures

The subject site is occupied by a part one part two storey single dwelling house with a swimming pool located within the south-eastern corner. Adjacent to the swimming pool, a set of stairs provides access to the lower level of the north-western boundary. A single garage structure (located off Bellevue Road) is largely located within the existing footprint of the development at the lower ground floor level in the north-western corner.

Surrounding Environment

The immediate locality is characterised by a mix of residential development, including: dwelling houses; semi-detached dwellings; dual occupancies; and residential flat buildings. There is a transition in the scale of development from the eastern side to the western side of Bellevue Road, with development on the western side typically comprising residential flat buildings, dual occupancies and large single dwelling houses and development on the eastern side typically comprising large single dwelling houses. This transition is reflective of the zone boundary between the R2 Low Density zone (subject site) and the R3 Medium Density zone on the western side of Bellevue Road.



Zoning Map (Source: Council Maps)

7. RELEVANT PROPERTY HISTORY

Current use
Dwelling House
Relevant Application History

None.

Relevant Compliance History

None.

Pre-DA

None.

Requests for Additional Information and Replacement Applications

- Additional information was requested on 21 August 2023 by way of a Stop the Clock (STC) letter. The following additional information was requested:
 - 1. Revised Stormwater Management Plans.
 - 2. Revised Geotechnical Report and Structural Report.
 - 3. Vehicular Access and Parking Arrangement.
 - 4. Demolition Report.
 - 5. Aboriginal Heritage Impact Assessment.
 - 6. Existing Floor Plans and Elevations.

The above information was provided to Council on 19 October 2023.

- Further additional information was requested on 20 December 2023 by way of a Request for Additional Information (RFI) I as a result of referral responses from Council's Development Engineer and Trees and Landscape Officers, including:
 - 1. The submission of revised stormwater management plan and/or Drains file for the catchment analysis.
 - 2. Amended Landscape Plan accurately showing Tree Canopy Cover.

The above information was provided to Council on 19 January 2024.

- Further additional information was requested on 21 March 2024 by way of a Request for Additional Information (RFI) as a result of further assessment by Council's Trees and Landscape Officer, including:
 - 1. Compliant Tree Canopy Cover.

An amended Landscape Plan (Rev B) was provided to Council on 26 March 2024.

Land and Environment Court Appeal(s)

None.

8. REFERRALS

Referral	Summary of Referral Response			
Development	Satisfactory, subject to conditions.	3		
Engineering				
Trees and Landscaping	Satisfactory, subject to conditions.	4		
Heritage	Satisfactory, subject to conditions.	5		
Transdev John Holland	Satisfactory, subject to the following requirements:	6		
(Sydney Buses)	 Consultation with affected residents carried out by 			
	proponent and council and approval copy provided to TJHB.			
	 30m bus zone installed at new location. 			
	 New bus stop must be DDA compliant as per attached TfNSW guidelines. 			
	 All cost associated with removal of existing bus stop and 			
	installing new bus covered by proponent.			
La Perouse LALC	Satisfactory, subject to conditions.	7		

ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 include the following:

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

9. ADVERTISING AND NOTIFICATION

9.1 Submissions

The application was advertised and notified from 30/08/2023 to 14/09/2023 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. Submissions were received from:

1. Scott Lockrey, Director Lockrey Planning and Development Solutions on behalf of Stuart Hindmarsh, owner of 81 Bellevue Road, Bellevue Hill.

9.2 Summary of Submissions

Issue	Conclusion	Section
Design excellence	The proposal is recommended for refusal.	Throughout
		this report.
Traffic and parking	Satisfactory. Council's Development Engineer supports the	15.2
concerns arising from	proposed parking and access arrangement and it complies with the	
the proposed bus	relevant parts of the Woollahra DCP 2015, subject to conditions.	
zone relocation		
FSR non-compliance	The proposal is recommended for refusal.	14.6
and excessive		
building envelope		
Clause 4.6 not well	The proposal is recommended for refusal.	14.6
founded		
Visual and aural	Satisfactory. If approval were recommended, relevant conditions	15.2
privacy	could be imposed to address overlooking from the proposal.	
Excavation,	Satisfactory. Despite non-compliance with Council's Volume of	14.9 &
dilapidation reports	Excavation Control, the proposed excavation has been assessed as	15.2
and photographic	satisfactory. If approval were recommended, appropriate conditions	
surveys	could be imposed to ensure structural risk/s to adjoining property	
	and impacts are minimised.	
Stormwater	Satisfactory. Amended Stormwater Plans were submitted and	15.4
management	found to be satisfactory by Council's Development Engineer.	
Landscaping	The proposal is recommended for refusal.	14.11 &
		15.2
Infrastructure	The proposal is recommended for refusal.	-
Asbestos and	The proposal is recommended for refusal.	-
demolition		
Management plans	The proposal is recommended for refusal.	-

9.3 Statutory Declaration

The applicant has completed the statutory declaration dated 15/09/2023 declaring that the site notice for DA278/2023/1 was erected and maintained during the notification period in accordance with Schedule 1 of the Woollahra Community Participation Plan 2019.

10. STATE ENVIRONMENTAL PLANNING POLICY (SUSTAINABLE BUILDINGS) 2022

State Environmental Planning Policy (Sustainable Buildings) 2022 (SB SEPP) encourages the design and construction of more sustainable buildings across NSW. This policy generally applies to all residential developments (excluding alterations and additions less than \$50,000) and all non-residential developments, except those excluded in Chapter 3.1 of the policy.

The SB SEPP came into effect on 1 October 2023. Pursuant to Section 4.2 entitled *Savings and Transitional Provisions*, development applications submitted on the NSW Planning Portal but not finally determined before 1 October 2023 are not subject to assessment under the SB SEPP.

The proposal was submitted on the NSW Planning Portal on 10/08/2023. As such, the SB SEPP does not apply to the proposed development. Refer to Part 7 of this assessment report for assessment under State Environmental Planning Policy (Building Sustainability Index BASIX) 2004.

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

The development application was accompanied by a BASIX Certificate No. 1405327M demonstrating compliance with the SEPP.

12. STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

12.1 Chapter 2 – Vegetation in Non-rural Areas

Chapter 2 of the Biodiversity and Conservation SEPP applies to the subject site.

Furthermore, Clause 2.9(1) defers assessment to the appropriate development control plan in determining vegetation to which Chapter 2 applies. Accordingly, *Chapter E3 Tree Management* under WDCP 2015 is applicable.

The original proposal was considered unsatisfactory with regard to Tree Canopy cover, however, additional tree planting has been included within the site that will now achieve 176.68m² or 35.2% canopy cover which satisfies the DCP requirements. Furthermore, six (6) trees outside the subject site would be impacted by the proposal, however, Council's Tree and Landscape Officer has determined that the development proposal is satisfactory in terms of tree preservation and landscaping. If approval were recommended, this would be subject to compliance with relevant DA Conditions.

The detailed commentary provided by Council's Trees and Landscape Officer is provided at **Attachment 4.**

Accordingly, the proposed development is considered to be acceptable pursuant to Chapter 2 of the Biodiversity and Conservation SEPP.

12.2 Chapter 6 - Water Catchments

Chapter 6 of the Biodiversity and Conservation SEPP applies to the subject land. The subject land is within the Sydney Harbour Catchment, but is outside the Foreshores and Waterways Area. Therefore, only the provisions in Part 6.2 of the SEPP apply to the proposal. In deciding whether to grant development consent to development on land in a regulated catchment, matters relating to water quality and quantity, aquatic ecology, flooding, recreation and public access, and total catchment management must be considered.

The proposal will have no significantly adverse impacts on the Sydney Harbour Catchment, subject to standard conditions including erosion and sedimentation, stormwater and flood risk management control.

13. STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

13.1 Chapter 2 – Coastal Management

Chapter 2 gives effect to the objectives of the Coastal Management Act 2016 from a land use planning perspective, by specifying how development proposals are to be assessed if they fall within the Coastal Zone.

The subject site is located wholly outside of the Coastal Environment Area (Section 2.10) and the Coastal Use Area (Section 2.11). Furthermore, sub-clauses 2.10(3) and 2.11(2) state:

This section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

Accordingly, no further consideration is required under Chapter 2 of the Resilience and Hazards SEPP 2021.

13.2 Chapter 4 – Remediation of Land

The Object of this Chapter aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment:

- a) By specifying when consent is required, and when it is not required, for a remediation work
- b) By specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular
- c) By requiring that a remediation work meet certain standards and notification requirements

Consideration with respect to Clause 4.6(a) of Chapter 4 has been given as to whether the subject site on which the development is occurring is contaminated. As the site has a long history of residential use, it is considered that the land does not require further consideration under Section 4.6(3) and 4.6(4) of Chapter 4 of the Resilience and Hazards SEPP 2021.

Accordingly, the proposal is considered to be acceptable with regard to the relevant matters for consideration under Section 4.6, Chapter 4 of the Resilience and Hazards SEPP 2021.

14. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

14.1 Part 1.2: Aims of Plan

The proposal is inconsistent with the aims in Part 1.2(2) of the Woollahra LEP 2014 in the following manner:

- The proposal would not achieve the desired future character of the Bellevue Hill North precinct, as required by Aim (I);
- The proposal would not encourage the retention and planting of trees and other vegetation to minimise the urban heat island effect, as required by Aim (n);

The proposal fails to satisfy the aforementioned aims and is listed as a reason for refusal.

14.2 Part 2.6: Subdivision – Consent Requirements

Part 2.6(1) states that development consent is required for subdivisions in the Woollahra local government area.

Conclusion:

The proposal satisfies all relevant parts of the Woollahra LEP 2014.

14.3 Land Use Table

R2 Low Density Residential Zone

The proposal involves the demolition of the existing dwelling house and the construction of a new attached dual occupancy. Development for the purpose of dual occupancies is permissible with consent in the R2 Low Density Residential zone however the proposal iis inconsistent with the relevant objectives of the R2 Low Density Residential zone for the following reasons:

- The proposal is not compatible with the character and amenity of the surrounding neighbourhood.
- The proposal does not achieve the desired future character of the neighbourhood.
- The proposal does not ensure development conserves and enhances tree canopy cover.

The proposal fails to satisfy the relevant objectives of this part and is listed as a reason for refusal

14.4 Part 4.1A: Minimum Lot Sizes for a Dual Occupancies, Multi Dwelling Housing and Residential Flat Building

Part 4.1A(2) specifies a minimum lot size of 460m².

Site Area: 501.9m ²	Proposed	Control	Complies
Minimum Lot Size – Attached Dual Occupancy in R2	501.9m ²	460m²	Yes
Zone			

The proposal complies with 4.1A(2) of Woollahra LEP 2014.

14.5 Part 4.3: Height of Buildings

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

	Existing	Proposed	Control	Complies
Maximum Building Height	9.28m	9.26m	9.5m	Yes

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

14.6 Part 4.4: Floor Space Ratio

Part 4.4E limits development to a maximum floor space ratio of 0.5:1 for dwelling houses, dual occupancies and semi-detached dwellings in the R2 and R3 zones.

Site Area: 501.9m ²	Existing	Proposed	Control	Complies
Floor Space Ratio	NA	0.66:1 (331.65m ²)	0.5:1 (250.95m²)	No

The proposal does not comply with Part 4.4E(3) of Woollahra LEP 2014 as detailed and assessed in Part 14.6 of this assessment report.

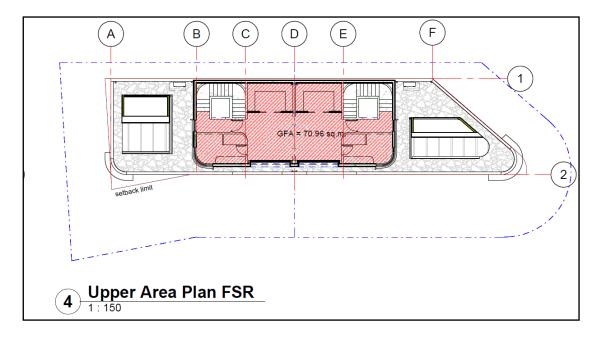
14.7 Part 4.6: Exceptions to Development Standards

Departure

The proposal contravenes the FSR development standard under Part 4.4E of the Woollahra LEP 2014, resulting in a non-compliance of 80.7m² or 32.15%.

It is noted that the calculations provided in submitted Clause 4.6 written request are inconsistent with the FSR calculations provided with the submitted architectural plans. The calculations provided with the submitted architectural plans are considered to be accurate and are relied upon for the purposes of this assessment.

Gross floor area (GFA) plans and calculations are provided in Figures 7-10.

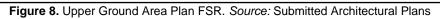


A B C D E F

of A loss some

S Upper Ground Area Plan FSR

Figure 7. Upper Area Plan FSR. Source: Submitted Architectural Plans



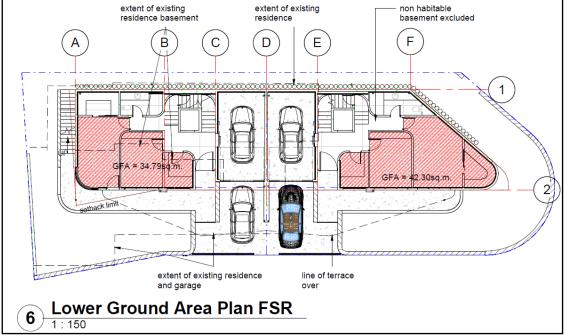


Figure 9. Lower Ground Area Plan FSR. Source: Submitted Architectural Plans

Permissable Floor Space Ratio	0.5
Permissable Gross Floor Area (GFA)	250.99 sq.m.
Proposed Gross Floor Area - Lower Ground Level	77.09 sq.m.
Proposed Gross Floor Area - Upper Ground Level	183.6 sq.m.
Proposed Gross Floor Area - Upper Level	70.96 sq.m.
Proposed Gross Floor Area - Total	331.65 sq.m.
Proposed Floor Space Ratio	0.66

Figure 10. LEP FSR Calculations. Source: Submitted Architectural Plans

Purpose

Clause 4.6 provides the consent authority with the ability to grant development consent for development that contravenes a development standard imposed by WLEP 2014. In doing so, the consent authority must be satisfied that compliance with the development standard is unreasonable or unnecessary, and that there are sufficient environmental planning grounds to justify contravening a development standard.

Written Request

Clause 4.6(3) stipulates that a consent authority must consider a written request from an applicant, which justifies contravention of a development standard by demonstrating consistency with the matters described above. Additionally, the consent authority must be satisfied that the applicant's written request has adequately addressed these matters, as required by Clause 4.6(4)(a)(i).

The applicant has provided a written request pursuant to Clause 4.6 of Woollahra LEP 2014 (refer to **Attachment 2**).

Assessment

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

Clause 4.6(4)(a)(i)

Clause 4.6(4)(a)(i) refers to the matters under subclause (3)(a) and (b) for which justification of contravening a development standard is to be demonstrated. These matters are as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Comment:

The applicant's written request has not adequately demonstrated that the objectives of the *Floor Space Ratio* development standard are achieved, notwithstanding the numerical non-compliance.

The applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

The objectives of the FSR Standard are discussed later in this assessment report, under the assessment of Clause 4.6(4)(a)(ii).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provides the following guidance to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be 'environmental planning grounds' by their nature: See Four2Five Pty Ltd. v Ashfield Council. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act including the objects in s1.3 of the EPA Act (para. 23).

Accordingly, the objects in s1.3 of the EPA Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The written request in support of the proposed non-compliance with the *floor space ratio* development standard, <u>has not</u> adequately demonstrated that:

- the proposed development promotes the orderly and economic use and development of land, in accordance with object 1.3(c); and
- the proposed development promotes good design and local amenity of the built environment in accordance with object 1.3(g).

Clause 4.6(4)(a)(ii)

Clause 4.6(4)(a)(ii) requires the consent authority to be satisfied of the following:

(ii). the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the *Floor Space Ratio (FSR)* development standard, and the zone objectives of the R2 Low Density Residential Zone. An assessment against these objectives is provided below.

Clause 4.4E - Floor Space Ratio (FSR)

The objectives of the floor space ratio development standard under Clause 4.4E are:

(i) To ensure the bulk and scale of new development is compatible with the desired future character of the area

Comment:

The proposal is not considered to achieve the desired future character objectives of the Bellevue Hill North precinct, as outlined in Part 15.1 of this assessment report

(ii) To minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain

Comment:

For the reasons referred to throughout this assessment report, the proposal would result in an excessive built form and is considered an overdevelopment of the subject site.

(iii) To ensure that development allows adequate provision on site for deep soil planting, tree canopy cover and areas of private open space

Comment:

Although compliant with Council's Tree Canopy Control, the proposal fails to provide compliant deep soil landscaped area, minimum required dimensions for canopy trees, or compliant private open space.

Objectives of the R2 Zone

The objectives applying to the R2 Low Density Residential zone and assessment against the objectives is provided below:

• To provide for the housing needs of the community within a low density residential environment.

Comment:

The proposal would provide a new dual occupancy development on the subject, thereby providing for the housing needs of the community and contributing to the variety of housing types within a low density residential environment.

 To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment:

Not relevant.

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

Comment:

The proposal is not considered to achieve the desired future character objectives of the Bellevue Hill North precinct, as outlined in part 15.1 of this assessment report.

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

Comment:

The proposal is not considered to achieve the desired future character objectives of the Bellevue Hill North precinct, as outlined in part 15.1 of this assessment report.

• To ensure development conserves and enhances tree canopy cover

Comment

The proposal provides compliant tree canopy and is supported by Council's Trees and Landscape Officer. However, Council's Trees and Landscape Officer has remained silent on deep soil landscaped area and minimum dimensions for canopy trees. Accordingly, the proposal fails to provide compliant deep soil landscaped area, or minimum dimensions for canopy trees required under Woollahra DCP 2015 and,has not demonstrated that the proposed tree canopy will be conserved and enhanced.

Clause 4.6(4)(b)

The Department issued Planning Circular No. PS20-002 (dated 05 May 2020) which notified Councils of arrangements "...where the Director General's concurrence may be assumed for exceptions to development standards under environmental planning instruments which adopt clause 4.6 ...of the Standard Instrument..." Clause 64 of the EPA Regulations provides that Council may assume the Director-General's [Secretary's] concurrence for exceptions to development standards, thus satisfying the terms of this clause.

Conclusion

The written submission from the applicant has <u>not</u> adequately demonstrated that the contravention of the *Floor Space Ratio* development standard prescribed by *Part 4.4E* of the Woollahra LEP 2014 is justified pursuant to the relevant matters for consideration prescribed by Clause 4.6.

The consent authority is <u>not</u> satisfied that the applicant's written request has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that sufficient environmental planning grounds have been demonstrated to justify the contravention of the standard.

The consent authority is <u>not</u> satisfied that the proposal is in the public interest as it is consistent with the objectives of the development standard and those applicable to development within the zone.

Accordingly, departure from the development standard is not justified in this instance.

14.8 Part 5.10: Heritage Conservation

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

The subject site is not a heritage item in Woollahra Local Environment Plan 2014 'the LEP' and is not within a heritage conservation area.

Further, Council's Heritage Officer has provided the following commentary:

A Demolition Heritage Impact Report has been submitted with the development application and includes historical research on the development of the property over time. The construction of the dwelling is not associated with any known prominent architect and has no distinctive landmark qualities or other features that would make it potentially significant or

rare. The report has assessed the potential heritage significance of the existing dwelling and has concluded that it does not meet the criteria for identification as a place of local significance. The findings of the report are considered to be accurate. Accordingly, the property is not of heritage value and therefore no objection is raised to the proposed demolition of the existing building.

As the property is not listed as a heritage item and is not located within a heritage conservation area, the design of the proposed new development will not result in any adverse impacts on heritage items/areas of value. There are no heritage items located within the vicinity of the site that will be adversely impacted and the proposal will not affect any significant views. As such, there are no concerns raised on heritage grounds regarding the design of the proposed new development.

The submitted Demolition Heritage Impact Report meets the standard of archival recordings for buildings with little or no heritage significance.

Council's Heritage Officer has determined that the proposal is generally acceptable, subject to Conditions. The detailed commentary provided by Council's Heritage Officer is provided at **Attachment 5.**

If development consent were granted, relevant conditions could be imposed to ensure the proposal is acceptable with regard to the objectives in Part 5.10 of the Woollahra LEP 2014.

14.9 Part 6.1: Acid Sulfate Soils

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

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

14.10 Part 6.2: Earthworks

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

The proposal involves excavation to accommodate the proposed Lower Ground Floor level and associated site works, which will require a maximum depth of excavation of up to 3m and is setback by approximately 0.8m from the rear northern boundary. According to the submitted soil cut/fill schedule, a total volume of excavation of 395.11m³ will be required.

The geotechnical report indicates that the subsurface conditions consists of:

- a) Fill comprising silty sand to a depth of 0.4m, 0.4m, 0.8m, 0.8m, and 0.35m in BH1, BH1A, BH2, BH3 and BH4 respectively.
- b) Depth of natural sand with various density from a depth beneath the fill to a termination depth of 2m, 3.4m, 2m, 0.8m and 2.4m in BH1, BH1A, BH2, BH3 and BH4 respectively.
- c) Sandstone bedrock was not encountered during the investigation.
- d) Groundwater was not observed during the investigation.

The following provides an assessment of the proposed excavation against the relevant objective set out under Part 6.2(1) of the Woollahra LEP 2014, and the matters of consideration set out under Part 6.2(3) of the Woollahra LEP 2014.

Part 6.2(1) states:

The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

Part 6.2(3) states:

In deciding whether to grant development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—

- a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,
- b) the effect of the development on the likely future use or redevelopment of the land,
- c) the quality of the fill or the soil to be excavated, or both,
- d) the effect of the development on the existing and likely amenity of adjoining properties,
- e) the source of any fill material and the destination of any excavated material,
- f) the likelihood of disturbing relics,
- g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,
- h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

The following comments are made in this regard:

- The following documents have been submitted in support of the application:
 - Geotechnical Report, referenced 7263-R1 Rev 2, prepared by AssetGeoEnviro, dated 29/09/2023.
 - ii. Statement of Environment Effects, referenced AP 1924, prepared by aSquare Planning, dated 03/05/2023.

Council's Development Engineer has reviewed these documents and is satisfied that the proposal would not have a detrimental effect on drainage patterns or soil stability in the locality. If approval was recommended, Council's Development Engineer's determination would be subject to recommended DA conditions requiring structural certification and the like prior to issuing of a construction certificate, ensuring structural risk/s to adjoining property, and impacts are minimised (a).

- The proposed excavation is not considered to effect the likely future use or redevelopment of the land (b).
- Subsurface conditions have been assessed in Part 13.2 Remediation of Land (Chapter 4 in Resilience and Hazards SEPP 2021) and Part 14.8 Acid Sulfate Soils (Part 6.1 Acid Sulfate Soils of the WLEP 2014) of the report. If approval was recommended, relevant DA Conditions could be recommended to ensure the recommendations outlined in the submitted Geotechnical Report are adhered to prior to and during development work (c).
- Excavation works are considered to be temporary in nature, thereby minimising associated noise, vibration, dust and other amenity impacts arising from jackhammering, rock breaking, truck movements, and the like to the short-term. If approval was recommended, standard DA Conditions requiring noise and dust mitigation measures would be recommended in order to ensure impacts on amenity are minimised (d).
- The submitted Geotechnical Report recommends consultation with a relevant specialist to advise on the appropriateness of the excavated materials for re-use on the subject site. Council cannot be satisfied that excavated material will be re-used on-site, therefore, the destination of all excavated material will need to be in accordance with relevant guidelines, relating to management of any soils that are Acid Sulfate Soils and/or Contaminated Land. The application is accompanied by a Site Waste Minimisation and Management Plan that relies on an unspecified portion of excavated material to be used as fill. Noting this cannot be

confirmed until an appropriate specialist has inspected the excavated material, relevant DA Conditions would generally be recommended requiring the submission of a new SWMMP detailing methods to dispose of all excavated materials (320m³ outlined in the submitted SWMMP) (e).

- Council's Heritage Officer has not raised any concerns relating to the potential for disturbing relics. If approval was recommended, a DA condition would be imposed requiring the protection of Aboriginal Objects and procedure to be followed in the unlikely event such objects are found during work (f).
- The subject site is not located proximate to any drinking water catchments and de-watering is not required. Council's Development Engineer is satisfied the submitted Stormwater Management Plan is acceptable with regards to Part E2.2 of the WDCP 2015 which considers water sensitive urban design and stormwater treatment. The site is not identified as being located within an environmentally sensitive area (g).
- If approval was recommended, standard DA Conditions requiring structural certification prior to issuing of a construction certificate and vibration monitoring to be in place during work would be required. These would ensure structural risk/s to adjoining property and impacts are minimised (h).

The detailed commentary provided by Council's Development Engineer is provided at **Attachment 3**.

Conclusion

If development consent were granted, relevant conditions could be imposed to ensure the proposal is acceptable with regard to Part 6.2 of the Woollahra LEP 2014.

14.11 Part 6.5: Particular Dual Occupancy Subdivisions Must Not Be Approved

Part 6.5 does not permit the subdivision of dual occupancy development. The proposal only involves strata subdivision.

14.12Part 6.9: Tree canopy cover in Zones R2 and R3

Part 6.9 aims to conserve and enhance tree canopy cover in the R2 Low Density Residential zone and R3 Medium Density Residential zone.

Council's Trees and Landscape Officer required amendments to the proposed Landscape Plans on 3 separate occasions, as follows:

1. On 25 October 2023, the Landscape Plans included inaccurate calculation for the DCP canopy cover requirements. Amended plans were required which accurately address the requirements of the DCP.

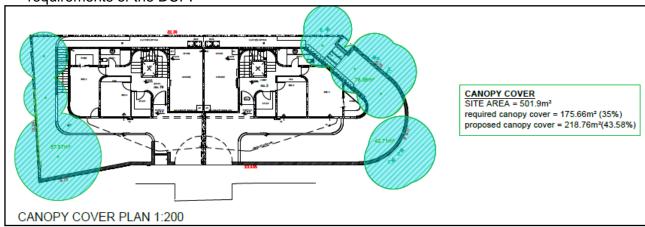


Figure 11. Original Tree Canopy Calculations. Source: Submitted Landscape Plans 18/07/2023

2. On 13 February 2024, the Amended Landscape Plans showed insufficient canopy cover and were not considered to be consistent with the DCP canopy cover requirements. By way of recommended DA Conditions, Council's Trees and Landscape Officer required Amended plans prior to the issuing of the Construction Certificate.

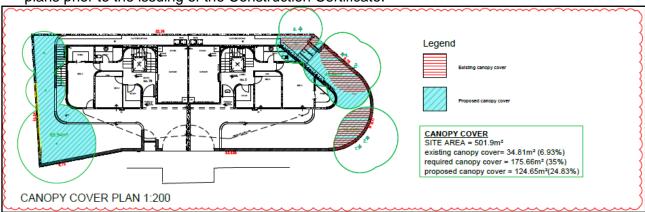


Figure 12. Amended Tree Canopy Calculations. Source: Amended Landscape Plans Rev A

3. On 21 March 2024, Council's Planning Officer requested further information in order to address the non-compliant Tree Canopy cover. Further Amended Landscape Plans were submitted which comply with Council's DCP canopy cover requirements. Subsequently, Council's Trees and Landscape Officer determined that the proposed Amended Landscape Plan was satisfactory.

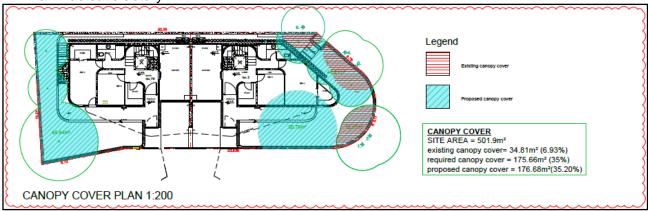


Figure 13. Further Amended Tree Canopy Calculations. Source: Amended Landscape Plan Rev B

Assessment

Part 6.9(3) requires Council to consider whether:

(a). incorporates planning and design measures to enable the retention and planting of trees to minimise the urban heat island effect

The proposal has failed to satisfy the above requirement, as follows:

- The proposal significantly exceeds the FSR development standard, resulting in a building envelope that fails to provide compliant deep soil landscaped area and minimum dimensions for canopy trees.
- The Woollahra: Greening our LGA Report (the Report), which formed the basis for Council's current FSR and Tree Canopy Controls, recommended minimum deep soil landscaped areas and minimum dimensions for canopy trees, as advised by Lyndal Plant, Urban Forester.

- Regarding the 4m minimum requirement under Woollahra DCP 2015, the report
 indicates that this is necessary to ensure the stability of canopy trees and minimise
 impacts on nearby structures. Furthermore, the minimum 4m in the narrowest
 dimension is required to allow canopy trees to develop a healthy root system and grow
 to their full potential (p.19).
- The proposal fails to achieve Council's DCP requirement for deep soil landscaped areas, which requires a minimum dimension of 4m for each canopy tree. None of the proposed canopy trees meet this requirement.
- While the applicant's architect raised concerns about the impact of a compliant tree
 canopy within the Bellevue Road frontage setback area on views and solar access (CM
 24/10556), reiterated during a site inspection on 03/05/2024, these concerns are not
 considered well founded. The Bellevue Road frontage faces south-west, and any
 overshadowing would generally fall upon the road reserve, not the proposed building.
- Additionally, Council's Trees and Landscape Officer notes that deciduous trees are available, allowing access to sunlight during winter months and providing much needed shade and reduced heat during summer days.
- Moreover, Council's DCP does not identify any significant views and vistas proximate
 to the subject site and any impact on district views to the south-west from the proposed
 dual occupancy is considered minor.

Accordingly, Council cannot be satisfied that the proposal has incorporated planning and design measures to enable the retention of the proposed tree canopy.

(b). will avoid, minimise or mitigate adverse impacts on the existing tree canopy.

Council's Trees and Landscape Officer considers the proposal acceptable and has recommended appropriate DA Conditions to manage adverse impacts on existing tree canopy.

The detailed commentary provided by Council's Trees and Landscape Officer is provided at **Attachment 4.**

Notwithstanding the comments from Councils Tree Officer, and for reasons discussed throughout this report, the proposal does not fully satisfy the requirements of Part 6.9 of the Woollahra LEP 2014.

Conclusion:

The proposal is considered unacceptable with regard to Part 6.9 of the Woollahra LEP 2014, and is listed as a reason for refusal.

15. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

15.1 Chapter B1: Bellevue Hill North Residential Precinct

The Streetscape Character and Key Elements of the precinct are as follows:

- a) the rich mixture of residential architectural styles and forms, including dwelling houses and residential flat buildings;
- b) the relationship of development along New South Head Road to the promenade and the harbour:
- c) buildings set within highly visible gardens;
- d) the tree canopy formed by both street and private yard plantings;
- e) mature street trees, grassed verges and sandstone walls;
- f) harbour views available from the streets within the precinct;

- g) the heritage significance of the adjoining Aston Gardens, Beresford Estate and Balfour Road Heritage Conservation Areas; and
- h) Inter-War flat buildings.

The Desired Future Character Objectives of the precinct are as follows:

- O1 To respect and enhance the streetscape character and key elements of the precinct.
- O2 To maintain the evolution of residential building styles through the introduction of well designed contemporary buildings incorporating modulation and a varied palette of materials.
- O3 To maintain a transition of development scale from the residential flat buildings that address New South Head Road, to the dwelling houses that dominate the majority of the precinct.
- O4 To reinforce a consistent building scale with streets.
- O5 To ensure that development responds in form and siting to the street and subdivision pattern.
- O6 To design and site buildings to respond to the topography and minimise cut and fill.
- O7 To reinforce the landscape setting and maintain the existing tree canopy which forms a green backdrop when viewed from the harbour and the surrounding districts.
- O8 To retain and reinforce the green setting of mature street trees, private trees and garden plantings and minimise hard stand areas.
- O9 To protect important views from the public spaces of the precinct to the harbour and city skyline, including view corridors between buildings.
- O10 To ensure that development facilitates view sharing to adjoining and adjacent private properties.
- O11 To ensure on-site parking does not dominate the streetscape.
- O12 To retain Inter-War flat buildings, particularly significant and traditional building elements visible from the street.

Assessment

The proposal fails to achieve Objectives O1, O4, O5, O6, O7 and O8 of this part, as follows:

- The cumulative non-compliances with Woollahra DCP 2015 would result in excessive built form that would dominate the landscape setting rather than siting the proposal within and reinforcing the landscape setting. On this point, the proposal fails to achieve the required deep soil landscape area throughout the subject site and is non-compliant with a number of building envelope controls (O1, O7 & O8);
- Large terrace areas with associated solid concrete balustrades are proposed along the southern elevation at the proposed Upper Ground Floor, which contribute to additional bulk and scale when viewed from Bellevue Road. These proposed terraces constitute an additional area of approximately 67m² not included in the calculable GFA for the proposal (O4).
- Further, the proposed terrace areas would provide the primary open space areas for both dwellings. However, the proposed terrace area associated with No. 79 would not achieve the minimum area required under Woollahra DCP. Despite the additional bulk and scale attributed by the proposed terraces, the proposal is unable to provide adequate private open space and is not considered to respond appropriately to the character of the streetscape (O5).
- The proposal would require a 161% non-compliance with Council's volume of excavation control in order to accommodate the additional GFA associated with the non-compliance with the FSR development standard (O6).

Given the commentary provided above, the proposal <u>fails</u> to satisfy the relevant Objectives of Part B1.8.2 of the Woollahra DCP 2015.

Conclusion:

For reasons discussed above, the proposal is considered unacceptable with regard to Part B1 of the Woollahra DCP 2015 and is listed as a reason for refusal.

15.2 Chapter B3: General Development Controls

Part B3.2: Building Envelope

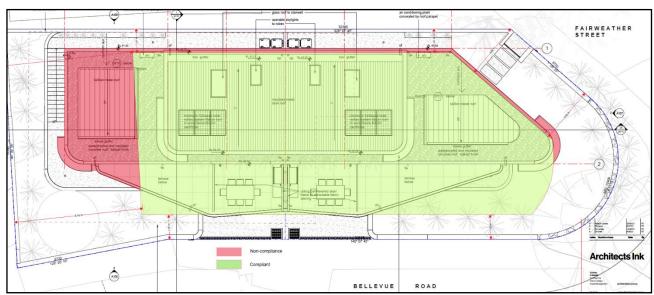


Figure 14. Council's determination of permissible setbacks. Source: Submitted Architectural Plans. Annotated by: WMC

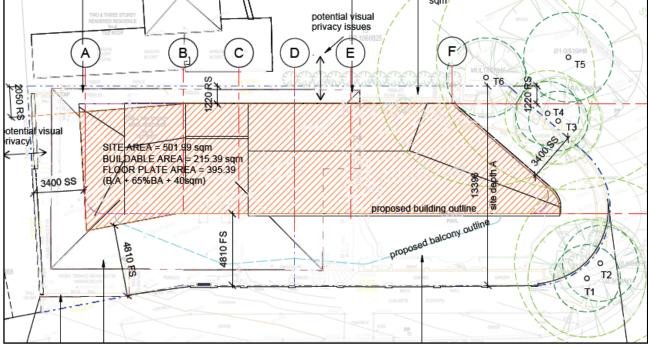


Figure 15. Applicant's determination of permissible setbacks. Source: Submitted Architectural Plans

Site Area: 501.9m ²	Existing	Proposed	Control	Complies
Front Setback	10.5m	3.4m	3.6m	No
Rear Setback	1.45-1.9m	3.5m	8.2m	No
Side Boundary Setbacks (N)	0.75m	1.23m	1.5m	No
Side Boundary Setbacks (S)	Nil – 1.5m	1.4m (Upper Ground Floor)	1.5m	No
Maximum Wall Height	<7.2m	9.26m	7.2m	No
Inclined Plane From Wall Height	>45°	>45°	45°	No
Maximum Unarticulated Length to Street	<6m	4.5m	6.0m	Yes
Maximum Unarticulated Wall Length	12m	24.5m (Northern Elevation)	12m	No

Council's determination of the permissible building envelope differs to that proposed by the Applicant, who considers Bellevue Road to be the front setback. This assessment has adopted the interpretation of front setback for corner lots under Woollahra DCP 2015, which states:

"Note: On corner lots, the shortest frontage to a street is typically where the front setback applies."

Accordingly, the shortest frontage in this instance is to Fairweather Street and therefore is considered to be the front setback.

Part 3.2.2: Front Setback

C1 states that the front setback is the average of the three most typical setbacks of the four closest residential properties.

C2 requires a maximum unarticulated building width of 6m to the street frontage.

<u>Assessment</u>

The proposal would result in a very minor non-compliance with C1 of approximately 0.2m. Notwithstanding, the minor non-compliance is acceptable in this instance, as it would be indiscernible to the casual observer, and adequate landscaping and tree canopy are proposed within the front setback area and would therefore satisfy the relevant objectives of this part.

Part 3.2.3: Side Setbacks

C1 requires a minimum side setback of 1.5m.

C4 notes a maximum unarticulated wall length of 12m to the side elevation.

Assessment

The proposal would result in a very minor non-compliance with C1 by approximately 0.1m at the southern side boundary and is considered acceptable.

However, non-compliance with C1 and C4 above at the northern side boundary would not achieve Objectives O1 and O2 of this part, as follows:

O1 To avoid an unreasonable sense of enclosure and to facilitate an appropriate separation between buildings.

O2 To ensure the side elevation of buildings are well articulated.

- The proposal would result in an excessive structure with unarticulated walls in excess of 12m that would be sited in close proximity to the adjoining property at 4 Fairweather Street (O1).
- Minimal landscaping is proposed along the northern side setback area to soften the visual impact of the proposal (O1).

- The proposed 2.2m rendered wall along the northern common boundary is considered excessive and would exacerbate the dominant presence of the proposal when viewed from 4 Fairweather Street (O2).
- The proposed northern wall at Upper Ground and Upper Floor levels would result in an unarticulated wall length of approximately 24.5m and 15.5m resulting in non-compliance with Control C4.

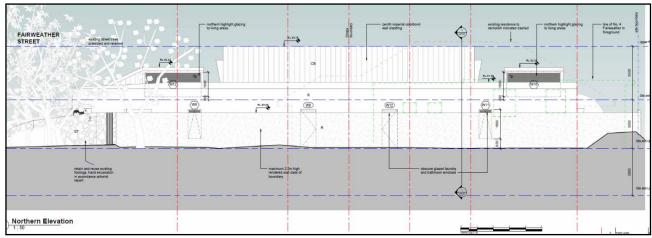


Figure 16. Northern Elevation. Source: Submitted Architectural Plans



Figure 17. Photomontage showing monotonous expanse of northern walls. Source: Submitted Architectural Plan

Part 3.2.4: Rear Setback

C1 requires a minimum rear setback of 25% of the average of the two side boundary dimensions, measured perpendicular to the rear boundary. The building must not encroach on the minimum rear setback.

Assessment

The proposal would result in non-compliance with C1 and would not achieve Objectives O1 and O5, of this part, as follows:

O1 To provide private open space and landscaped areas at the rear of buildings.

O5 To protect vegetation of landscape value and provide for landscaped area and deep soil planting.

- The proposal is non-compliant with Council's deep soil landscaped area control.
- The proposal does not provide adequate private open space within the rear setback area and does not comply with Council's relevant private open space requirements for dual occupancies.

Part 3.2.5: Wall Height and Inclined Plane

C1 specifies a maximum external wall height of 7.2m with an inclined plane of 45 degrees above this height. Roof eaves can protrude into the setback if they are below the inclined plane.

Assessment

The proposal complies with the Height of Buildings Standard under Woollahra LEP 2014, and contains a slope greater than 15° within the permissible building envelope. In this instance, variation to C1 above, with regard to the 7.2m wall height is considered acceptable (Figure 18).

A very minor non-compliance with the 45° inclined plane would occur at the western edge of the proposed Upper Floor parapet (Figure 19). Notwithstanding, this minor element complies with the Height of Buildings development standard, and is considered acceptable in this instance.

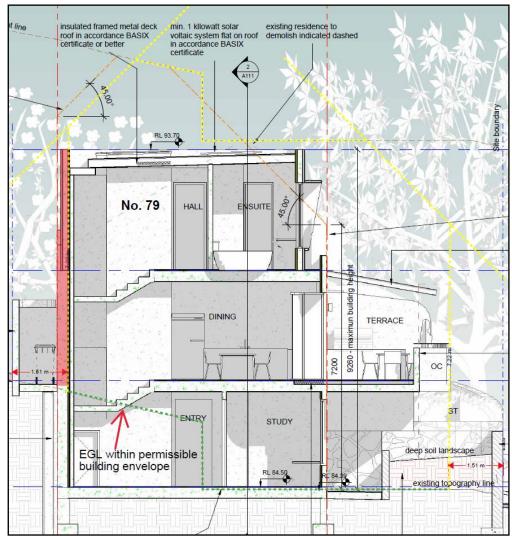


Figure 18. EGL within building envelope shown with dashed green line. *Source:* Submitted Architectural Plans. *Annotated:* WMC

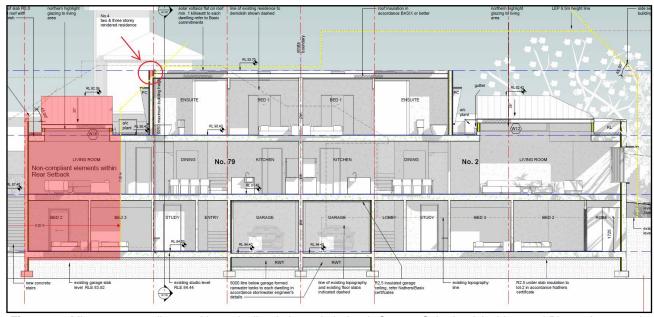


Figure 19. Minor non-compliance with 45° inclined plane circled red. Source: Submitted Architectural Plans. Annotated: WMC

Conclusion

For reasons discussed above, the proposal is unacceptable with regards to Part B3.2 of the Woollahra DCP 2015 and is listed as a reason for refusal.

Part B3.4: Excavation

Site Area: 501.9m ²	Existing	Proposed	Control	Complies
Maximum Volume of Excavation	NA	395.11m ³	151m ³	No
Excavation, Piling and Subsurface Wall Setback	NA	0.8m	1.5m	No
Geotechnical Report	N/A	Yes	Required Where > 2.0m	Yes

C1 limits the volume of excavation to 151m³.

C6 requires a minimum setback of excavation of 1.5m.

C9 requires a Geotechnical Report where excavation is below 2m or within 1.5m of a boundary.

<u>Assessment</u>

Excavation has been addressed in detail at part 14.9 of this assessment report. Notwithstanding the non-compliance with C1 and C6 of this part, the proposed excavation is considered acceptable with regard to the objectives in Part B3.4 of the Woollahra DCP 2015.

Conclusion:

If development consent were granted, relevant conditions of consent could be imposed to ensure structural risk/s to adjoining property and impacts are minimized and that the proposal achieved the relevant objectives of Part B3.4 of the Woollahra DCP 2015.

Part B3.5: Built Form and Context

Site Area: 501.9m ²	Existing	Proposed	Control	Complies
Colour Scheme	Consistent	Consistent	Consistent	Yes
Casual Surveillance – Windows Facing Street/Public Area	>One	>One	One	Yes
Solar Access to Open Space of Neighbouring Properties	>50% for 2 hours on 21 June	>50% for 2 hours on 21 June	50% for 2 hours on 21 June	Yes
Solar Access to Nth Facing Living Areas of Neighbouring Properties	>3 hours on 21 June	>3 hours on 21 June	3 hours on 21 June	Yes
Bedroom Walls Adjoining Adjacent Dwellings	NA	Not Adjoining Living Room/Garage	Not Adjoining Living Room/Garage	Yes
Distance of Habitable Room Windows to Neighbouring Dwellings	NA	<9.0m	9.0m	No



Figure 20. 3D Images. Source: Submitted Architectural Plans

Part B3.5.1: Streetscape and Local Character

C1 requires the proposed building to be consistent with the desired future character of the area.

Assessment

As discussed throughout this report, the proposal is considered unsatisfactory with regard to the desired future character of the Bellevue Hill North precinct and would therefore not comply with C1 of this part.

As a consequence, the proposal would not achieve objectives O1, O2, O3 of this part, as follows:

O1 To ensure that the built form is compatible with the streetscape and the desired future character of the area.

O2 To ensure that development is of high visual quality and enhances the street.
O3 To ensure that development contributes towards reducing the urban heat island effect by encouraging urban greening and retaining, protecting and enhancing tree canopy cover.

- It is considered that the non-compliance with the FSR development standard would be exacerbated by the additional bulk and scale of the elevated principle private open space areas fronting Bellevue Road, the siting and overall volume of the proposed building, and non-compliant deep soil landscaping. When combined, these elements result in an overbearing built form when viewed from Bellevue Road (O1 & O2).
- The proposal's failure to comply with the minimum deep soil landscaped area and dimension requirements for canopy trees does not demonstrate that it will ensure the retention, protection and enhancement of the proposed tree canopy (O3).

Part B3.5.2: Overshadowing

Overshadowing from the proposed dwelling would generally fall upon the road reserve and would not unreasonably impact adjoining or surrounding properties.

Part B3.5.3: Public and Private Views

No significant public views and vistas are identified in proximity to the subject site under Woollahra DCP 2015. Furthermore, issues of private view loss were not raised by adjoining residents.

Part B3.5.4: Acoustic and Visual Privacy

C4 requires new windows in habitable rooms to be designed to prevent direct sightlines within 9m of adjoining habitable rooms and private open spaces.

<u>Assessment</u>

Proposed windows W9 and W10 at the Upper Ground level western elevation would be within 9m of an adjoining window at 81 Bellevue Road and would not comply with C4 of this part.

Notwithstanding this, the proposal would satisfy objective O2 of this part, as follows:

O2 To ensure adequate visual privacy for occupants and neighbours while balancing the need to provide for reasonable levels of environmental amenity, including access to sunlight and ventilation, and good architectural outcomes.

- Proposed windows W9 and W10 are offset to prevent direct sightlines into the adjoining dwelling.
- Furthermore, the specific window that would be impacted by the proposal appears to be associated with a bathroom and contains obscure glazing.

Part B3.5.5: Internal Amenity

The proposal would provide adequate internal amenity to habitable spaces within the proposed dwellings.

Conclusion

For the reasons referred to under Part B3.5.1 *Streetscape and Local Character*, the proposal is unacceptable with regard to the built form and context controls in Part B3.5 of the Woollahra DCP 2015 and is listed as a reason for **Refusal**.

Part B3.6: On-Site Parking

Site Frontage:	Existing	Proposed	Control	Complies
Location of Parking	NA	Within the Building Envelope	Within the Building Envelope	Yes
Width of Driveway	NA	5.4m	3m-6m	Yes
Maximum Number of Driveways	One	One	One	Yes

The proposed parking structure is located within the permissible building envelope and would not unreasonably impact upon the streetscape.

However, the proposal would result in the loss of on-street parking resulting from the proposed relocated on-site parking and access.

Assessment

The proposal involves the relocation of the existing vehicle crossover and bus stop, as depicted in the images below.

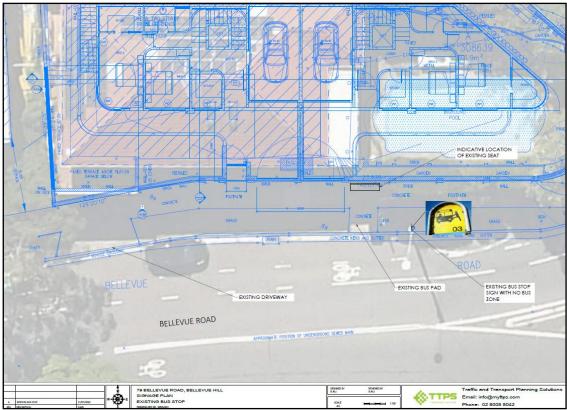


Figure 21. Traffic Plan showing existing driveway and bus stop. Source: Submitted Traffic Report

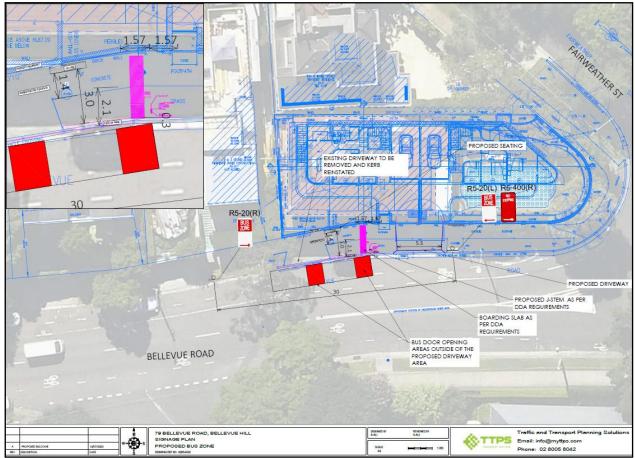


Figure 22. Plan showing proposed driveway and bus stop. Source: Submitted Traffic Report

The proposed relocated vehicle crossing and bus stop would result in the loss of two (2) on-street car parking spaces. Despite the loss of on-street parking, the proposal would achieve Objectives O1, O2, O4 and O5 of this part, as follows:

O1 To minimise the visual impact of garages, car parking structures and driveways on the streetscape.

O2 To ensure that on-site parking does not detract from the streetscape character and amenity. O4 To minimise loss of on-street parking.

O5 To retain trees and vegetation of landscape value.

- The proposal provides two (2) car parking spaces per dwelling (four (4) total), with a garage incorporated into the permissible building envelope (O1).
- The proposal would remove the existing vehicle crossing and provide a new single vehicle crossing (O1).
- The proposal would be consistent with adjoining and surrounding properties along Bellevue Road in terms of vehicle crossings and parking structures (O1).
- Development along Bellevue Road typically comprises garages at the front boundary. The
 proposal would site a garage structure within the permissible building envelope, which would
 minimise any impacts on the existing streetscape character (O2).
- Concerns were raised by the adjoining owner at 81 Bellevue Road concerning the loss of onstreet parking. The objection describes the area as a "high demand for on-street parking spaces" citing 2021 Census showing that "47% of occupied private dwellings own two or more vehicles" (O4).
- No specific parking study was submitted in support of this objection, and the cited data only relates to ownership and not on-street parking demand (O4).

- The adjoining locality is characterised, in part, by garage structures and on-site parking. It is considered that residents in the immediate locality have sufficient opportunity to park vehicles on-site. In particular, the proposed development complies with Council's maximum parking rates and would not likely require on-street parking to accommodate resident's vehicles (O4).
- Further, the subject site and adjoining dwellings are well serviced by public transport, as evidenced by the existing bus stop (O4).
- Council's Development Engineer supports the proposed parking and access arrangement, subject to relevant DA Conditions. The detailed commentary provided by Council's Development Engineer is provided at **Attachment 3**
- The Applicant has consulted with the relevant Bus operator (Transdev/John Holland), who supports the proposal, subject to the following:
 - i. Consultation with affected residents carried out by proponent and council and approval copy provided to TJHB.
 - ii. 30m bus zone installed at new location.
 - iii. New bus stop must be DDA compliant as per attached TfNSW guidelines.
 - iv. All cost associated with removal of existing bus stop and installing new bus covered by proponent.
- The proposed bus stop would improve upon the existing arrangement by complying with disability access requirements, thereby providing more equitable access to public transport in the locality (O4).
- The proposed relocated driveway would not impact any existing trees (O5).

Conclusion:

If development consent were granted, relevant conditions of consent could be imposed to ensure the proposal achieved the relevant objectives of Part B3.6 of the Woollahra DCP 2015.

Part B3.7: External Areas

Site Area: 501.9m ²	Existing	Proposed	Control	Complies
Tree Canopy Area	6.93% (34.81m²)	35.20% (176.68m²)	35%	Yes
Tree Canopy Area Comprising of Canopy Trees	96.2% (33.5m²)	63.3% (112m²)	50%	Yes
Deep Soil Landscaping –	Not provided	28.89% (145m²)	35% of Site Area (175.665m²)	No
Deep Soil Landscaping – Front Setback	Not provided	83.7% (36m²)	40% (17.2m²)	Yes
Minimum Area of Primary Open Space	NA	35m ² (No.2) 31m ² (No. 79)	35m²	Yes No
Location of Private Open Space	South-east	South-west	To the North	No
Maximum Height of Fencing	2m	1.75m – 2.3m solid	1.2m 1.5m and 50% open	No
Side and Rear Fence Height	1.8m	2.2m	1.8m	No
Air Conditioning Units	Visible from Public Domain	Not Visible from Public Domain	Not Visible from Public Domain	Yes

Part 3.7.1: Landscaped Areas and Private Open Space

C1 requires that 35% of the site area is to comprise tree canopy area, and at least half of the total tree canopy area on the site is contributed by canopy tree/s.

C2 requires that 35% of the site area is deep soil landscaping.

C3 requires at least 40% of the front setback area is to comprise deep soil landscaping.

C4-C6 requires that each dwelling must have primary open space with a minimum area of 35m² with a maximum gradient of 1:10.

C11 requires that private open space is defined through planting, fencing or landscape features. C12 notes that the location of private open space should take advantage of the outlook and natural features of the site and maintain privacy and solar access and address surveillance.

Assessment

The proposal would result in non-compliance with C2 and C5 of this part and is considered unsatisfactory with regard to Objectives O1, O2, O4 and O6 as follows:

O1 To ensure that the areas outside the building contribute to the desired future character of the location.

O2 To provide sufficient deep soil landscaped area to encourage urban greening and maintain and enhance tree canopy cover which in turn contributes positively to the existing and desired future character of the locality.

O4 To ensure the adequate provision of accessible and useable primary open space.

O6 To ensure that private open space areas are well-designed.

O7 To retain important existing canopy trees, vegetation and other landscape features.

O9 To ensure that landscaping contributes positively to the streetscape and the amenity of neighbouring properties.

- As outlined at part 15.1 of this assessment report, the proposal is not considered to achieve the desired future character of the Bellevue Hill North Precinct (O1).
- The demolition of the existing structures on the subject site presents the opportunity to provide compliant deep soil landscaping consistent with this objective. The proposal fails to do so and would not achieve this objective (O2).
- The non-compliance with the deep soil landscaping controls is directly attributed to the cumulative non-compliances discussed throughout the report, which restricts opportunities to provide deep soil landscaping.
- The proposal would not achieve Council's DCP requirement for deep soil landscaped area which requires a minimum dimension of 4 metres for each canopy tree. On this point, the proposal would not achieve this requirement for any of the proposed canopy trees (C1).
- The proposal would not provide compliant private open space to the proposed dwelling No.79.
- Useable private open space at ground level of No.79 is unattainable as a direct result of the excessive bulk and scale of the proposed building (O4 & O6).
- The proposed private open space at Upper Ground level would be located to the south-west and would constitute approximately 67m² of floor area, which does not count towards FSR but contributes to additional bulk and scale. The proposed private open space areas do not take advantage of optimal orientation for comfortable year round use, and would add significant bulk and scale to the proposal (O4 & O6).

Council's Trees and Landscape Officer considers the proposal acceptable, subject to Conditions.

The detailed commentary provided by Council's Trees and Landscape Officer is provided at **Attachment 4.**

Notwithstanding the comments from Councils Tree Officer, and for reasons discussed in section 14.12 of this report, the proposal does not achieve the relevant objectives and controls of this part.

Part 3.7.2: Fences

C4 limits fencing to 1.2m if solid, or 1.5m if 50% transparent or open. On the high side of the street, C8 stipulates that where a vehicular entrance is proposed, a 45° splay or its equivalent is provided either side with minimum dimensions of 2m by 2m.

C9 and C10 stipulate that side and rear boundary fences are no higher than 1.8m, as measured from the low side (if applicable). Where there is an increase in ground level in excess of 1.2m, the height may increase by 1.2m.

C15 states that fences should be compatible within the streetscape.

Assessment

The proposal would result in non-compliance with C4 and C9 of this part and is considered unsatisfactory with regard to Objectives O1 and O2 of this part, as follows:

O1 To ensure fences and walls improve amenity for existing and new residents and contribute positively to streetscape and adjacent buildings.

O2 To ensure that fences and walls are not visually intrusive in the streetscape and to enhance pedestrian safety.

- Front fences and walls along Bellevue Road are varied in form and materials. Generally, front walls step down sloping sites with varying heights. Materiality varies from solid rendered and sandstone walls to low solid rendered walls with palisade style open fencing above. Corner sites on the same side of Bellevue Road and in close proximity to the subject site generally provide low solid rendered or sandstone walls that step with the topography of Bellevue Road. These existing walls contribute to the character of the neighbourhood by providing the opportunity for highly visible gardens.
- Solid rendered walls above 1.2m are evident in the immediate locality and are most common on the opposite side of Bellevue Road, within the R3 zone and Bellevue Hill South Precinct.
- The proposed front wall would limit visibility of landscaping within the Bellevue Road setback and would not respect or enhance the character along the high side of Bellevue Road.

Part 3.7.3: Site Facilities

C7-C8 states that air conditioning units must be located internally and wholly contained within the permissible building envelope. They must not be located externally or on the roof unless Council is satisfied that they:

- cannot be reasonably located elsewhere,
- are thoughtfully located, sized, enclosed, concealed and integrated into the building design, so they are not visible from the public domain, are consistent with the overall building design, are visually discreet, and will minimise acoustic impacts to adjoining properties.

<u>Assessment</u>

The proposal would result in non-compliance with C7 & C8 of this part. A/C units are proposed to be located behind the roof parapet, which would likely provide an acoustic barrier and would screen the A/C units from view. Despite non-compliance with C7 and C8, the proposed location of the A/C units is acceptable. In addition, conditions of consent could be imposed to ensure any plant equipment associated with the development be acoustically treated so that noise from any plant and equipment shall not exceed ambient background noise levels measured at the common boundaries.

Conclusion

For the reasons referred to under B3.7.1 and B3.7.2, the proposal is unacceptable with regard to Part B3.7 of the Woollahra DCP 2015 and is listed as a reason for refusal.

15.3 Chapter E1: Parking and Access

Part E1.4: Residential parking

	Existing	Proposed	Control	Complies
Max Number of Car Parking Spaces – Dual Occupancy	2	2 Spaces per Dwelling	2 Spaces per Dwelling	Yes

Parking for residential uses is calculated using the generation rates specified in E1.4.2.

In this instance, the development results in a generation rate of 2 spaces per dwelling and makes provision for 2 spaces per dwelling.

The proposal is acceptable with regard to Chapter E1.4 of the Woollahra DCP 2015.

Part E1.10: Parking and Access Design Standards

The proposed vehicular access and car parking layout has been reviewed by Council's Development Engineer and is satisfied that it complies with the applicable Australian Standard (AS2890.1), subject to conditions.

The detailed commentary provided by Council's Development Engineer is provided at **Attachment 3.**

If the proposal were to be recommended for approval the above could be addressed by standard conditions in order to ensure compliance with relevant Parking and Access Design Standards as required in Chapter E1.10 of the WDCP 2015.

Part E1.11: Electric Vehicle Charging Points

Control C1 of this part requires evidence of electric circuitry to accommodate 'Level 2' electric vehicle charging points to be integrated into all off-street car parking of new residential development to ensure that 100% of car spaces can install electric vehicle charging points in the future.

Insufficient details of the electric circuity have been provided. However, if development consent were granted, relevant conditions of consent could be imposed requiring the provision for electric vehicle circuitry within the development, thereby ensuring compliance with Part E1.11 of the Woollahra DCP 2015.

Conclusion:

If the application were recommended for approval, relevant conditions of consent could be imposed to ensure the proposal achieves the objectives and controls outlined in Chapter E1 of the Woollahra DCP 2015.

15.4 Chapter E2: Stormwater and Flood Risk Management

Council's Development Engineer has determined that the proposed stormwater design is satisfactory and provides the following comments:

This proposal is a new development on a lot greater than 500 m², in which case the installation of an on-site stormwater detention (OSD) system including rain garden is required. A rainwater tank of increased capacity has been proposed to substitute the required OSD and rain garden. The proposed capacity of the rainwater tank is satisfactory.

Conditions will be imposed to ensure that the invert level of each rainwater tank overflow is set above the finished level of the receiving stormwater pit in the road reserve.

Council's Infrastructure and Sustainability Division is satisfied that adequate provision could be made for the disposal of stormwater from the land it is proposed to develop and complies with Chapter E2 "Stormwater and Flood Risk Management" DCP.

The detailed commentary provided by Council's Development Engineer is provided at **Attachment 3.**

Conclusion:

If the application were recommended for approval, relevant conditions of consent could be imposed to ensure the proposal achieves the objectives outlined in Chapter E2 of the Woollahra DCP 2015.

15.5 Chapter E3: Tree Management

The relevant objectives of this Chapter require development:

- To promote, maintain and conserve the leafy character of the Woollahra Municipality (O3).
- To conserve significant trees of historic, cultural, commemorative, scientific, visual or aesthetic importance (O4).
- To sustain and enhance Woollahra's tree canopy cover whilst providing opportunities for development on private land (O5).

Council's Trees and Landscape Officer has determined that the proposal is satisfactory with regard to Tree Management and provides the following comments:

The Tree and Landscape team provided detailed comments on the 2 November 2023 in relation to six (6) trees outside the site that would be impacted by the proposal.

Provided the trees are protected and tree sensitive construction methods are implemented during the works, the trees are not expected to be adversely impacted. Tree protection measures required during the works are detailed in the below conditions.

Canopy Cover

it is noted that amended Landscape Plans have been submitted in response to issues previously raised by the Tree and Landscape team about insufficient canopy cover which did not meeting the DCP requirement.

Additional tree planting has been included within the site that will now achieve 176.68m² or 35.2% canopy cover which satisfies the DCP requirements.

The detailed commentary provided by Council's Trees and Landscape Officer is provided at **Attachment 4.**

Notwithstanding the comments from Councils Tree Officer, and for reasons discussed in section 14.12 of this report, the proposal does not achieve the relevant objectives of this part.

Conclusion:

For reasons discussed above, the proposal fails to satisfy the relevant objectives of Chapter E.5 of the Woollahra DCP 2015 and is listed as a reason for refusal.

15.6 Chapter E5: Waste Management

Chapter E5 is applicable to all development and seeks to establish waste minimisation and sustainable waste management during demolition and construction phases and throughout the ongoing use of the building.

The SWMMP addresses volume and type of waste and recyclables to be generated, storage and treatment of waste and recyclables on site, disposal of residual waste and recyclables and operational procedures for ongoing waste management once the development is complete.

The requirement for a new SWMMP is discussed at part 14.10 of this assessment report.

Part E5.3: On-Site Waste and Recycling Controls for all Development

	Existing	Proposed	Control	Complies
Garbage and Recycling Areas	Separated	Separated	Separated	Yes
Location of Garbage and Recycling Areas	Behind Building Line or Non- Habitable Areas	Behind Building Line or Non- Habitable Areas	Behind Building Line or Non- Habitable Areas	Yes

The relevant objectives and controls of this part read as follows:

O1 To assist applicants in planning for sustainable waste management, through the preparation of a site waste minimisation and management plan.

O2 To identify on-site requirements for waste and recycling storage and management, having regard to access and amenity.

C5 states that access to waste and compost storage areas are to safe and convenient for occupants to access with a grade less than 1:8, secure and located to minimise noise or odour. C6 requires manual maneuverability by one person for bulk bins.

<u>Assessment</u>

Concerns are raised with regard to the location of the garbage and recycling bins. Occupants would be required to maneuver bins from the northern side setback area of No.79 down external stairs to the kerb at Bellevue Road, or alternatively through the proposed dwelling and down the internal lift. This arrangement is not considered to be convenient nor practical and should be reconsidered.

Conclusion:

For reasons discussed above, the proposal fails to fully satisfy the objectives of Chapter E.5 and is listed as a reason for refusal.

16. THE LIKELY IMPACTS OF THE PROPOSAL

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

17. THE SUITABILITY OF THE SITE

The site is not suitable for the proposed development.

18. THE PUBLIC INTEREST

The proposal is <u>not</u> considered to be in the public interest.

19. CONCLUSION

Based on the assessment contained within this report, the proposal is <u>unacceptable</u> against the relevant heads of considerations under Section 4.15 of the EP&A Act 1979 and the proposal is therefore recommended for refusal.

20. DISCLOSURE STATEMENTS

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

21. RECOMMENDATION: PURSUANT TO SECTION 4.16 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, is not satisfied that the written request from the applicant has adequately addressed the relevant matters to be addressed under Clause 4.6 of the Woollahra Local Environmental Plan 2014 and therefore consent cannot be granted to the development which contravenes the FSR development standard under Clause 4.4E of the Woollahra Local Environmental Plan 2014.

AND

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, refuse development consent to Development Application No. 278/2023/1 for demolition of existing building and construction of new dual occupancy development with associated landscaping and strata sub-division on land at 79 Bellevue Road Bellevue Hill, for the following reasons:

1. Woollahra Local Environmental Plan 2014 (WLEP 2014) Part 1 Clause 1.2: Aims of Plan

The proposal is inconsistent with the aims in Part 1.2(2) because:

- It does not to ensure development achieves the desired future character of the area, as required in sub-clause (I),
- It does not encourage the retention and planting of trees and other vegetation to minimise the urban heat island effect, as required in sub-clause (n).

2. Woollahra Local Environmental Plan 2014 (WLEP 2014) Land Use Table

The proposal is inconsistent with the relevant objectives of the R2 Low Density Residential zone because:

- The proposal is not compatible with the character and amenity of the surrounding neighbourhood.
- The proposal does not achieve the desired future character of the neighbourhood.
- The proposal does not ensure development conserves and enhances tree canopy cover.
- 3. Woollahra Local Environmental Plan 2014 (WLEP 2014) Part 4 Clause 4.4E Exceptions to floor space ratio—dwelling houses, dual occupancies and semi-detached dwellings in Zones R2 and R3
 - The proposal is excessive in bulk and fails to comply with the FSR development standard under cl. 4.4E of the Woollahra LEP 2014.
 - The Applicant's written request seeking to justify contravention of cl. 4.4E FSR development standard in Woollahra LEP 2014 does not demonstrate:

- a) that compliance with the development standard is unreasonable or unnecessary [cl. 4.6(3)(a)]; and
- b) that there are sufficient environmental planning grounds to justify contravening the development standard [cl. 4.6(3)(b)].

Therefore, cl. 4.6(4)(a)(i) of Woollahra LEP 2014 is not satisfied.

• The proposed development is inconsistent with objective of the FSR development standard as prescribed in Clause 4.4E(1) and with the objectives of the R2 Low Density Residential Zone as prescribed in the R2 Low Density Residential Land Use Table, in sub-clause 2.3(2) of the Woollahra LEP 2014.

Therefore cl. 4.6(4)(a)(ii) of Woollahra LEP 2014 is not satisfied.

- The development is of a bulk and scale that does not achieve the desired future character of the area.
- The submitted Cl 4.6 written request is inconsistent with the calculations provided for FSR.

4. Woollahra Local Environmental Plan 2014 (WLEP 2014) Part 6 - Clause 6.9 Tree Canopy Cover in Zones R2 and R3

The proposal is inconsistent with the relevant objectives of Clause 6.9 Tree Canopy Cover in Zone R2 because:

• The proposal fails to incorporate planning and design measures to enable the retention and planting of trees to minimise the urban heat island effect.

5. Woollahra Development Control Plan 2015 (WDCP 2015), Chapter B1 Residential Precincts

The proposal does not achieve consistency with the Desired Future Character objectives O1, O4, O5, O6, O7 and O8, prescribed in Woollahra DCP 2015 under Part 1.8.2 *Bellevue Hill North Precinct*.

6. WDCP 2015, Chapter B3 General Development Controls

a. Part B3.2: Building Envelope

- The proposal does not comply with Controls C1 and C4 and does not achieve the underlying Objectives O1 and O2 outlined in Part B3.2.3 of the WDCP 2015.
- The proposal does not comply with Controls C1 and does not achieve the underlying Objectives O1 and O5 outlined in Part B3.2.4 of the Woollahra DCP 2015.

b. Part B3.5.1: Streetscape and Local Character

• The proposal does not comply with Control C1 and does not achieve the underlying Objectives O1, O2 and O3 outlined in Part B3.5.1 of the Woollahra DCP 2015.

c. Part B3.7.1: Landscaped Areas and Private Open Space

• The proposal does not comply with Controls C1, C2 and C5 and does not achieve the underlying Objectives O1, O2, O4, O6, O7 and O9 outlined in Part B3.7.1 of the Woollahra DCP 2015.

d. Part B3.7.2 Fences

 The proposal does not comply with Controls C4 and C9 and does not achieve the underlying Objectives O1 and O2 outlined in Part B3.7.2 of the Woollahra DCP 2015.

7. WDCP 2015, Chapter E3 Tree Management

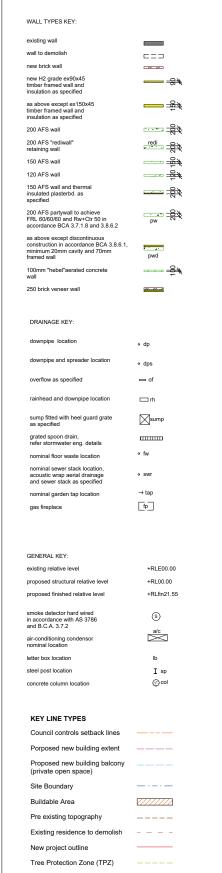
The proposal does not achieve the underlying Objectives O3-O5 outlined in Chapter E3
of the Woollahra DCP 2015.

8. WDCP 2015, Chapter E5 Waste Management

 The proposal does not achieve the underlying Objectives O1 and O2 outlined in Chapter E5 of the Woollahra DCP 2015.

Attachments

- 1. Plans and elevations 🗓 🖫
- 2. Clause 4.6 Written Request (FSR) U
- 3. Referral Response Development Assessment J
- 4. Referral Response Trees U
- 5. Referral Response Heritage 🗓 🖫
- 6. Referral Response Transdev John Holland (Buses) 🗓 🖺
- 7. Referral Response La Perouse LALC J. Tale













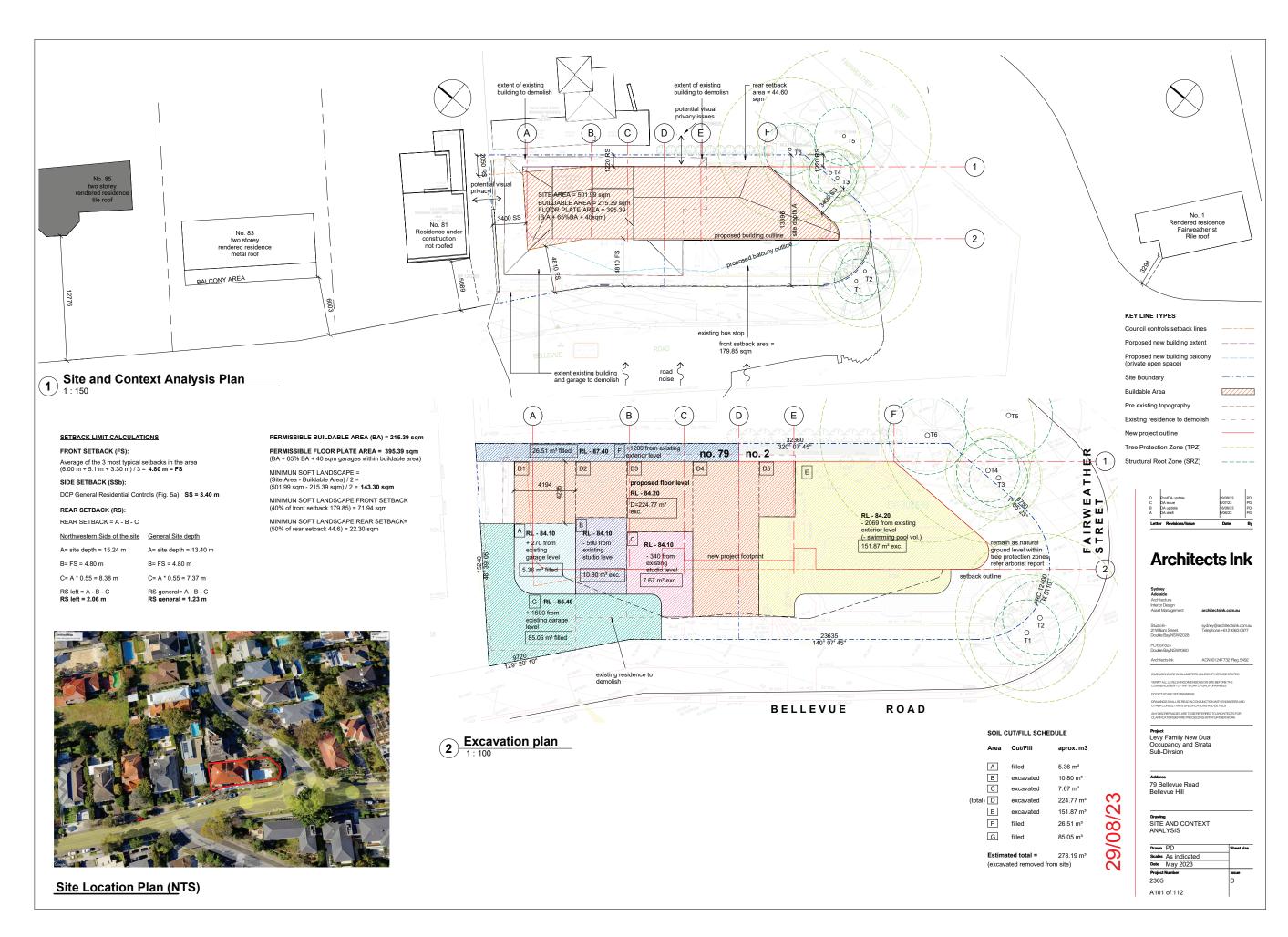
	Key Drawings	
Sheet Number	Sheet Name	Scale
A100	COVER SHEET	
A101	SITE AND CONTEXT ANALYSIS	1:150
A102	SITE AND LOWER GROUND FLOOR PLAN	1:50
A103	SITE AND UPPER GROUND FLOOR PLAN	1:50
A104	UPPER FLOOR PLAN	1:50
A105	ROOF PLAN	1:50
A106	WESTERN ELEVATION	1:50
A107	EASTERN ELEVATION	1:50
A108	NORTHERN ELEVATION	1:50
A109	SOUTHERN ELEVATION	1:50
A110	SECTION 1	1:50
A111	SECTION 2	1:50
A112	AREA CALCULATION AND DRAFT STRATA PLAN	1:150
SD-1	SHADOW DIAGRAM 9A.M	1:100
SD-3	SHADOW DIAGRAM 3 P.M.	1:100
SD-2	SHADOW DIAGRAM 12 P.M.	1:100
H1	9.5m HEIGHT DIAGRAM	
H2	9.5m + BUILDING HEIGHT + HEIGHT PLANE DIAGRAM	

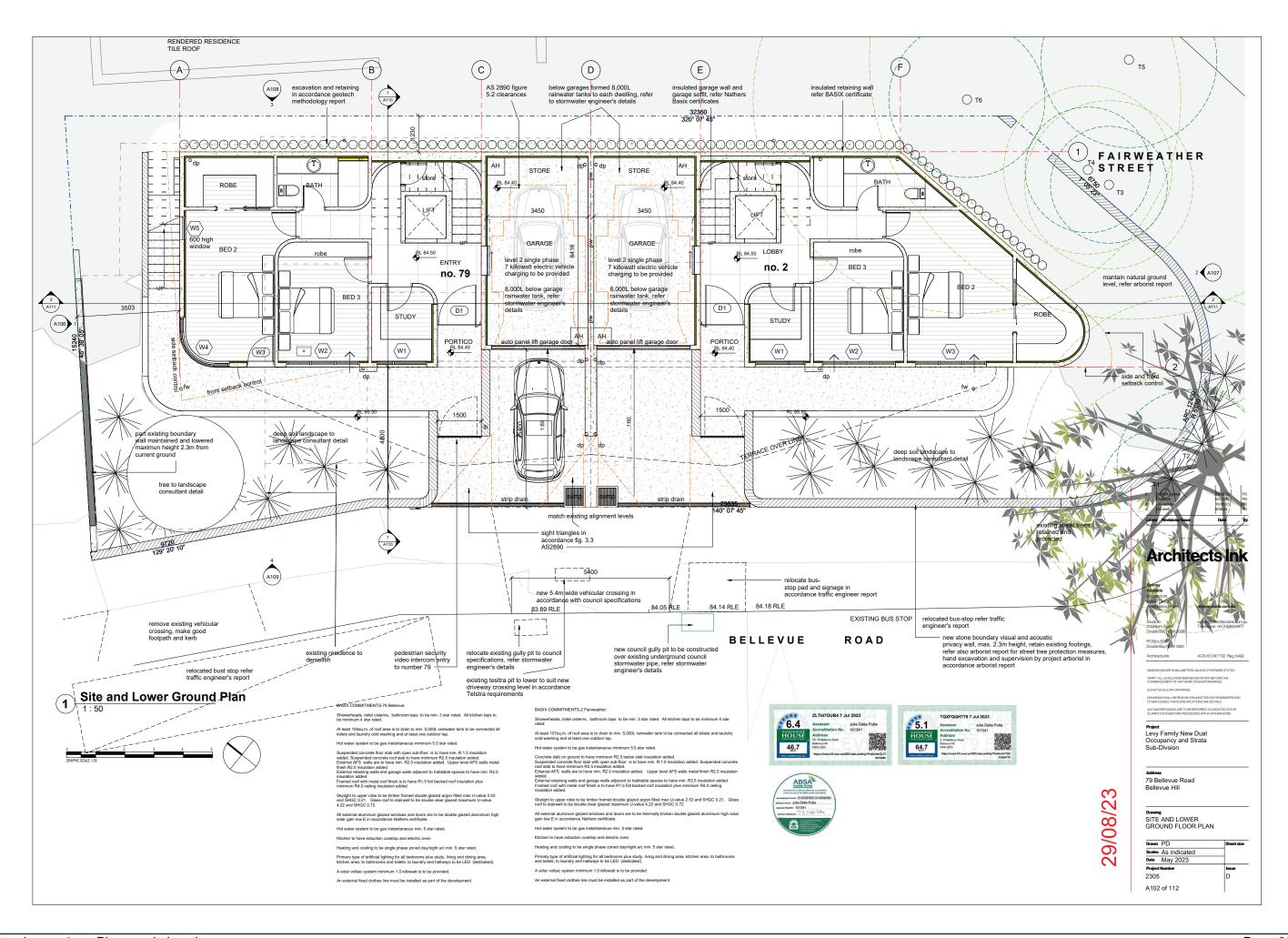
		ote	

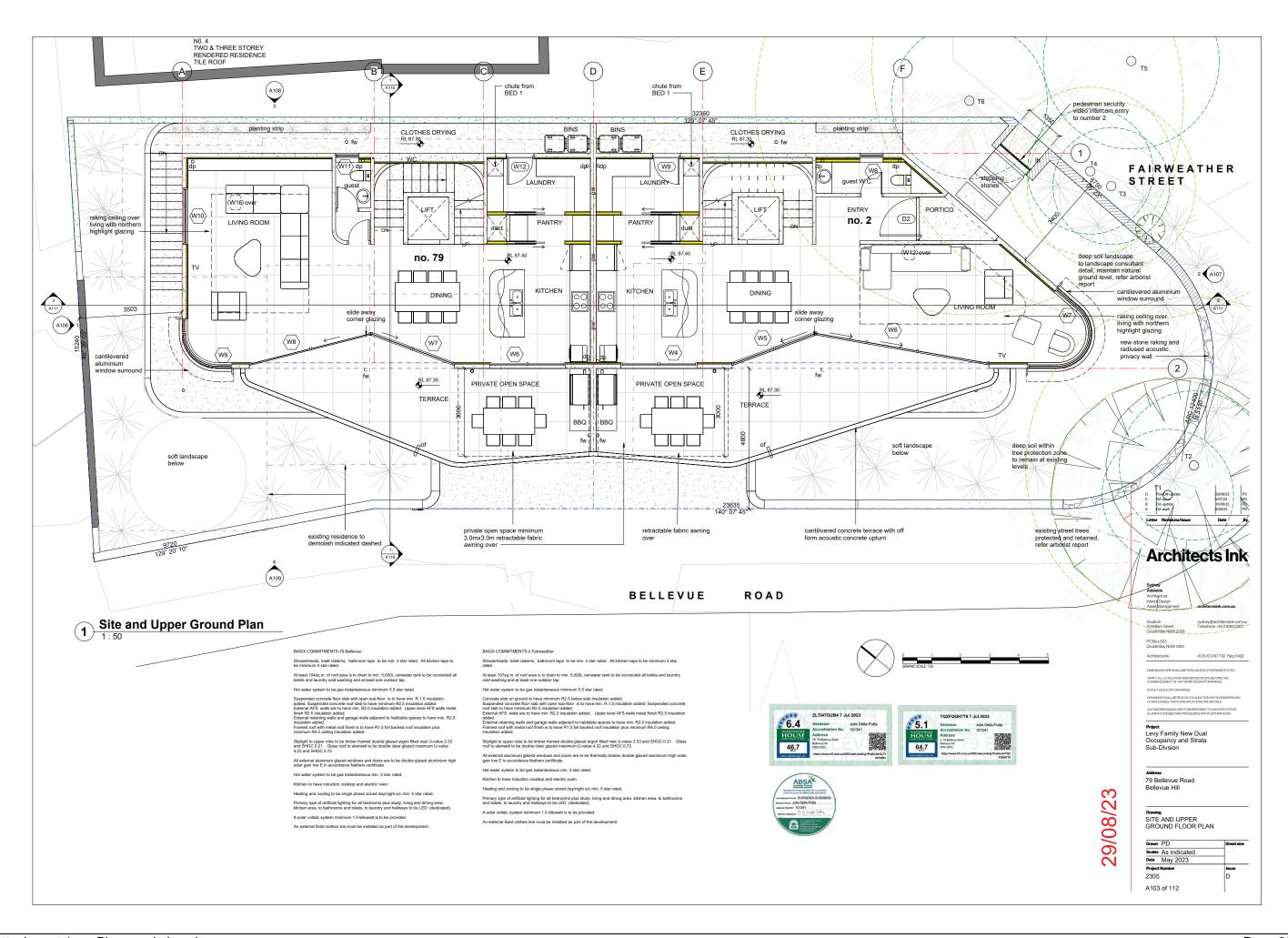
Adelaide Architecture Interior Design Asset Management	architectsink.com
Studio 6 - 21 William Street. Double Bay NSW 2028	sydney@architect Telephone +6129
PO Box 823 Double Bay NSW 1360	
Architects Ink	ACN 101 247 732 F
	DEFECTIONS AND DETAILS DEFECTED TO ARCHITECTS DEEDING WITHFURTHER WOR
Project Levy Family Ne Occupancy and Sub-Divsion	

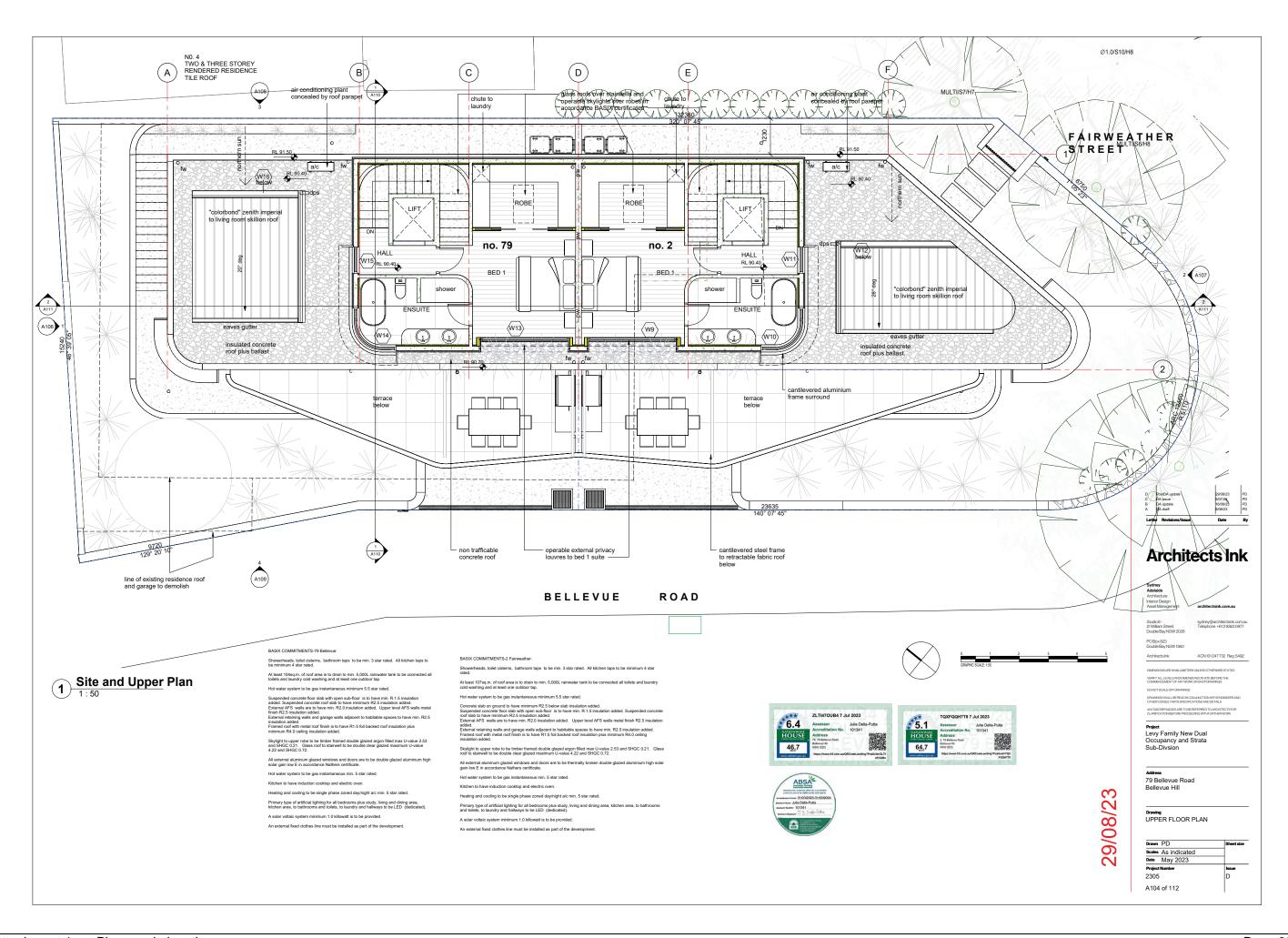
29/08/23 Drawn PD Scales 1:100 Date May 2023 Project Number 2305 Structural Root Zone (SRZ) A100 of 112

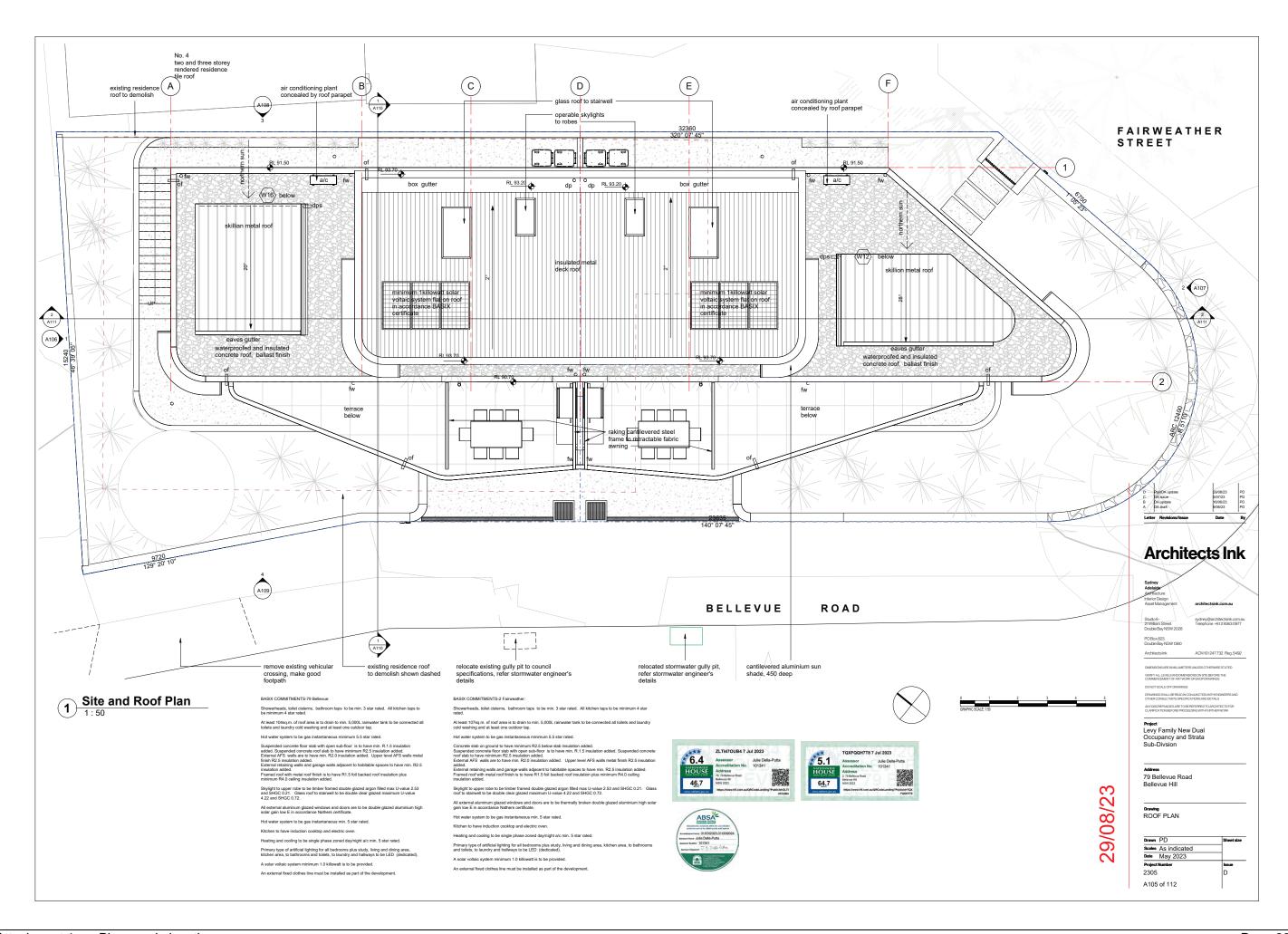
Page 279 Attachment 1 Plans and elevations

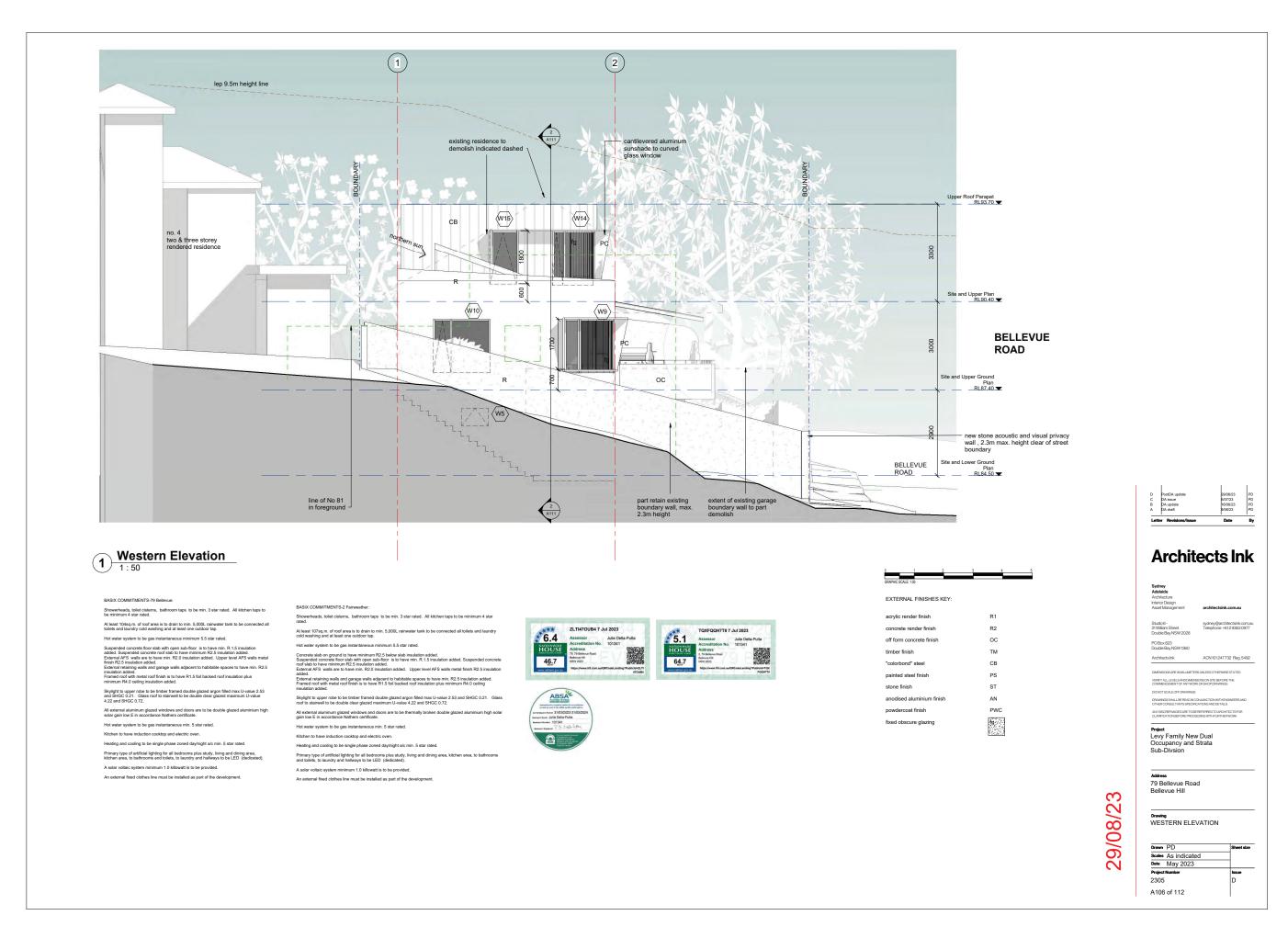


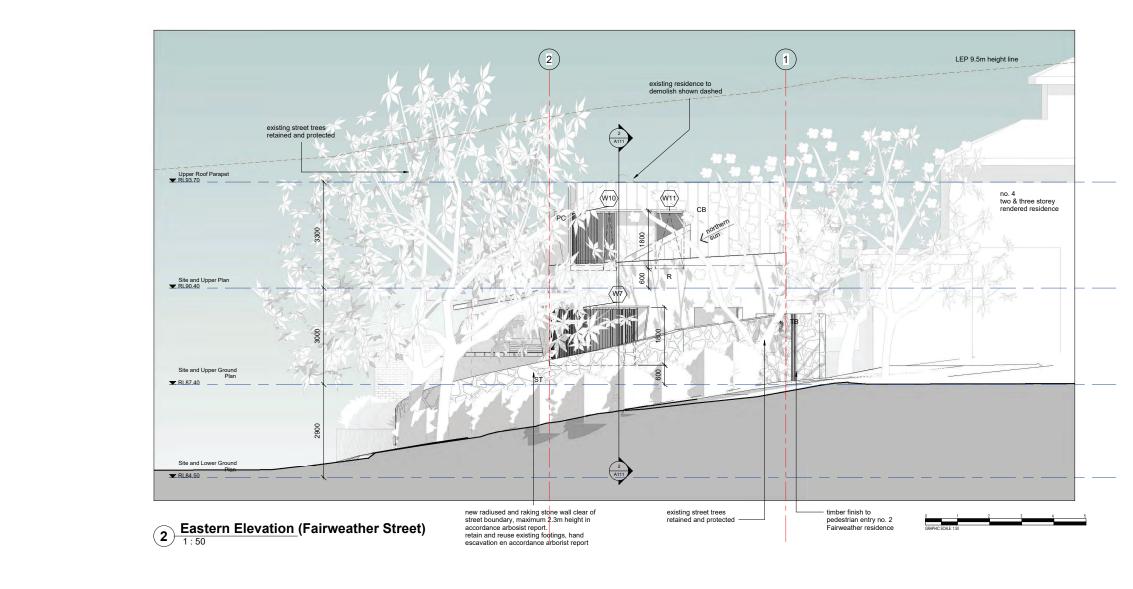












Suspended concrete hous are considered to the property of the construction of the cons

Hot water system to be gas instantaneous min. 5 star rated.

Heating and cooling to be single phase zoned day/night a/c min. 5 star rated.

A solar voltaic system minimum 1.0 killowatt is to be provided.

An external fixed clothes line must be installed as part of the development

Concrete slab on ground to have minimum R2.5 below slab insulation added.

Suspended concrete flor slab with open sub-floor is to have minimum R2.5 insulation added. Suspended concrete flor slab with open sub-floor is to have minimum R2.5 insulation added. Suspended concrete roof slab to have minimum R2.5 insulation added. External RFS walls are to have min. R2.0 insulation added. Upper level AFS walls metal finish R2.5 insulation added. External retaining walls and garage walls adjacent to habitable concrete.

All external aluminum glazed windows and doors are to be thermally broken double glazed aluminium high sola gain low E in accordance Nathers certificate.

Hot water system to be gas instantaneous min. 5 star rated.

Kitchen to have induction cooktop and electric oven.

Heating and cooling to be single phase zoned day/night a/c min. 5 star rated.

Primary type of artificial lighting for all bedrooms plus study, living and dining area, kitchen area, to bathrooms and toilets, to laundry and hallways to be LED (dedicated).

A solar voltaic system minimum 1.0 killowatt is to be provided.

ZLTI470UB4 7 Jul 2023
Assessor Julie Della



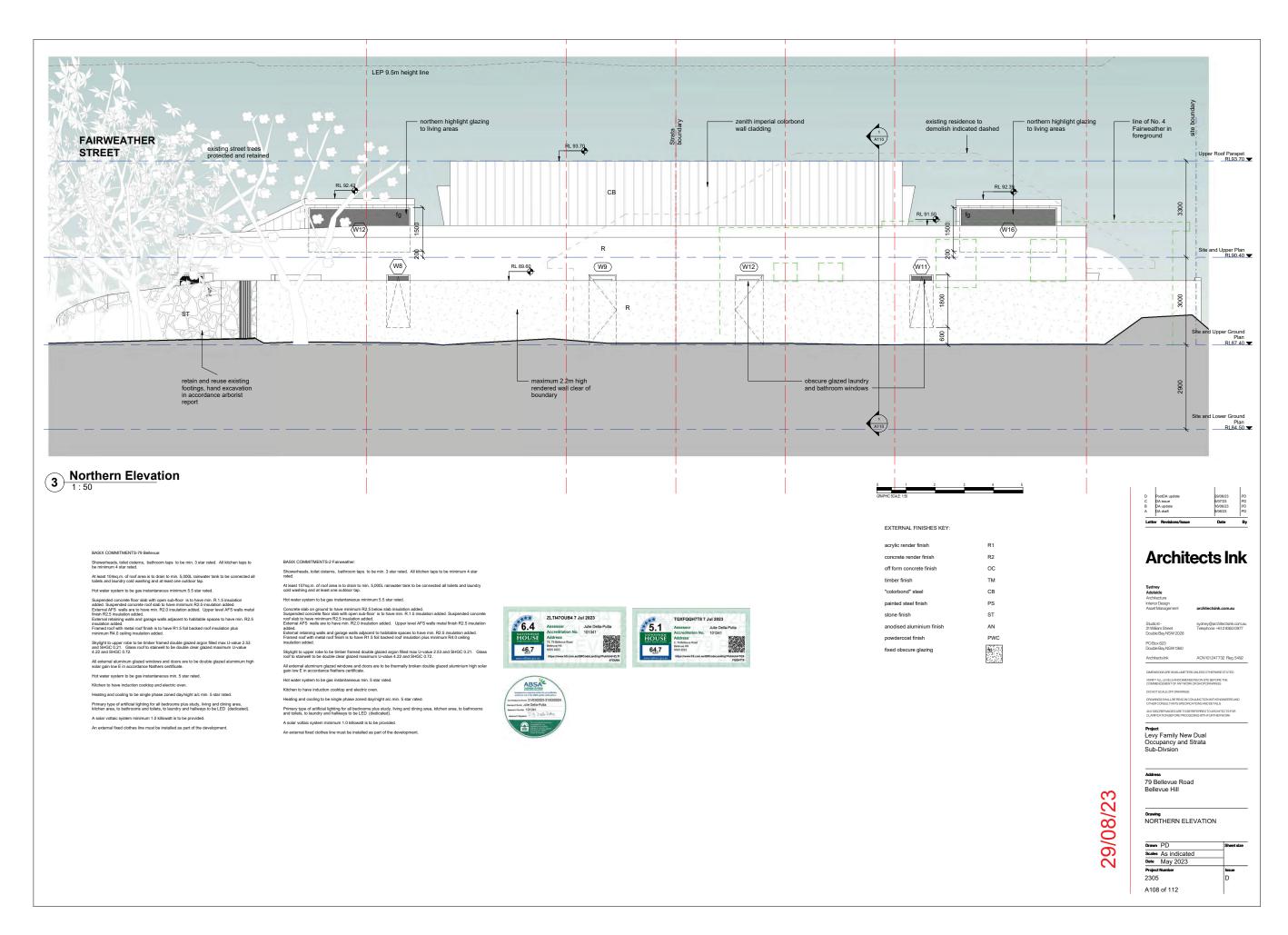


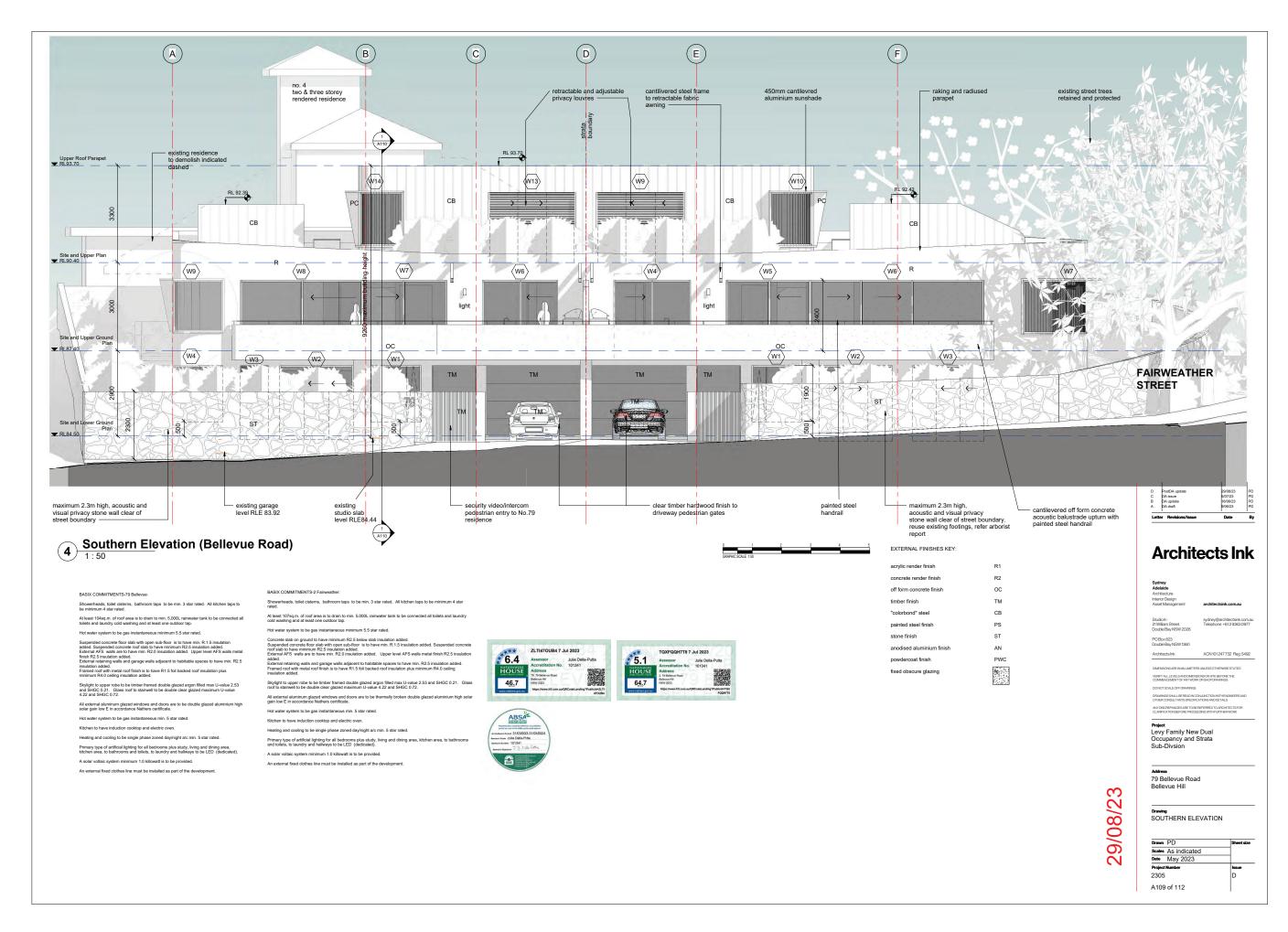
EXTERNAL FINISHES KEY:

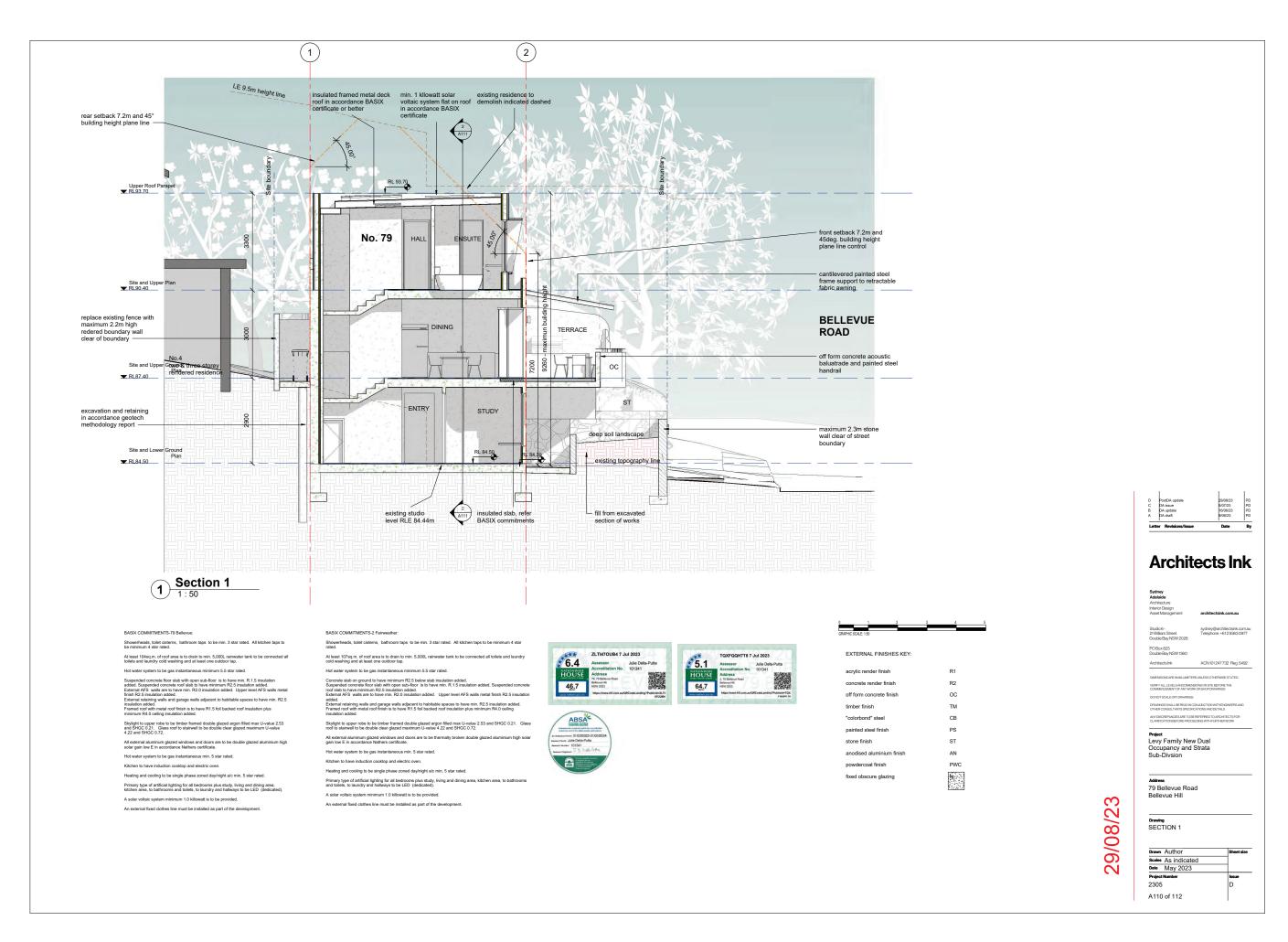
concrete render finish off form concrete finish timber finish "colorbond" steel painted steel finish stone finish anodised aluminium finish fixed obscure glazing

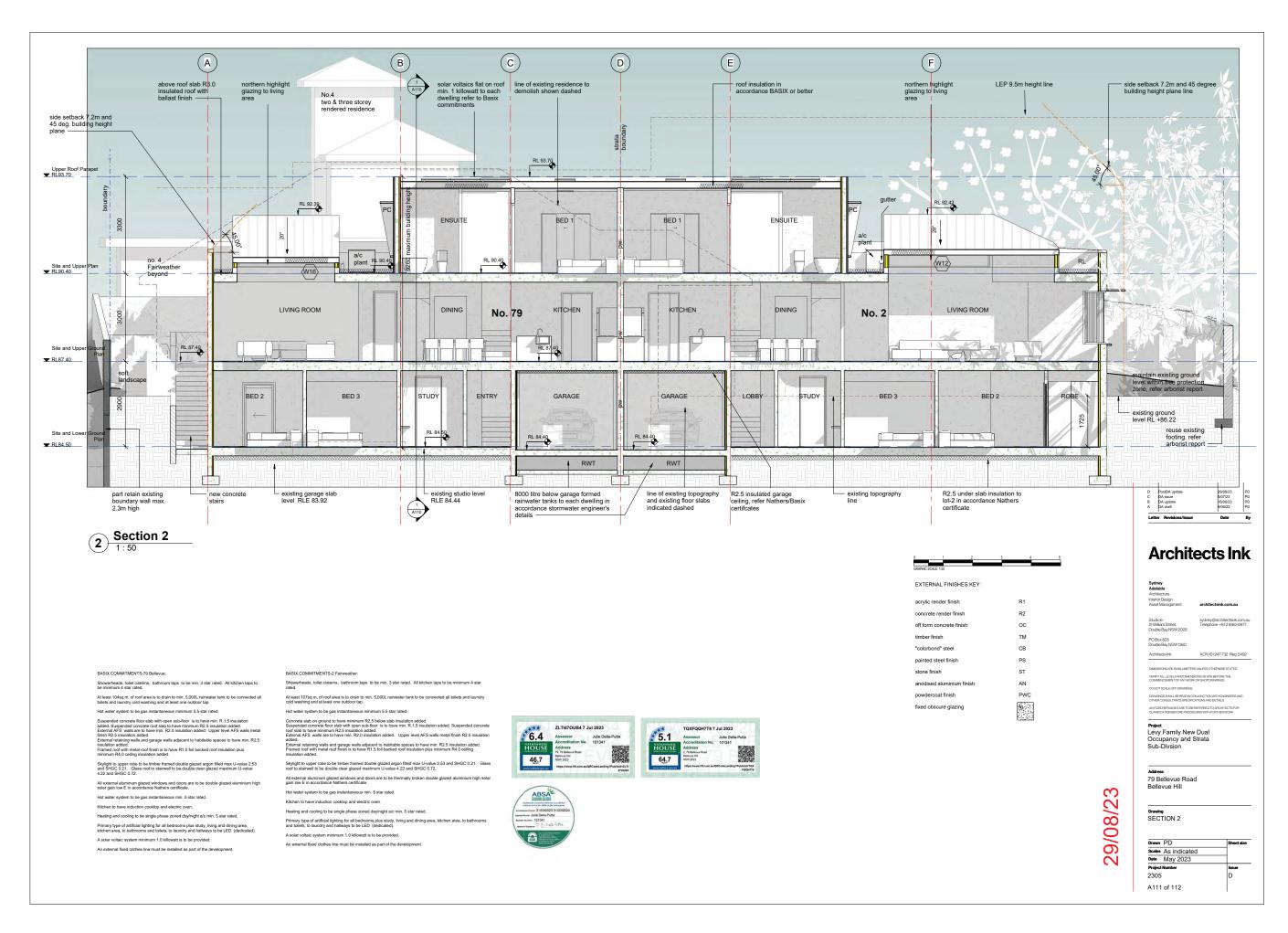
29/08/23

Architects Ink Project Levy Family New Dual Occupancy and Strata Sub-Divsion 79 Bellevue Road Bellevue Hill Drawing EASTERN ELEVATION Scales As indicated Date May 2023 Project Number A107 of 112

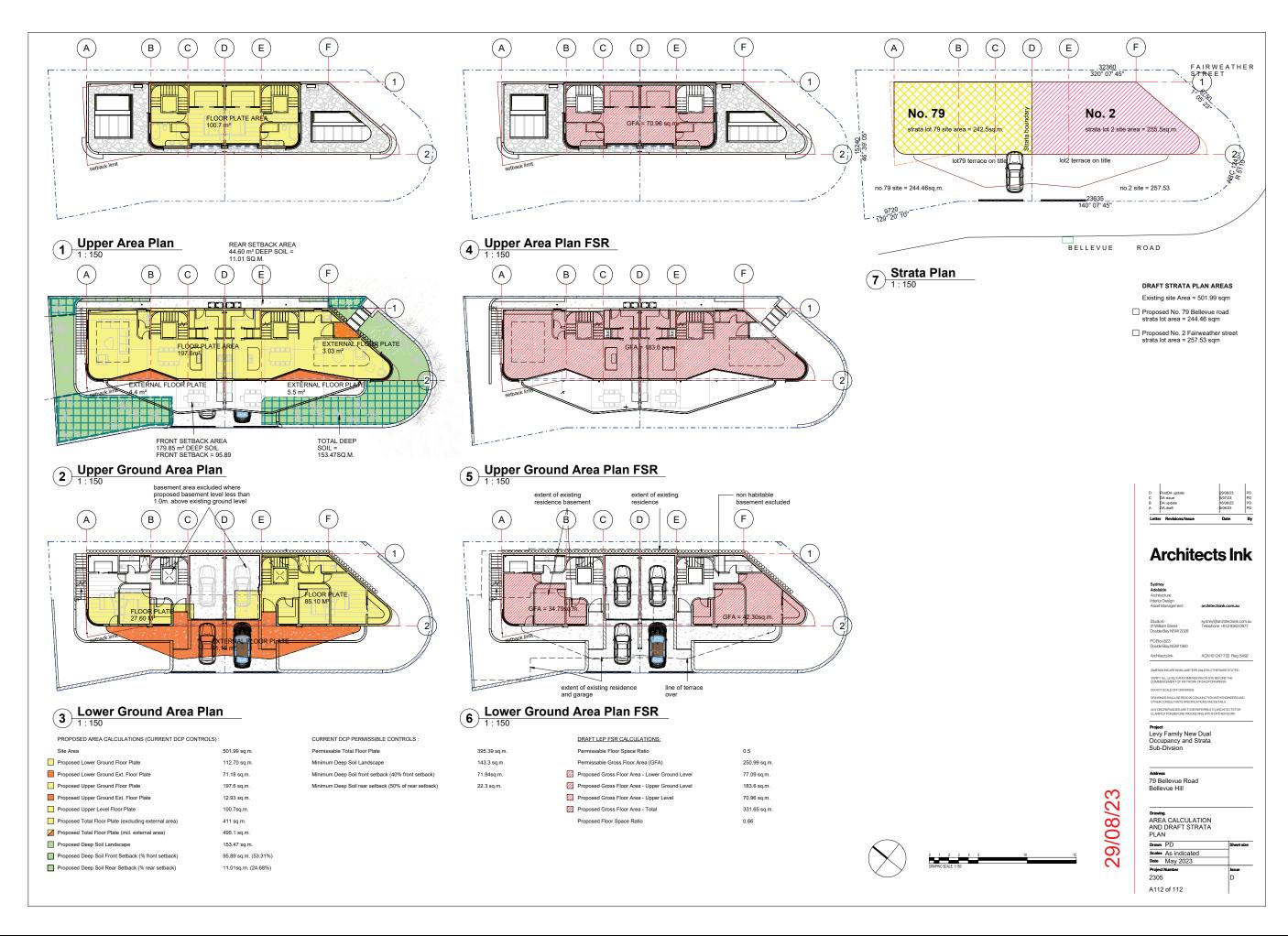








Attachment 1 Plans and elevations Page 290



Attachment 1 Plans and elevations Page 291



79 Bellevue Road, Bellevue Hill

REQUEST FOR VARIATION TO FLOOR SPACE RATIO DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6(3) OF WOOLLAHRA LEP 2014

This Clause 4.6 variation relates to a proposal for demolition of the existing structures on the site and construction of a new attached dual occupancy and associated strata subdivision.

The proposal will result in the following two dwellings:

- No. 79 Bellevue Road (Northern Dwelling): Strata lot area = 244.46m²
- No. 2 Fairweather Street (Southern Dwelling): Strata lot area = 257.53m²

Both dwellings will comprise of the following:

- Bedroom 2 with walk-in-robe, Bedroom 3, study and bathroom on the Lower Ground Floor
- Open plan living, dining and kitchen, pantry, laundry and WC on the Ground Floor
- · Master bedroom with walk-in-robe and ensuite on the First Floor
- Stairs and lift leading from the Lower Ground Floor to the First Floor
- South-western terrace overlooking Bellevue Road, accessed from the Ground Floor living area
- Driveway leading from Bellevue Road to a single garage
- Clothes drying area and bin storage area at the rear of the site
- · Landscaping within the boundary setbacks

The proposal results in a non-compliance with clause 4.4E of the *Woollahra Local Environmental Plan 2014* (**Woollahra LEP**) which relates to floor space ratio (**FSR**). As such, this Clause 4.6 request has been prepared in accordance with Clause 4.6 of the *Woollahra Local Environmental Plan 2014*, which applies to the subject site.

The request demonstrates that compliance with the development standard relating to FSR is unreasonable or unnecessary in the circumstances of

Suite 203 | 59 Great Buckingham Street | Redfern | NSW 2016 telephone: 02 9360 0989 | www.a2p.com.au

the case and establishes that there are sufficient environmental planning grounds to justify contravening the development standard, satisfying clause 4.6(3) of the Woollahra LEP.

Based on this Clause 4.6 request, the consent authority can be satisfied that the written request has adequately addressed the matters required to be demonstrated by subclause (3), and that the proposed development will be in the public interest because it is consistent with the objectives of the FSR development standard and the objectives for development within the R2 - Low Density Residential zone under the Woollahra LEP, in which the development is proposed to be carried out.

The nature of the exceedance to the development standard relating to FSR is set out below, followed by consideration of the relevant matters in clause 4.6 of the Woollahra LEP.

The NSW Department of Planning, Industry and Environment (DPI&E) provides guidance on how to prepare Clause 4.6 variations; 'Varying development standards: A Guide' (August 2011). This written request to vary the standards is based on the Guide.

Zoning of the site

The zoning of the land is R2 - Low Density Residential. The objectives of the R2 zone are:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.
- To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.
- To ensure development conserves and enhances tree canopy cover.

Clause 4.4 – Floor Space Ratio

The Standard

The site has an area of 501.9m².

Clause 4.4E of Woollahra LEP 2014 prescribe a maximum FSR of 0.5:1 for a dual occupancy on a lot area of greater than 400m^2 .



The proposal will result in an FSR of 0.66:1 (GFA: 332.45m²), providing a non-compliance with this control. The percentage variation is 32% (81.5m²).

Clause 4.6 - Exceptions to Development Standards

Clause 4.6 of the Woollahra LEP allows for exceptions of Development Standards. The objectives of this Clause 4.6 are:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6 of the Woollahra LEP allows for exceptions of Development Standards. The objectives of this Clause 4.6 are:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6(2) provides the power for development consent to be granted even though the development would contravene a development standard, subject to that clause:

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Clause 4.6(3) sets out what a clause 4.6 written request seeking to justify a contravention of a development standard must demonstrate in order for consent to be granted for development that contravenes a development standard:

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:



- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard

Clause 4.6(4) sets out the matters which a consent authority must be satisfied of in order to grant consent to a development that contravenes a development standard:

- (4) Consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Secretary has been obtained.

This document constitutes the written request referred to in Clause 4.6(3) in relation to the proposal's breach of the FSR development standard and provides the necessary information for the consent authority to be satisfied of the matters in clause 4.6(4).

The matters required to be demonstrated under clause 4.6(3) are set out below as Points 1 and 2.

1. Clause 4.6(3)(a) - Compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case:

In order to assess whether strict compliance with the development standard is unreasonable or unnecessary, a proposal is considered against the following five ways¹:

¹ see Wehbe v Pittwater Council [2007] NSWLEC 827





- 1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
- 2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
- The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable:
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard; or
- 5. The zoning of particular land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to the land.

These five ways were re-emphasised by the Court². Each 'test' offers a potential way of demonstrating that compliance is unnecessary or unreasonable in a particular circumstance³. All tests are separate and not all tests may not be applicable in each case. Therefore, not all tests need to be met.

This objection relies on the first method set out above, that compliance with a standard is unreasonable and unnecessary given that the objectives of the standard are met even though the standard is not complied with⁴. Compliance with the objectives of the height standard is addressed under **Point 4 below**.

The following points are raised:

- Compliance with the development standard is unreasonable and unnecessary as the siting, bulk and scale of the proposed development is compatible with surrounding existing development and is consistent with the desired future character of the area, refer to the site photos in Section 3 of the SEE.
- The proposed development has been designed to step down the site to follow the topography of the land and avoid excessive excavation.
- The proposed scale and bulk are appropriate to its context and will not appear out of character when viewed in its context of other buildings in the vicinity.

Wehbe v Pittwater Council [2007] NSWLEC 827, Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 and Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245



² Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386

³ Mecone Pty Limited v Waverley Council [2015] NSWLEC 1312

- The proposed development incorporates modulation and a varied palette of materials. The proposed development provides an articulated building form that minimises perceived bulk and scale impacts when viewed from the surrounds of the site.
- The proposed built form is sited and designed to maintain the predominance of soft landscaped areas on the site.
- The proposal complies with the 9.5m building height development standard. Despite the FSR contravention, the proposal is not an overdevelopment of the site and achieves an appropriate correlation between maximum height and density.
- The FSR variation will be indiscernible from the streetscape and surrounding properties. A reduction of the proposed FSR would provide for an indiscernible benefit to the streetscape and would reduce the amenity of the proposal.
- The unique corner site on a busy road which is in close proximity to
 public transport is ideal for dual occupancy development. The front,
 side and rear setbacks of the proposed development generally
 increase from the existing built form on the site. The proposal
 increases the amount of deep soil planting and tree canopy compared
 to that currently existing on the site.
- Exceedance of the FSR control will not create additional building bulk
 that results in unreasonable environmental amenity impacts in terms of
 overshadowing, loss of views, loss of privacy or loss of visual amenity
 and a reduction in this bulk would not create additional benefit for
 adjoining properties or the locality.
- The proposal has negligible overshadowing impacts on neighbouring properties due to the favourable orientation of the site with any additional shadows generally falling on road reserve or street boundary walls. The non-compliant components of the development will not result in any unreasonable overshadowing. As demonstrated on the Shadow Diagrams submitted with this application, the proposal will not result in additional overshowing to the adjoining properties to the northeast and northwest. The additional overshadowing from the proposal will fall on the Bellevue Road reserve and the residential flat building opposite the subject site at No. 76 to 84 Bellevue Road. However, the proposed additional overshadowing to the properties to the properties opposite the site (No. 76 to 84 Bellevue Road) only occurs in the morning. Overall, the proposal will not overshadow any private open space or north-facing windows of the adjoining properties, thereby complying with the DCP solar access controls.



- Due to the location, orientation and topography of the site and surrounding sites, the proposed FSR non-compliance is unlikely to have unreasonable impact on existing views from the public domain or surrounding properties. It is reiterated that the proposal complies with the LEP building height control.
- The additional FSR does not prevent the proposal from achieving the objectives of the FSR standard and that of the R2 zone.

2. Clause 4.6(3)(b) - There are sufficient environmental planning grounds to justify contravening the development standard:

Given the consistency of the proposal against the zone objectives and FSR objectives (see **Point 4 below regarding both**), in my opinion there are sufficient environmental planning grounds to justify contravening the development standard⁵.

The components proposed above the FSR control are:

• 81.5m² of GFA

There are sufficient environmental planning grounds which demonstrate that the proposed FSR can be achieved without adverse impacts for the following reasons:

- Overall, the proposed building height and bulk is of an appropriate form and scale and is compatible with surrounding development and the desired future character for the locality.
- Exceedance of the FSR control will not create additional building bulk that results in unreasonable environmental amenity impacts as follows:
 - The proposal will not result in the loss of views from surrounding development.
 - The proposal has negligible overshadowing impacts on neighbouring properties due to the favourable orientation of the site with any additional shadows generally falling on road reserve or street boundary walls. The proposal will not overshadow any private open space or north-facing windows of the adjoining properties, thereby complying with the DCP solar access controls.
 - The proposal will provide a development, which has been designed to ensure that the visual and acoustic privacy of adjoining properties is maintained.

⁵ see SJD DB2 Pty Ltd v Woollahra Munipical Council [2020] NSWLEC 1112 at [90]



 The proposal will provide a development, which is consistent with the scale of the adjoining developments and is of an appropriate visual bulk for the locality.

The proposal will provide a suitable design and be of suitable amenity in terms of the built environment and represents the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979). The building envelope and design of the proposal responds appropriately to the unique opportunities and constraints of the site.

The aspect of the development that breaches the FSR control can be justified as the proposal provides a consistent scale with neighbouring development. This can be described as an environmental planning ground because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome⁶.

The lack of impact on adjoining properties in terms of solar access, privacy, view loss and visual bulk establishes sufficient planning grounds⁷.

3. Clause 4.6(4)(a)(i) - The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3):

Based on the above, the written request adequately addresses the matters referred to above by Clause 4.6(3).

4. Clause 4.6(4)(a)(ii) - The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out:

Objectives of Standard

The proposal will be in the public interest as it meets the objectives of the FSR development standard as follows:

Objective (a) seeks to ensure the bulk and scale of development is compatible with the desired future character of the area,

Randwick City Council v Micaul Holdings Pty Ltd at [34]



Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 1097 at [42]
 Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 at [94(c)] and

Comment: The siting, bulk and scale of the proposed development is compatible with surrounding existing development and is consistent with the desired future character of the area, refer to the site photos in Section 3 of the SEE. The proposed scale and bulk are appropriate to its context and will not appear out of character when viewed in its context of other buildings in the vicinity.

The proposal complies with the 9.5m building height development standard. Despite the FSR contravention, the proposal is not an overdevelopment of the site and achieves an appropriate correlation between maximum height and density.

Objective (b) seeks to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,

Comment: The proposed development incorporates modulation and a varied palette of materials. The proposed development provides an articulated building form that minimises perceived bulk and scale impacts when viewed from the surrounds of the site.

Exceedance of the FSR control will not create additional building bulk that results in unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity.

- Overshadowing: The proposal has negligible overshadowing impacts on neighbouring properties due to the favourable orientation of the site with any additional shadows generally falling on road reserve or street boundary walls. The non-compliant components of the development will not result in any unreasonable overshadowing. As demonstrated on the Shadow Diagrams submitted with this application, the proposal will not result in additional overshowing to the adjoining properties to the northeast and northwest. The additional overshadowing from the proposal will fall on the Bellevue Road reserve and the residential flat building opposite the subject site at No. 76 to 84 Bellevue Road. However, the proposed additional overshadowing to the properties to the properties opposite the site (No. 76 to 84 Bellevue Road) only occurs in the morning. Overall, the proposal will not overshadow any private open space or north-facing windows of the adjoining properties, thereby complying with the DCP solar access controls.
- Views: Due to the location, orientation and topography of the site and surrounding sites, the proposal is unlikely to have unreasonable impact on existing views from the public domain or surrounding properties. It is reiterated that the proposal complies with the LEP building height control.



 <u>Privacy:</u> The proposed development has been designed and sited to ensure adequate visual and acoustic privacy between the subject dwellings and the adjoining dwellings. The proposal has considered the location of the development on the site, the internal layout and the building materials used. The proposed development has appropriate setbacks thereby providing adequate separation from the adjoining properties.

Windows have been appropriately sited and designed to minimise any potential overlooking. Louvres have been provided to the Bedroom 1 windows on the First Floor to ensure privacy.

The proposal does not include any balconies or roof top terraces. The terraces on the Ground Floor are appropriately sized and orientated to the front and setback from the site boundaries to minimise potential visual and acoustic privacy impacts to the adjoining properties.

The landscaped private open space areas and terraces will be screened by fencing and landscaping to minimise potential acoustic privacy concerns.

Objective (c) seeks to ensure development makes adequate provision for deep soil planting, tree canopy cover and private open space.

Comment: The proposed built form is sited and designed to maintain the predominance of soft landscaped areas on the site.

The proposal includes a high-quality landscape design including the planting of a variety of trees, shrubs and turf. Refer to the Landscape Plan prepared by Zenith Landscapes submitted with this application. The proposed landscaping enhances tree canopy cover and will soften the built form, add visual interest and amenity to the area and ensure that the development sits well within the local context.

Objectives of the Zone

The zoning of the land is R2 – Low Density Residential. The objectives of the R2 zone are:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.



- To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.
- To ensure development conserves and enhances tree canopy cover.

The proposal is consistent with the objectives of the R2 zone as follows:

- The proposal will provide two dwellings that are contextually appropriate in the low-density environment.
- The proposal will not inhibit other sites to provide services and facilities for the residents.
- The proposal is compliant with the LEP height control and is compatible with the bulk and scale of neighbouring developments and the surrounding neighbourhood.
- The proposal will not unreasonably impact on the amenity of neighbouring properties in terms of privacy, solar access and views.
- The proposal includes a high-quality landscape design including the
 planting of a variety of trees, shrubs and turf. Refer to the Landscape
 Plan prepared by Zenith Landscapes submitted with this application. The
 proposed landscaping enhances tree canopy cover and will soften the
 built form, add visual interest and amenity to the area and ensure that
 the development sits well within the local context.

As demonstrated above, the proposed development will be in the public interest because it is consistent with the objectives of the FSR development standard and the objectives of the R2 zone.

The above demonstrates that compliance with the control is unreasonable and unnecessary in the circumstances of this case.

5. Clause 4.6(4)(b) – the concurrence of the Planning Secretary has been obtained

Concurrence of the Planning Secretary is taken to have been obtained as a result of written notice dated 5 May 2020 attached to the Planning Circular PS 20-002.

6. Clause 4.6(5)

In the context of the requirements of Clause 4.6(5), it is considered that no matters of State or regional planning significance are raised by the proposed development. Moreover, it is considered that there would be no public benefit in maintaining the particular planning control in question, in the case of this specific development.



Conclusion

The consistency of the development with the zone objectives and the objectives of the FSR standard together with the absence of adverse impacts arising establish that there are sufficient grounds to support the variation from the development standard and confirm that it is unreasonable and unnecessary for the development to comply. This therefore demonstrates sufficient environmental planning grounds to justify contravening the standard.

In addition, the resultant development will be in the public interest as it complies with the objectives of the zone and the objectives of the development standard.

The proposal is consistent with the objects of Section 1.3 of the EP& A Act, 1979, which are to encourage development that promotes the social and economic welfare of the community and a better environment, to promote and coordinate orderly and economic use and development of land, to promote the delivery and maintenance of affordable housing, to promote good design and amenity of the built environment and to protect the heritage of the built environment.

This submission is considered to adequately address the matters required by Clause 4.6 and demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to support the variation.

Based on this Clause 4.6 request, the consent authority can be satisfied that the written request has adequately addressed the matters required to be demonstrated by subclause (3), and that the proposed development will be in the public interest because it is consistent with the objectives of the FSR development standard and the objectives for development within the R2 – Low Density Residential zone under the Woollahra LEP, in which the development is proposed to be carried out.

Clare Findlay Consultant Town Planner

aSquare Planning Pty Ltd

Date: 3 August 2023





15 February 2024

REFERRAL RESPONSE - DEVELOPMENT ENGINEERING

FILE NO: Development Applications: 278/2023/1

ADDRESS: 79 Bellevue Road BELLEVUE HILL 2023

PROPOSAL: Demolition of existing building and construction of new dual

occupancy development with associated landscaping and strata sub-

division

FROM: Mr W Huynh

TO: Mr W Perdigao

1. ISSUES

None

2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environment Effects, referenced AP 1924, prepared by aSquare Planning, dated 03/05/2023.
- Architectural Plans, referenced 2305-Rev D, prepared by Architects Ink, dated 29/08/2023.
- Survey Plan, referenced 23064-Rev 3, prepared by Urban Surveying, dated 29/08/2023.
- Revised Stormwater Management Plan, referenced 2986-Issue D, prepared by Zimmerman Engineers, dated 17/01/2024.
- Stormwater Design Letter, unreferenced, prepared by Zimmerman Engineers, dated 26/09/2023.
- Civil Drawings, referenced 2986-Issue A, prepared by Zimmerman Engineers, dated 26/09/2023.
- Telstra Asset Relocation Quote, referenced SS483656-1, prepared by Telstra InfraCo, dated 27/09/2023.
- Telstra Asset Relocation Request, referenced SS483656-1, prepared by Telstra InfraCo, dated 19/09/2023.
- Telstra Asset Relocation Map, unreferenced, prepared by Telstra InfraCo, undated.
- Geotechnical Report, referenced 7263-R1 Rev 2, prepared by AssetGeoEnviro, dated 29/09/2023.
- Transport Impact Assessment, referenced N285/2023 prepared by Traffic and Transport Planning Solutions, dated 22/07/2023.
- Traffic Response Report, referenced N285/2023/01 prepared by Traffic and Transport Planning Solutions, dated 18/10/2023.
- Traffic Statement, referenced 0849r01v03 prepared by PDC Consultants, dated 21/09/2023.

Page 1 of 17



3. ASSESSMENT

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

a. Site Drainage comments

This proposal is a new development on a lot greater than 500 m², in which case the installation of an on-site stormwater detention (OSD) system including rain garden is required. A rainwater tank of increased capacity has been proposed to substitute the required OSD and rain garden. The proposed capacity of the rainwater tank is satisfactory.

Conditions will be imposed to ensure that the invert level of each rainwater tank overflow is set above the finished level of the receiving stormwater pit in the road reserve.

Council's Infrastructure and Sustainability Division is satisfied that adequate provision could be made for the disposal of stormwater from the land it is proposed to develop and complies with Chapter E2 "Stormwater and Flood Risk Management" DCP.

b. Flooding & Overland Flow comments

Not relevant

c. Impacts on Council Infrastructure comments

The applicant seeks to construct a double garage as part of this application. It is noted from the submitted architectural plans that the new crossing will be situated in a different location, in which case the existing crossing is to be replaced with kerb and gutter which will be conditioned accordingly. Council's existing kerb inlet pit in the road reserve will be incorporated into the new crossing with a butterfly v-grate. A new kerb inlet pit will be constructed on top of the existing stormwater line in the vicinity to replace the existing kerb inlet pit. These infrastructure works are to be conditioned which is subject to detailed assessment under the S138 application.

It is also noted from the submitted documentation that there do not appear to be any objections from Telstra regarding the lowering of the Telstra pit affected by the new crossing, subject to the applicant's acceptance of the provided quote from Telstra.

d. Traffic comments

The submitted documents demonstrate that the bus operator has indicated the unsuitability of the bus stop remaining in the existing location in consideration of the proposed vehicular crossing. It is also indicated that there are no objections from the bus operator to the relocation of the bus stop northwesterly to the location of the existing vehicular crossing. A new 30m bus zone is to be installed at the location of the new bus stop. It noted from submitted traffic statements that 2 onstreet parking spaces will be lost as a result. Conditions will be imposed for the applicant to liaise with Council's Traffic Team for the relocation of the bus stop.

e. Vehicle Access & Accommodation comments

The proposed vehicular access and parking arrangement is considered satisfactory. Conditions will be imposed to ensure sight lines requirements are met.

Page 2 of 17



f. Geotechnical, Hydrogeological and/or Structural comments

A Geotechnical Report by AssetGeoEnviro, Ref: 7263-R1 Rev 2, dated 29 September 2023, has been submitted in support of the application. The proposal involves excavation with a maximum depth of about 3 metres from the existing ground surface for the proposed lower ground floor.

The report identified that the subsurface conditions as:

- a) Fill comprising silty sand to a depth of 0.4m, 0.4m, 0.8m, 0.8m, and 0.35m in BH1, BH1A, BH2, BH3 and BH4 respectively.
- b) Depth of natural sand with various density from a depth beneath the fill to a termination depth of 2m, 3.4m, 2m, 0.8m and 2.4m in BH1, BH1A, BH2, BH3 and BH4 respectively.
- c) Sandstone bedrock was not encountered during the investigation.
- d) Groundwater was not observed during the investigation.

The report made comments and recommendations on the following:

- Shoring and support,
- Vibration Monitoring,
- Excavation method,
- Further Geotechnical input.

Council's Infrastructure & Sustainability Services Division has no objections to the proposed excavation on technical grounds. Notwithstanding this, Council's Planning Officer is also to undertake an assessment of the proposed excavation against the relevant excavation objectives and controls prescribed under the LEP and DCP.

4. RECOMMENDATION

Council's Development Engineer has determined that the proposal is satisfactory, subject to the following conditions:

A. GENERAL CONDITIONS

A.5 Approved Plans and Supporting documents

Reference	Description	Author	Date
7263-R1 Rev 2	Geotechnical Report	AssetGeoEnviro	29/09/2023
2986	Stormwater Management Plan	Zimmerman Engineers	
S01-C	_	-	25/09/2023
S02-D			17/01/2024
S03-C			25/09/2023
S04-C			25/09/2023
S05-D			17/01/2024

A.8 Ancillary Aspects of Development (section 4.17(2) of the Act)

A.31 No Underpinning Works

B. BEFORE DEMOLITION WORK COMMENCES

Page 3 of 17



B.4 Erosion and Sediment Controls - Installation

B.7 Public Road Assets Prior to Any Work/Demolition

B.14 Payment of Security and Fees

Property Damage Security	y Deposit (S138)	\$57,530	No	T115

B. 16. Dilapidation Reports for Existing Buildings

Before any site work commences, dilapidation surveys and dilapidation reports must be conducted and prepared by a professional structural engineer for all buildings and/or structures that are located within the likely "zone of influence" of any excavation, dewatering and/or construction induced vibration as determined applicable by the structural engineer.

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

- a) No. 81 Bellevue Road
- b) No. 4 Fairweather Street

Where access is not granted to any adjoining properties to prepare the dilapidation report, the report must be based on a survey of what can be observed externally and it must be demonstrated, in writing, to the satisfaction of the Principal Certifier, that all reasonable steps were taken to obtain access.

The completed dilapidation reports must be submitted to the Principal Certifier for approval, and an approved copy of the reports must be submitted to Council with the Notice of Commencement prior to the commencement of any development work.

No less than two (2) days before any site work commences, neighbouring building owner(s) must be provided with a copy of the dilapidation report for their property(ies).

Notes:

- The dilapidation report will be made available to affected property owners on request and may be used by them in the event of a dispute relating to damage allegedly caused by the carrying out of the development.
- This condition cannot prevent neighbouring buildings being damaged by the carrying out of the development.
- 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.
- Council will not become directly involved in disputes between the developer, its contractors and the owners of neighbouring buildings.

Condition Reason: To establish and document the structural condition of adjoining properties for comparison as site work progresses and is completed and ensure neighbours and Council are provided with the dilapidation report.



B. 17. Dilapidation Reports for Public Infrastructure

Before any site work commences, to clarify the existing state of public infrastructure prior to the commencement of the development (including prior to any demolition), a dilapidation report, prepared by a chartered professional engineer, on Council's infrastructure within and near the development site must be prepared.

The dilapidation report must be submitted to Council prior to the commencement of any site work and include:

- a) closed circuit television/video inspection (in DVD format) and report of the public stormwater drainage system traversing the frontage of the site, and
- b) photographs showing any existing damage to the road pavement fronting the site.
- c) photographs showing any existing damage to the kerb and gutter fronting the site,
- d) photographs showing any existing damage to retaining walls within the footway or road,
- e) photographs showing any existing damage to street signs, heritage name plates, and historical items,
- f) the full name and signature of the Chartered Professional Engineer.

The report is to be supplied in both paper copy and electronic format in PDF. Photographs are to be in colour, digital, and date stamped.

The dilapidation report must specify (with supporting photographic/DVD evidence) the exact location and extent of any damaged or defective public infrastructure prior to the commencement of any site work. If the required report is not submitted, Council will assume there was no damage to any infrastructure in the immediate vicinity of the site prior to the commencement of any site work under this consent.

Notes:

- If a dilapidation report is not submitted as required by this condition, and damage is
 occasioned to public assets, which adjoin the site, Council will deduct from security
 any costs associated with remedying, repairing or replacing damaged public
 infrastructure.
- Nothing in this condition prevents Council making any claim against security held for this purpose.

Condition Reason: To establish and document the structural condition of public land for comparison as site work progresses and is completed and ensure Council is provided with the dilapidation report.

- B.18 Adjoining buildings founded on loose foundation materials
- B.21 Work (Construction) Zone Approval & Implementation

C. ON COMPLETION OF REMEDIATION WORK

Nil

Page 5 of 17



D. BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

13. Road and Public Domain Works

Before the issue of any construction certificate, a separate application under Section 138 of the Roads Act 1993 is to be made to, and be approved by Council, for the following infrastructure works. The infrastructure works must be carried out at the applicant's expense:

- a) The removal of all redundant vehicular crossings including layback and gutter and reinstatement into Council's standard kerb and gutter and nature strip in accordance with Council's Specification for Roadworks, Drainage and Miscellaneous Works and to the satisfaction of Council's Assets Engineers,
- b) The removal of the existing kerb and gutter and the construction of a new 5.4 metres wide vehicular crossing in accordance with Council's Crossing Specification, standard driveway drawing RF2_D and to the satisfaction of Council's Assets Engineers. The new vehicular crossing must be constructed at a right angle to the street kerb in plain concrete where the centreline of the new crossing must align with the centreline of the internal driveway at the property boundary. Note that splay crossing from the back of layback to the property boundary is not permitted. Design longitudinal surface profiles along each side/edge for the proposed driveway, starting from the road centreline to the parking slab must be submitted for assessment.
- c) The reconstruction of the existing 1.8m wide footpath for the full frontage of the site in Bellevue Road and Fairweather Street in accordance with Council's Specification, Council's standard drawing RF3 and to the satisfaction of Council's Assets Engineers. A maximum cross-fall of 3% must be provided for the footpath, graded from the property boundary towards the top of kerb. Note that an uniform longitudinal grade shall be provided for the footpath on the Bellevue Road frontage. Design longitudinal surface profile (scale 1:100) and cross sections (scale 1:50) at every 5 metres interval must be submitted for assessment,
- d) The removal of the existing bus stop (ID 202349) and the installation of a new bus stop. As part of the bus stop relocation process, the applicant shall liaise with Council's Traffic Team for the following requirements:
 - (i) Consultation with affected residents regarding the bus stop,
 - (ii) A 30m bus zone is installed for the new bus stop location,
 - (iii) The new bus stop must comply with *Disability Discrimination Act 1992* and Transport for New South Wales guidelines.

Note that the relocation of bus stop is required to be referred to Woollahra Traffic Committee for approval and the process can take up to 8 weeks. All costs associated with the bus stop relocation is to be borne by the applicant,

e) The construction of a new kerb inlet pit (KIP) with 1.8m precast lintel over the Council's existing underground drainage pipeline in Bellevue Road in accordance with Council's Specification for Roadworks, Drainage and

Page 6 of 17



Miscellaneous Works, Council's Standard Drawing DR1 and to the satisfaction of Council's Assets Engineers,

- f) The existing KIP located within the proposed vehicular crossing must be reconstructed with butterfly v-grates in accordance with Council's Specification for Roadworks, Drainage and Miscellaneous Works, Council's Standard Drawing DR1 and to the satisfaction of Council's Assets Engineers,
- g) The installation of a stormwater outlet pipe across the nature strip and discharging to the modified KIP must be in accordance with Council's Specification for Roadworks, Drainage and Miscellaneous Works and to the satisfaction of Council's Assets Engineers,
- h) The reinstatement of the existing, kerb and gutter and road pavement to Council's Specification for Roadworks, Drainage and Miscellaneous Works and to the satisfaction of Council's Assets Engineers,
- i) Where a grass verge exists, the balance of the area between the footpath and the kerb 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 Couch turf.

Before the issue of any construction certificate, the principal certifier must be provided with the original receipt(s) for the payment of all of the following security bonds and fees:

Description	Amount	Indexed	Council Fee Code
SECURITY under section 4.17(6) of the Environmental Planning and Assessment Act 1979			79
Infrastructure Works Bond - completing any public work required in connection with the consent.	\$ 59,500	No	T113
Infrastructure Works Bond – remedying any defects in any public work that arise within 6 months after the work is completed	\$ Nil	No	T113
INSPECTION FEES under section 608 of the Local Government Act 1993			
Public Road and Footpath Infrastructure Inspection Fee	\$ 645	No	T45
TOTAL SECURITY AND FEES	\$ 60,145		

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 any site works being undertaken, 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.

Notes:

- Road has the same meaning as in the Roads Act 1993.
- 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.
- Works or structures over, on or under public roads or footpaths are subject to sections 138, 139 and 218 of the Roads Act 1993 and specifically:
- Construction of driveways and/or new or alterations to footpath paving
- Alteration and/or extension to Council drainage infrastructure
- Alteration and/or addition of retaining walls
- · Pumping of water to Council's below ground stormwater system
- Installation of soil/rock anchors under the roadway
- · Installation of Stormwater outlet pipes across the nature strip
- 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. 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 and gutter, new gully pit showing clearly the connection point of site outlet pipe(s). 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

Page 8 of 17



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.

- 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 Woollahra DCP 2015 Chapter E2 Stormwater and Flood Risk Management.
- Temporary ground anchors may be permitted, in accordance with Council's "Rock Anchor Policy".
- Services: Prior to any excavation works, the location and depth of all public utility services (telephone, cable TV, electricity, gas, water, sewer, drainage, etc.) must be ascertained. The Applicant must be responsible for all public utility adjustment/relocation works, necessitated by the development work and as required by the various public utility authorities and/or their agents.
- All public domain works must comply with the latest version of Council's
 "Specification for Roadworks, Drainage and Miscellaneous Works" unless
 expressly provided otherwise by these conditions. This specification and the
 application form can be downloaded from www.woollahra.nsw.gov.au.
- When an application under the Roads Act is required, then four (4) weeks is to be allowed for assessment.
- An application must be made to Council by the person who paid the security for release of the securities held under section 4.17 of the Act.
- The securities will not be released until the Occupation Certificate has been 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.
- When determining whether the works within public land are satisfactory, Council
 will consider the ownership, construction quality, maintenance, operations, and
 public utility of such item/s.
- 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.

Condition Reason: To ensure the design of the road, footpaths, driveway crossings and public stormwater drainage works are detailed and approved under section 138 of the Roads Act 1993 and to ensure the works are completed to Council's satisfaction.

- D.25 Erosion and Sediment Control Plan Submissions & Approval
- D.36 Professional Engineering Details
- D.37 Engineer Certification



D 40. Geotechnical and Hydrogeological Design, Certification and Monitoring

Before the issue of the construction certificate, the applicant must submit, for approval by the Principal Certifier, a detailed geotechnical report prepared by a Geotechnical Engineer with National Engineering Register (NER) credentials in accordance with Chapter E2.2.10 of Council's DCP and Council's document "Guidelines for Preparation of Geotechnical and Hydrogeological Reports". The report must include 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 details of cut-off walls and/or similar controls 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 to below ground structures to prevent the entry of seepage water such that subsoil drainage/ seepage water is NOT collected and discharged to the kerb and gutter.
- 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 Appendix J including acceptable velocity of vibration (peak particle velocity),
 - will detect groundwater changes calibrated against natural groundwater variations,
 - details the location and type of monitoring systems to be utilised,
 - details the pre-set acceptable limits for peak particle velocity and ground water fluctuations.
 - details recommended hold points to allow for the inspection and certification of geotechnical and hydrogeological measures by the professional engineer, and
 - details a contingency plan.

Condition Reason: To ensure that geotechnical and hydrogeological impacts are appropriately managed.

Page 10 of 17



D.41 Ground Anchors

Vehicular Access and Parking Arrangement

Prior to issue of any Construction Certificate, Construction Certificate plans and specifications required by clause 139 of the *Regulation*, must include detailed architectural plans and specifications showing the following:

- a) Pursuant to Clause 3.2.4 of AS2890.1, a 2m x 2.5m pedestrian sight splay, clear of any obstructions to visibility, must be provided on both sides of the driveway exit. In this regard, any proposed structures (such as landscaping, retaining wall, front fence and driveway gate etc) located within these splay areas must be relocated/redesigned to prevent obstructions to visibility. Alternatively, exceptions to this requirement may be acceptable for this type of development where the height of any landscaping, retaining wall, solid front fence and driveway gate in these splay areas are limited to a maximum of 0.9m. These unobstructed sight splays must be clearly depicted on the drawings showing compliance with this requirement,
- b) Dimensions of the proposed off-street parking spaces must be clearly depicted on the architectural plans. In this regard, each parking space shall have minimum dimensions of 3m x 5.4m, clear of obstructions, to comply with AS2890.1. These required dimensions and the design envelope around parked vehicle as per Figure 5.2 of AS2890.1 are to be clearly depicted on the revised architectural plans,
- c) The maximum gradients within a parking space, measured parallel to the angle of parking shall be 5%, to comply with AS2890.1. Finished slab levels at all corners of the proposed parking spaces shall be depicted on the detailed plans.

The proposed off-street parking spaces and vehicular access shall be designed in compliance with AS/NZS 2890.1: Parking Facilities - Off-Street Car Parking.

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

The Principal Certifier 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.

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 4.15 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.

Condition Reason: To ensure parking facilities are designed in accordance with the Australian Standard.

Page 11 of 17



D 51. Stormwater Management Plan

Before the issue of any construction certificate, the applicant must submit, for approval by the Principal Certifier, detailed stormwater management plans prepared by a chartered professional civil engineer, which detail the following:

- a) General design in accordance with stormwater management plans, referenced 2986-Issue D, prepared by Zimmerman Engineers, dated 17/01/2024 other than amended by this and other conditions,
- b) The discharge of stormwater from the site, by direct connection, to the Council's existing kerb inlet pit. The discharge must be located within the frontage of the site. Only one stormwater outlet will be permitted,
- c) To prevent any back water effects, invert level of all rainwater tank's overflows must be set at a minimum of 600mm above the finished grate level of the modified kerb inlet pit,
- d) The provision of a minimum 450mm x 450mm boundary junction pit must be provided prior to discharging stormwater from the site to the street drainage system. The stormwater outlet pipe across the Council's property must have a minimum grade of 1% to comply with Council's DCP and AS3500.3,
- e) The installation of rainwater tank (RWT) with a minimum storage volume of 10m³ for each dwelling to comply with Chapter E2.2.4 of the Council's DCP. Runoff from all roof areas must be collected and directed to the required RWT for non-potable uses to both dwellings such as toilet flushing, laundry devices and garden irrigation etc. Overflow from the RWT must be directed to the boundary junction pit by gravity,
- f) All below ground structures are to be fully tanked such that subsoil drainage/seepage water is NOT collected and discharged to the kerb and gutter to comply with Chapter E2.2.5 of Council's DCP. Notation to this requirement must be clearly depicted on the drawings,
- g) Interceptor drain(s) at the site boundary to prevent stormwater flows from the site crossing the footpath.
- Dimensions of all drainage pits and access grates must comply with AS3500.3.
- i) Compliance with the objectives and performance requirements of the BCA,
- j) General compliance with the Council's Woollahra DCP 2015 Chapter E2 Stormwater and Flood Risk Management.

Rainwater Tank (RWT) Requirements

The minimum storage volume for the required rainwater tank (RWT) must be $10 \, \mathrm{m}^3$ for each dwelling.

The Stormwater Management Plan must also 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 Australian Government publication, Australian Rainfall and Run-off, 2019 edition or most current version thereof. It must include:

Page 12 of 17



- a) All pipe layouts, dimensions, grades, lengths and material specification.
- b) Location of proposed rainwater tanks.
- c) All invert levels reduced to Australian Height Datum (AHD).
- d) Location and dimensions of all drainage pits.
- e) Point and method of connection to Councils drainage infrastructure.
- f) Overland flow paths over impervious areas.

Rainwater Reuse System Details:

- a) Any potential conflict between existing and proposed trees and vegetation.
- b) Internal dimensions and volume of the proposed rainwater storage.
- c) Plans, elevations and sections showing the rainwater tanks, finished surface level and adjacent structures.
- d) Details of access and maintenance facilities.
- e) Construction and structural details of all tanks and pits and/or manufacturer's specifications for proprietary products.
- f) Details of the emergency overland flow-path (to an approved Council drainage point) in the event of a blockage to the rainwater tanks

For the proposed stormwater connection to the Council's underground drainage system, separate approval under Section 138 of the Roads Act 1993 must be obtained from Council for those works before 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 (2012).

Notes:

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

Condition Reason: To ensure that site stormwater is disposed of in a controlled and sustainable manner.

E. BEFORE BUILDING WORK COMMENCES

E.14 Erosion and Sediment Controls - Installation

F. DURING BUILDING WORK

- F.7 Public Footpaths Safety, Access and Maintenance
- **F.11 Maintenance of Environmental Controls**
- F.12 Compliance with Geotechnical/Hydrogeological Monitoring Program
- F.13 Support of Adjoining Land and Buildings
- **F.14 Vibration Monitoring**
- F.15 Erosion and Sediment Controls Maintenance
- F.17 Disposal of Site Water during Construction
- F.19 Site Cranes

Page 13 of 17



- F.20 Check Surveys boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum
- F.24 Compliance with Council's Specification for Roadworks, Drainage and Miscellaneous Works, Road Works and, Work within the Road and Footway

F 30. Protection of Street Name Inlays

While site work is being carried out, the existing heritage listed street name inlays in the footpath along Bellevue Road and Fairweather Street adjoining the development site are not to be removed or damaged. Appropriate protective measures must be implemented in consultation with Council's Engineering Services staff to ensure the protection of the street name inlays at all times during the course of construction.

Condition Reason: To preserve the cultural heritage of the Woollahra Municipality

F.33 Shoring and Adequacy of Adjoining Property

G. BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

- G.7 Commissioning and Certification of Systems and Works
- G.9 Commissioning and Certification of Public Infrastructure Works
- G.29 Works within Public Land (including Council, State or Federal owned land or property)

G 30. Dilapidation Report for Public Infrastructure Works

Before the issue of an occupation certificate for the whole of the building, a follow up dilapidation report, prepared by a chartered professional engineer, on Council's infrastructure within and near the development site upon completion of the work must be submitted to Council.

The dilapidation report must include:

- a) closed circuit television/video inspection (in DVD format) of public stormwater drainage system traversing the frontage of the site, and
- b) photographs showing any existing damage to the road pavement fronting the site.
- photographs showing any existing damage to the kerb and gutter fronting the site,
- d) photographs showing any existing damage to retaining walls within the footway or road,
- e) photographs showing any existing damage to street signs, heritage name plates, and historical items,
- f) the full name and signature of the professional engineer.

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

Page 14 of 17



Before the issue of an occupation certificate for the whole building, written correspondence must be obtained from Council attesting to this condition being appropriately satisfied, and be provided to the Principal Certifier.

Notes:

If the dilapidation report required by this condition is not provided and damage is
occasioned to public assets adjoining the site Council will deduct from security any
costs associated with remedying, repairing or replacing damaged public
infrastructure. Nothing in this condition prevents Council making any claim against
security held for this purpose.

Condition Reason: To ensure that any damage to public infrastructure is identified and rectified prior to the occupation of the whole building.

G 32. Positive Covenant and Works-As-Executed Certification of Stormwater Systems

Before the issue of an occupation certificate for the whole of the building, and on the completion of construction work, stormwater drainage works are to be certified by a professional engineer with works-as-executed drawings supplied to the Principal Certifier detailing:

- a) compliance with conditions of development consent relating to stormwater,
- b) the structural adequacy of the rainwater tanks,
- c) that all below ground structures are fully tanked and subsoil drainage/seepage water is NOT collected and discharged into the kerb and gutter in accordance with the approved stormwater drawings,
- d) that the invert level of all rainwater tank overflows have been set at a minimum of 600mm above the finished level of the receiving kerb inlet pit,
- e) that a rainwater tank with minimum storage of 10m³ for each dwelling has been constructed in accordance with the approved stormwater plans,
- f) that the as-built rainwater retention and reuse system has been plumbed into both dwellings including all toilet, laundry and garden irrigation etc.,
- g) that only one stormwater outlet pipe has been constructed in accordance with the approved stormwater plans,
- h) that the works have been constructed in accordance with the approved design and will provide the retention storage volume and attenuation in accordance with the submitted calculations,
- i) pipe invert levels and surface levels to Australian Height Datum, and
- j) contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.

A positive covenant under section 88E of the Conveyancing Act 1919 must be created on the title of the subject property, providing for the on-going maintenance of the rainwater retention and reuse system and including any pumps and sumps incorporated in the development. The wording of the Instrument must be in accordance with Council's standard format and the Instrument must be registered with the NSW Land Registry Services. The person with the benefit of this consent must reimburse Council's reasonable expenses incurred in the drafting, negotiation and registration of the covenant



Notes:

- The required wording of the Instrument can be downloaded from Council's website www.woollahra.nsw.gov.au. The PC must supply a copy of the Works As Executed plans to Council together with the occupation certificate.
- The occupation certificate for the whole of the building must not be issued until this condition has been satisfied.

Condition Reason: To ensure the certification and ongoing maintenance of the stormwater system prior to the occupation of the whole building.

H. OCCUPATION AND ONGOING USE

H 29. Ongoing Maintenance of the Rainwater Retention and Reuse System

During the occupation and ongoing use, in accordance with this condition and any positive covenant, the person with the benefit of this consent must:

- a) Permit stormwater to be temporarily retained and reused by the System;
- b) Keep the system clean and free of silt rubbish and debris.
- c) Maintain renew and repair as reasonably required from time to time the whole or part of the system so that it functions in a safe and efficient manner
- d) Carry out the matters referred to in paragraphs (b) and (c) at the Owners expense.
- e) Not make any alterations to the system or elements thereof without prior consent in writing of the Council and not interfere with the system or by its act or omission cause it to be interfered with so that it does not function or operate properly.
- f) Permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the land with regard to compliance with the requirements of this covenant.
- g) Comply with the terms of any written notice issued by Council in respect to the requirements of this clause within the time stated in the notice.
- h) Where the Owner fails to comply with the Owner's obligations under this covenant, permit the Council or its agents at all times and on reasonable notice at the Owner's cost to enter the land with equipment, machinery or otherwise to carry out the works required by those obligations.

The owner:

- a) Indemnifies the Council from and against all claims, demands, suits, proceedings or actions in respect of any injury, damage, loss, cost, or liability (Claims) that may be sustained, suffered, or made against the Council arising in connection with the performance of the Owner's obligations under this covenant except if, and to the extent that, the Claim arises because of the Council's negligence or default; and
- b) releases the Council from any Claim it may have against the Council arising in connection with the performance of the Owner's obligations under this covenant except if, and to the extent that, the Claim arises because of the Council's negligence or default.

Page 16 of 17



Notes:

• This condition is supplementary to the owner(s) obligations and Council's rights under any positive covenant.

Condition Reason: To ensure that owners are aware of maintenance requirements for their stormwater systems.

I. BEFORE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

Nil



2 April 2024

REFERRAL RESPONSE - TREES AND LANDSCAPING

FILE NO: Development Applications: 278/2023/1

ADDRESS: 79 Bellevue Road BELLEVUE HILL 2023

PROPOSAL: Demolition of existing building and construction of new dual

occupancy development with associated landscaping and strata sub-

division

FROM: Sam Knight

TO: Mr W Perdigao

1. ISSUES

None.

2. DOCUMENTATION

I refer to the following documents received for this report:

- Survey Plan, drafted by Urban Surveying, dated 20 April 2023
- Architectural Drawings, drawn by Architects Ink, dated 29 August 2023
- Arboricultural Impact Assessment Report, written by NSW Trees, dated 10 July 2023
- Amended Landscape Plans, designed by Zenith Landscape Designs, dated 25 March 2024

A site inspection was carried out on 27 October 2023.

3. RELEVANT CONTROLS

- Woollahra Local Environment Plan 2014
- Woollahra Development Control Plan 2015
- Woollahra Street Tree Master Plan 2014 Part 1, Part 2 (Precinct Plans), Part 3 (appendices)
- Significant Tree Register 1991 Volume 1 Significant Trees Under Private Ownership, Volume 2 Significant Trees Under Private Ownership, Volume 3 Significant Trees, Volume 4 Significant Trees in Public Parks
- The comments and recommendations within this Referral Response have taken into consideration the guidelines established within Australian Standard AS 4373 – Pruning of amenity trees and Australian Standard AS 4970 – Protection of trees on development sites

Page 1 of 16



 Apartment Design Guide – Tools for improving the design of residential apartment development, Part 4, 4P – Planting on Structures, written by NSW Department of Planning, Industry and Environment, dated July 2015

4. SUMMARY

The proposal is supported subject to the below conditions being included into the DA consent.

5. COMMENTS

The Tree and Landscape team provided detailed comments on the 2 November 2023 in relation to six (6) trees outside the site that would be impacted by the proposal.

Provided the trees are protected and tree sensitive construction methods are implemented during the works, the trees are not expected to be adversely impacted. Tree protection measures required during the works are detailed in the below conditions.

Canopy Cover

it is noted that amended Landscape Plans have been submitted in response to issues previously raised by the Tree and Landscape team about insufficient canopy cover which did not meeting the DCP requirement.

Additional tree planting has been included within the site that will now achieve 176.68m² or 35.2% canopy cover which satisfies the DCP requirements.

6. RECOMMENDATIONS

Council's Tree and Landscape Officer has determined that the development proposal is satisfactory in terms of tree preservation and landscaping, subject to compliance with the following Conditions of Consent.

A. GENERAL CONDITIONS

A. 1. Approved Plans and Supporting Documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with both the architectural plans to which is affixed a Council stamp "Approved" and supporting documents listed below unless modified by any following condition.

Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author	Date
AIA-LEV	Arboricultural Impact Assessment	NSW Trees	10/7/23
07/23	Report		
L01, L02,	Landscape Plans – Rev B	Zenith	25/3/24
L03, L04		Landscape	
		Design	

Notes:

 Warning to Principal Certifier – You must always insist on sighting the original Council stamped approved plans. You must not rely solely upon the plan reference

Page 2 of 16



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 plans.

 These plans and supporting documentation may be subject to conditions imposed under section 4.17(1)(g) of the Act modifying or amending the development.

Condition Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

Standard Condition A.2 (Autotext 2A)

A. 2. Tree Preservation and Landscaping Works

While site work is being carried out, all landscape works must be undertaken in accordance with the approved landscape plan, arborist report, tree management plan and transplant method statement as applicable.

· Trees on Council land:

Council Ref No	Species	Location	Dimension (metres)	Tree value
1	Melaleuca quinquenervia	Street tree – Bellevue Rd	9 x 5	\$15,000
2	Melaleuca quinquenervia	Street tree – Bellevue Rd	9 x 5	\$15,000
3	Callistemon viminalis	Street tree – Fairweather Street	6 x 6	\$8000
4	Callistemon viminalis	Street tree – Fairweather Street	8 x 5	\$8000
5	Agonis flexuous	Street tree – Fairweather Street	6 x 8	\$10,000

The tree/s required to be retained must appear coloured green on the Construction Certificate plans.

Condition Reason: To ensure all landscape works are undertaken in accordance with the approved plans and documents.

Standard Condition A.22 (Autotext 22A)

B. BEFORE DEMOLITION WORK COMMENCES

В.	1.	Payment of Security and Fees					
		Prior to any site works, the following security and fees must be paid in full:					
		Description	Amount	Indexed	Council Fee Code		
		SECURITY under section 4.17(6) of the Environmental Planning and Assessment Act 1979					

Page 3 of 16



Tree Damage Security Deposit – making good any damage caused to any public tree	\$56,000	No	T114	
INSPECTION FEES under section 608 of the Local Government Act 1993				
Public Tree Management Inspection Fee	\$231.30	No	T95	
Security Deposit Administration Fee	\$225.00	No	T16	
TOTAL SECURITY AND FEES	\$ <insert></insert>			

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 <-- ### Invalid Field Definition ###,
- 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 any site works being undertaken, 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.

Notes

- An application must be made to Council by the person who paid the security for release of the securities held under section 4.17 of the Act.
- The securities will not be released until the Occupation Certificate has been 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.

Page 4 of 16



 The Refund of Security Bond Application form can be downloaded from www.woollahra.nsw.gov.au

Condition Reason: To ensure any relevant security and fees are paid.

Standard Condition B14 (Autotext 14B)

B. 2. Establishment Tree Protection Measures within the Tree Protection Zones (TPZ)

Prior to any site works, tree protection measures must be established around all trees to be retained in accordance with Section 4 of the Australian Standard Protection of Trees on Development Sites (AS 4970).

The Tree Protection Zones must be calculated in accordance with Section 3 of the Australian Standard Protection of Trees on Development Sites (AS 4970).

A Construction Site Management Plan, which clearly details the tree protection measures, must be prepared before the issue of a construction certificate. The tree protection measures must comply with the following requirements;

a) Tree Protection Fencing:

Council Ref No	Species	Tree Location	Fence Radius from Centre of Trunk (Metres)*
1	Melaleuca quinquenervia	Street tree – Bellevue Rd	Edge of garden & footpath
2	Melaleuca quinquenervia	Street tree – Bellevue Rd	Edge of garden & footpath
3	Callistemon viminalis	Street tree – Fairweather Street	Edge of garden & footpath
4	Callistemon viminalis	Street tree – Fairweather Street	Edge of garden & footpath
5	Agonis flexuous	Street tree – Fairweather Street	3m

Where this condition relates to street trees, and the fence cannot be placed at the specified radius, the fencing is to be positioned so that the entire verge (nature strip) area in front of the subject property, excluding existing driveways and footpaths, and bus stops is protected.

Where this condition relates to trees on private property, the radial distance of fencing must be positioned only within the subject property relating to the development consent.

b) Tree Protection Zones must be fenced with a 1.8 metre high chainmesh or weldmesh fence and secured to restrict access. The fence must be established prior to any materials being bought onto the site and before the commencement of works including demolition. The area within the fence must be mulched and the mulch layer maintained to a depth of 75mm. The soil within the TPZ area must be kept in a moist condition for the duration of the construction works. Unless approved by the site arborist there must be no access within the TPZ area.

Page 5 of 16



- c) Signs identifying the Tree Protection Zone area must be erected on each side of the protection fence indicating the existence of a TPZ area. Signage must be visible from within the development site.
- d) No excavation, construction activity, grade changes, storage of materials, stockpiling, siting of works sheds, preparation of mixes or cleaning of tools is permitted within Tree Protection Zones, unless specified in this consent.
- e) Temporary access within the TPZ area for pedestrian and machinery
 movements must only be permitted with the approval of the site arborist or
 unless specified in this consent.
- f) The site supervisor must be made aware of all tree protection requirements associated with these conditions of consent by the project arborist. Any subsequent site personnel and contractors to the site must be made aware of all tree protection requirements by the site foreman.
- g) The project arborist must provide written certification of compliance to the Principal Certifier with the above conditions.

Condition Reason: To ensure the protection of existing trees

Standard Condition B.5 (Autotext 5B)

B. 3. Construction Management Plan Arborist Review

Prior to any site works, the Construction Management Plan must be reviewed and certified by the Project Arborist confirming that appropriate tree protection measures are implemented. The Construction Management Plan must be prepared in accordance with all tree protection measures specified within this consent.

The plan must address:

- a) Drawings and method statement showing details and the location of hoarding and scaffold and any pruning required to accommodate the hoarding and scaffolding;
- b) The movement and positioning of heavy machinery, lifting cranes, pier drilling gantry etc.;
- Site construction access, temporary crossings and movement corridors on the site defined;
- d) Contractors car parking;
- e) Phasing of construction works;
- f) The space needed for all foundation excavations and construction works;
- g) All changes in ground level;
- h) Space for site sheds and other temporary structures such as toilets;
- Space for sorting and storing materials (short or long term), spoil and fuel and the mixing of cement and concrete; and
- j) The effects of slope on the movement of potentially harmful liquid spillages towards or into tree protection areas.

Page 6 of 16



Condition Reason To ensure the Construction Management Plan incorporates measures for the protection of existing trees.

Standard Condition B.28 (Autotext 28B)

B. 4. Arborists Documentation and Compliance Checklist

Prior to any site works, the project arborist must provide written certification that all tree protection measures and construction techniques relevant to this consent are implemented. Documentation for each site visit must include:

- A record of the condition of trees to be retained prior to and throughout development.
- Recommended actions to improve site conditions and rectification of noncompliance.
- Recommendations for future works which may impact the trees.

All compliance certification documents must be kept on site.

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

Stage of arboricultural inspection and supervision	Compliance documentation and photos must include
Prior to any site works	Project Arborist to hold pre construction site meeting with the principal contractor to discuss methods and importance of tree protection measures and resolve any issues in relation to feasibility of tree protection requirements that may arise. Project Arborist to mark all trees approved for removal under DA consent.
	The project arborist must install or supervise the installation of tree protection fencing, trunk protection, ground protection and traffic height control beam.

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

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

Condition Reason To ensure that written certification that all tree protection measures and construction techniques relevant to this consent have been implemented.

Standard Condition B.29 (Autotext 29B)

B. 5. Permissible work within Tree Protection Zones

Prior to any site works, the following works are permissible within the Tree Protection Zone:

Page 7 of 16



Counci I Ref No	Species	Radius from Centre of Trunk (Metres)	Approved works
1	Melaleuca quinquenervia	4m	Landscape works
2	Melaleuca quinquenervia	5.8m	Landscape works
3	Callistemon viminalis	2.9m	Landscape works
4	Callistemon viminalis	2.9m	Landscape works
5	Agonis flexuous	8.9m	Landscape works

The project arborist must provide written certification of compliance to the Principal Certifier with the above condition.

Condition Reason To establish the works which are permissible within the Tree Protection Zones.

Standard Condition B.30 (Autotext 30B)

C. ON COMPLETION OF REMEDIATION WORK

Nil.

D. BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

D 1. Tree Protection Plan and Specification

Before the issue of any construction certificate, the Principal Certifier must ensure the measures for tree protection detailed in this consent are in place. The construction certificate plans and specifications must show the following information:

- a) Trees to be numbered and coloured in accordance with these conditions:
 - shaded green where required to be retained and protected
 - shaded red where authorised to be removed
 - shaded yellow where required to be transplanted
 - shaded blue where required to be pruned
- b) Tree Protection Plan and Specification prepared by an arborist with a minimum qualification of AQF 5 including the following:
 - Tree Location Plan (to scale) based on/overlaid with the approved plans, indicating trees to be retained, removed or transplanted, and the location of tree protection zones (TPZ) and structural root zones (SRZ) of trees to be retained and protected.
 - The plan must also include site specific tree protection recommendations such as fencing, ground and trunk protection and other protection devices.
 - Tree Protection Specification (written document) with tree protection requirements included from this consent and in accordance with sections 4 & 5 of AS4970, providing guidance for the implementation of tree protection methods.
 - To minimise construction damage, the plan must show specific areas requiring works to be done under direct supervision of the project arborist.

Page 8 of 16



 References to applicable tree management plan, arborists report or transplant method statement.

This plan must be kept on site until the issue of the occupation certificate for the whole building.

Condition Reason: To ensure the construction certificate includes the approved tree management details, and all measures are implemented.

Standard Condition D.30 (Autotext 30D)

E. BEFORE BUILDING WORK COMMENCES

Nil.

F. DURING BUILDING WORK

F 1. Tree Preservation

While site work is being carried out, all persons must comply with Chapter E.3 – *Tree Management* of Council's Development Control Plan (DCP) 2015, other than where varied by this consent. The DCP applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.

General Protection Requirements:

- a) The tree protection measures must be maintained during all development work unless otherwise specified within these conditions of consent.
- b) Excavation must cease where tree roots with a diameter exceeding 50mm are exposed. The principal contractor must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.
- 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 arborist. The arborist is to supply a detailed report to the appointed certifier.

Trees must be pruned in accordance with Australian Standard AS 4373 "Pruning of Amenity Trees" and WorkCover NSW Code of Practice Amenity Tree Industry.

Condition Reason: To protect trees during the carrying out of sitework.

Standard Condition F.8 (Autotext 8F)

F 2. Arborists Documentation and Compliance Checklist

While site work is being carried out, the project arborist must provide written certification that all tree protection measures and construction techniques relevant to this consent have been implemented. Documentation for each site visit must include:

Page 9 of 16



- a) a record of the condition of trees to be retained prior to and throughout development,
- b) recommended actions to improve site conditions and rectification of noncompliance, and
- c) recommendations for future works which may impact the trees.

All compliance certification documents must be kept on site by the site Supervisor.

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

Stage of arboricultural inspection and supervision	Compliance documentation and photos must include
While site work is carried out	 The project arborist must supervise all demolition and excavation works within the Tree Protection Zones or specified distances of nominated trees listed in this consent.
	The project arborist must supervise the demolition of the existing boundary wall within the TPZ of trees 1 – 5. The condition of exposed roots must be managed and documented.
	The project arborist must supervise the installation of the new boundary wall within the TPZ of trees 1 - 5, documenting the condition of roots and soil.
	The project arborist must ensure pier holes within the Tree Protection Zones or specified distances of nominated trees listed in this consent are positioned to avoid the severance of and damage to roots greater than 50mm diameter.
	The project arborist must inspect the installed irrigation system to plants in garden beds. The arborist must certify there is an appropriate distribution of water to planted and existing trees.
	Project Arborist to approve relocation of tree protection for landscaping. All landscaping works within the TPZ of trees to be retained are to be undertaken in consultation with the project Arborist to minimise the impact to trees.
	Regular inspections as indicated in the Tree Management Plan.

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

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

Condition Reason: To ensure that all tree protection measures and construction techniques relevant to this consent have been implemented.

Standard Condition F.45 (Autotext 45F)

F 3. Replacement/Supplementary trees which must be planted

Page 10 of 16



While site work is being carried out, any replacement or supplementary tree must be grown in accordance with Tree stock for landscape use (AS 2303). The replacement trees must be planted in deep soil landscaped area and maintained in a healthy and vigorous condition. If the replacement tree is found to be faulty, damaged, dying or dead before it attains a size whereby it becomes a prescribed tree in accordance with Chapter E.3 of Council's Development Control Plan, it must be replaced with another of the same species, which complies with the approved Landscape Plans.

The project arborist must document compliance with the above condition.

Condition Reason: To ensure the provision of appropriate replacement planting.

Standard Condition F.46 (Autotext 46F)

F 4. Hand excavation within tree root zones

While site work is being carried out, demolition of underground structures such as existing footings and approved excavation undertaken within the specified radius from the trunks of the following trees must be carried out by hand.

Council Ref No	Species	Location	Radius from centre of trunk (metres)
1	Melaleuca quinquenervia	Street tree – Bellevue Rd	4m
2	Melaleuca quinquenervia	Street tree – Bellevue Rd	5.8m
3	Callistemon viminalis	Street tree – Fairweather Street	2.9m
4	Callistemon viminalis	Street tree – Fairweather Street	2.9m
5	Agonis flexuous	Street tree – Fairweather Street	8.9m
6	Lagerstroemia indica	4 Fairweather Street	7.3m

Small hand tools such as mattocks or using compressed air or water jetting only must be used. Roots with a diameter equal to or in excess of 50mm must not be severed or damaged unless approved in writing and documented by the project arborist.

Mechanical excavation is permitted beyond this radius when root pruning by hand along the hand excavated perimeter line is completed. Exposed roots to be retained must be covered with mulch or a geotextile fabric and kept in a moist condition and prevented from drying out.

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 5 or recognised equivalent).

The project arborist must document compliance with the above condition.

Condition Reason: To ensure demolition and excavation works would not adversely impact upon the health of existing trees.

Page 11 of 16



Standard Condition F.50 (Autotext 50F)

5. Footings in the vicinity of trees

While site work is being carried out, footings for any structure within the specified radius from the trunks of the following trees must be supported using an isolated pier and beam system.

Council Ref No	Species	Location	Radius from centre of trunk (metres)
1	Melaleuca quinquenervia	Street tree – Bellevue Rd	4m
2	Melaleuca quinquenervia	Street tree – Bellevue Rd	5.8m
3	Callistemon viminalis	Street tree – Fairweather Street	2.9m
4	Callistemon viminalis	Street tree – Fairweather Street	2.9m
5	Agonis flexuous	Street tree – Fairweather Street	8.9m

Excavations for the installation of piers must be located so that no tree root with a diameter equal to or in excess of 50mm is severed or damaged. The smallest possible area must be excavated which allows construction of the pier. In consultation with the project engineer the piers must be offset a minimum 100mm from any root equal to or in excess of 50mm to accommodate future growth. The beam is to be placed a minimum of 100mm above ground level and is to be designed to bridge all tree roots with a diameter equal to or in excess of 50mm.

The project arborist must document compliance with the above condition.

Condition Reason: To ensure the proposed footings would not adversely impact upon the health of existing trees.

Standard Condition F.51 (Autotext 51F)

F 6. Installation of stormwater pipes and pits in the vicinity of trees

While site work is being carried out, excavation for the installation of stormwater pipes and pits within the specified radius from the trunks of the following trees must be carried out by hand.

Council Ref No	Species	Location	Radius from centre of trunk (metres)
1	Melaleuca quinquenervia	Street tree – Bellevue Rd	4m
2	Melaleuca quinquenervia	Street tree – Bellevue Rd	5.8m
3	Callistemon viminalis	Street tree – Fairweather Street	2.9m
4	Callistemon viminalis	Street tree – Fairweather Street	2.9m
5	Agonis flexuous	Street tree – Fairweather Street	8.9m

Page 12 of 16



Any roots equal to or greater than 50mm diameter uncovered for the installation of stormwater pipes and pits must not be severed and remain in situ bridging across the excavated trench. Pipes must be guided under any roots equal to or greater than 50mm bridging across excavated trenches. Stormwater pits must be positioned so that no roots equal to or greater then 50mm diameter are severed.

The project arborist must document compliance with the above condition.

Condition Reason: To ensure the installation of the stormwater works would not adversely impact upon the health of existing trees.

Standard Condition F.52 (Autotext 52F)

G. BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

G 1. Amenity Landscaping

Before the issue of any occupation certificate, all approved amenity landscaping (screen planting, soil stabilisation planting, etc.) and replacement/supplementary tree planting must be installed in accordance with the approved plans and documents and any relevant conditions of consent.

Condition Reason: To ensure that the environmental impacts of the development are mitigated by approved landscaping prior to the occupation of the development.

Standard Condition G.6 (Autotext 6G)

G 2. Landscaping

Before the issue of any occupation certificate, the Principal Certifier and Council must be provided with a works-as-executed landscape plan and certification from a qualified landscape architect/designer, horticulturist and/or arborist as applicable to the effect that the landscaping and replacement/supplementary tree planting works comply with this consent.

Condition Reason: To ensure that all landscaping work is completed prior to occupation.

Standard Condition G.26 (Autotext 26G)

G 3. Arborists Documentation and Compliance Checklist – Prior to any occupation certificate

Before the issue of any occupation certificate, the project arborist must provide written certification that all tree protection measures and construction techniques relevant to this consent have been implemented. Documentation for each site visit must include:

 a) A record of the condition of trees to be retained prior to and throughout development.

Page 13 of 16



- b) Recommended actions to improve site conditions and rectification of noncompliance.
- c) Recommendations for future works which may impact the trees.

All compliance certification documents must be kept on site by the site Supervisor.

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

Stage of arboricultural inspection and supervision	Compliance documentation and photos must include
Prior to the issue of any occupation certificate	Ensure all trees conditioned to be planted as part of this consent have been planted in accordance with the details prescribed in this consent.

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

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

Condition Reason: To ensure that all tree protection measures and construction techniques relevant to this consent are implemented.

Standard Condition G.34 (Autotext 34G)

G 4. Arborists Documentation and Compliance Checklist – Prior to an occupation certificate for the whole building

Before the issue of any occupation certificate for the whole of the building, the project arborist must provide written certification that all tree protection measures and construction techniques relevant to this consent have been implemented. Documentation for each site visit must include:

- a) A record of the condition of trees to be retained prior to and throughout development.
- Recommended actions to improve site conditions and rectification of noncompliance.
- c) Recommendations for future works which may impact the trees.

All compliance certification documents must be kept on site.

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

Before the issue of any occupation certificate for the whole of the building • The project arborist must supervise the dismantling of tree protection measures • After all demolition, construction and landscaping works are complete the project Arborist must assess that the subject trees have been retained in the same condition and vigour. If changes to condition are identified the project Arborist must provide recommendations for	Stage of arboricultural inspection and supervision	Compliance documentation and photos must include
remediation.	occupation certificate for the	tree protection measures After all demolition, construction and landscaping works are complete the project Arborist must assess that the subject trees have been retained in the same condition and vigour. If changes to condition are identified the project Arborist must provide recommendations for

Page 14 of 16



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

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

Condition Reason: To ensure that all tree protection measures and construction techniques relevant to this consent are implemented.

Standard Condition G.35 (Autotext 34G)

H. OCCUPATION AND ONGOING USE

H 1. Maintenance of Landscaping

During the occupation and ongoing use, 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.

Notes:

- 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 must have regard to the amenity impact of trees upon the site and neighbouring land.

Condition Reason: To ensure that the landscaping design intent is not eroded over time by the removal of landscaping or inappropriate exotic planting.

Standard Condition H.25 (Autotext 25H)

I. BEFORE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

Nil.

J. BEFORE SUBDIVISION WORK COMMENCES

Nil.

K. BEFORE ISSUE OF A SUBDIVISION CERTIFICATE (subdivision works)

Nil.

L. BEFORE ISSUE OF A SUBDIVISION CERTIFICATE (no subdivision works)

Nil.

M. BEFORE ISSUE OF A STRATA CERTIFICATE

Nil.

Sam Knight 9 March 2024

Page 15 of 16



30 November 2023

REFERRAL RESPONSE - HERITAGE

FILE NO: Development Applications: 278/2023/1

ADDRESS: 79 Bellevue Road BELLEVUE HILL 2023

PROPOSAL: Demolition of existing building and construction of new dual

occupancy development with associated landscaping and strata sub-

division

FROM: Vanessa Wood

TO: Mr W Perdigao

1. DOCUMENTATION

The following documentation provided by the applicant has been examined for this referral response:

- Drawing set by Architects Ink, dated 5 July 2023 (updated 29 August 2023), and numbered A100 – H2
 - o Including External Finishes Schedule
 - Including photomontage
- Demolition Report by John Oultram Heritage and Design, dated September 2023
- Statement of Environmental Effects by aSquare Planning, dated August 2023
- Survey plan by Architects Ink, dated May 2023
- Aboriginal Heritage Impact Assessment by Dominic Steel Consulting Archaeology, dated October 2023
- Geotechnical Investigation Report by AssetGeoEnviro, dated 29 September 2023

2. SITE INSPECTION / RESEARCH

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

Review of the following documents and photographic evidence:

- Council's property system, to establish dates of earlier building and development applications for the subject and surrounding properties.
- Council's photography files relevant to the immediate area
- Council's heritage inventory sheets
- Council's aerial photography and mapping database
- Google Maps street view

3. STATUTORY AND POLICY DOCUMENTS

The following statutory and policy documents are relevant to the application:

- National Parks & Wildlife Act 1974
- Woollahra LEP 2014
- Woollahra DCP 2015

4. ASSESSMENT OF HERITAGE IMPACT

Compliance with the relevant legislative framework and planning controls

Page 1 of 7



5. SIGNIFICANCE OF SUBJECT PROPERTY/TO THE CONSERVATION AREA

The property is not a listed heritage item and is not located within a Heritage Conservation Area.

The Heritage Demolition Report provides the following description of the subject property:

79 Bellevue Road is a single storey (with undercroft) house set on an irregular site to the corner of Bellevue Road and Fairweather Street. The house is of rather indeterminate style though with Inter War Georgian Revival style overtones and has been altered.

The Heritage Demolition Report provides the following conclusion:

Based in the above assessment we consider that the current house is not at a level of significance that would preclude its demolition. The house has been altered and the has no features of note.

The Heritage Demolition Report submitted with the development application includes historical research on the development of the property over time. The construction of the dwelling is not associated with any known prominent architect and has no distinctive landmark qualities or other features that would make it potentially significant or rare. The report has assessed the potential heritage significance of the existing dwelling and has concluded that the property does not meet the criteria for identification as a place of local significance.

Analysis of previous DAs associated with the dwelling indicate that various alteration and additions to the dwelling have diminished its integrity. This includes a rear addition, reconfiguration of the original roof form and infill of the side verandah.

Research indicates that the first owner of the property was William Sidney Falconer Corner, Chief engineer of NSW Tramways Department. Research indicates that while he was a respected figure, the association with the dwelling would not warrant its heritage listing at a local level. Corner passed away at the dwelling from a stroke in 1953.¹

Considering the above, the findings of the Heritage Demolition Report are considered to be accurate

National Parks and Wildlife Act 1974

The site is in an area of Potential Aboriginal Heritage Sensitivity. Therefore, an Aboriginal Heritage Impact Assessment was required as part of the DA to ascertain whether potential Aboriginal cultural heritage will be impacted by the proposal.

Anyone proposing to carry out an activity that may harm an Aboriginal object or a declared Aboriginal place must investigate, assess and report on the harm that may be caused by the activity they propose.

The 'Due Diligence Code of Practice for the protection of Aboriginal Objects in NSW' (2010) prescribes that an extensive search must be undertaken if AHIMS has shown that there are Aboriginal sites or places in the search area.

Page 2 of 7

¹ https://familypedia.fandom.com/wiki/William Sydney Falconer Corner (1877-1953), https://trove.nla.gov.au/newspaper/article/167378534



The Office of Environment & Heritage (OEH) disclosures for AHIMS searches are copied below:

- You must do an extensive search if AHIMS has shown that there are Aboriginal sites or places recorded in the search area.
- If you are checking AHIMS as a part of your due diligence, refer to the next steps of the Due Diligence Code of practice.
- The information derived from the AHIMS search is only to be used for the purpose for which it was requested.
- AHIMS records information about Aboriginal sites that have been provided to Office of Environment and Heritage and Aboriginal places that have been declared by the Minister;
- It is not be made available to the public.
- Information recorded on AHIMS may vary in its accuracy and may not be up to date.
- Location details are recorded as grid references and it is important to note that there may be errors or omissions in these recordings.
- Some parts of New South Wales have not been investigated in detail and there may be fewer records of Aboriginal sites in those areas. These areas may contain Aboriginal sites which are not recorded on AHIMS.
- Aboriginal objects are protected under the National Parks and Wildlife Act 1974 even if they are not recorded as a site on AHIMS.

The Applicant has provided an Aboriginal Heritage Impact Assessment (the 'report') prepared in accordance with the 'Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW' published by the Department of Environment, Climate Change and Water and dated 13 September 2010 and in accordance with Attachment 10 of Council's DA guide available at: https://www.woollahra.nsw.gov.au/__data/assets/pdf_file/0009/248238/DA-Guide-Attachment-10-Aboriginal-Heritage-Impact-Assessment.pdf

Dominic Steele is a qualified Aboriginal heritage consultant who has inspected the property on 21 September 2023 date on foot. Steven Ella of the La Perouse Local Aboriginal Land Council also attended the inspection, evidencing consultation.

There has been consideration of relevant previous Aboriginal heritage investigations, as detailed in Section 3 of the report.

The AHIMS of the OEH was consulted on 11 September 2023 and the extensive search is attached at Attachment C of the report. None of these sites are within the study area, or a 50m buffer of the study area.

The report identifies the following potential for unexpected findings within the area:

• There are not any previously recorded Aboriginal archaeological (AHIMS) sites listed on the property or any Aboriginal heritage sites recorded within close proximity and no potential Aboriginal objects are expected to be present on the land.

In terms of site's disturbance, the report states that:

 The property has been modified by past building works and the proposal is not going to impact upon rock surfaces with the potential to be engraved and the subsurface sandy sediments are not expected to contain Aboriginal objects and archaeological deposits.

The report's recommendations conclude that:

1. Woollahra Municipal Council approve the proposed development at 79 Bellevue Road and works should proceed as planned, but with caution, and should be monitored by the La

Page 3 of 7



Perouse Local Aboriginal Land Council.

- 2. An Aboriginal heritage induction should be delivered to contractors prior to the commencement of site works by the La Perouse Local Aboriginal Land Council, or by a suitably qualified Aboriginal heritage consultant if a representative from the Land Council is not able to provide the induction. The heritage induction should explain what Aboriginal heritage may be found on the site and the procedures to follow in the event of discovering unexpected Aboriginal cultural heritage finds.
- 3. If any unexpected Aboriginal object is discovered while undertaking future development activities on the property, the work must stop immediately, and the landowner is required to notify the Environment Line (131555) and provide details of the discovery and not recommence work at the site unless authorised in writing by Heritage NSW.
- 4. In the event that skeletal remains are unexpectedly encountered during future works, activity must stop immediately, the area is to be secured to prevent unauthorised access, and NSW Police and Heritage NSW are to be contacted.
- 5. At the completion of development works on the property, and if no unexpected Aboriginal objects are discovered, we recommend that Woollahra Council's Aboriginal Heritage Sensitivity map should be updated to this effect to show that the 79 Bellevue Road property does not retain potential Aboriginal heritage sensitivity.
- 6. A copy of this report should be provided to La Perouse Local Aboriginal Land Council.

La Perouse LALC Referral Response

On 1 November 2023, the La Perouse LALC provided the following recommendations in response to the application:

Recommendation 1:

 The La Perouse LALC agrees with recommendations as set out on page 23 of the assessment.

Recommendation 2:

 The La Perouse LALC advises that if any Aboriginal objects (such as human or animal bone, shell material or stone artifacts) are impacted or unearthed during any activity on the property, the activity must cease and the NSW Heritage and La Perouse LALC be contacted immediately.

Given the above, it is concluded that an unexpected findings condition of consent will need to be imposed as part of the DA consent.

Woollahra LEP 2014

The subject site is not a heritage item in Woollahra Local Environment Plan 2014 'the LEP' and is not within a heritage conservation area.

Clause 1.2 Aims of Plan

Subclause 1.2. (2) (f) – to conserve built and natural environmental heritage

The dwelling has no heritage significance and does not make any contribution to the heritage

Page 4 of 7



significance of Bellevue Hill. The property is not heritage listed and is not located within a heritage conservation area.

A Demolition Heritage Impact Report has been submitted with the development application and includes historical research on the development of the property over time. The construction of the dwelling is not associated with any known prominent architect and has no distinctive landmark qualities or other features that would make it potentially significant or rare. The report has assessed the potential heritage significance of the existing dwelling and has concluded that it does not meet the criteria for identification as a place of local significance. The findings of the report are considered to be accurate. Accordingly, the property is not of heritage value and therefore no objection is raised to the proposed demolition of the existing building.

As the property is not listed as a heritage item and is not located within a heritage conservation area, the design of the proposed new development will not result in any adverse impacts on heritage items/areas of value. There are no heritage items located within the vicinity of the site that will be adversely impacted and the proposal will not affect any significant views. As such, there are no concerns raised on heritage grounds regarding the design of the proposed new development.

The submitted Demolition Heritage Impact Report meets the standard of archival recordings for buildings with little or no heritage significance.

Significance of items in the vicinity

There are no listed heritage items in close proximity that would be adversely affected by the proposal.

6. CONCLUSION

National Parks & Wildlife Service Act, 1979

Appropriate conditions of consent to manage Aboriginal heritage will be provided below.

Woollahra LEP 2014

• Clause 1.2 (2) (f) The development does conserve the built heritage of Woollahra.

7. RECOMMENDATION

The proposal is generally acceptable, subject to conditions, as it complies with the relevant statutory and policy documents and would have a satisfactory impact.

Consent, subject to conditions.

- Stone, bricks, joinery and decorative architectural elements to be demolished, which include windows and doors, chimney pieces, sandstone, plaster medallions, fireplaces, timber flooring, decorative ceilings and ceiling roses must be salvaged and where possible reused on the project. Salvaged building materials surplus to the project must either be stored on site for future reuse, or transferred to an established second building material dealer for recycling.
- 2. Aboriginal Objects Unexpected Findings

Page 5 of 7



If unexpected Aboriginal objects or bones are found during any activity associated with this consent, you must:

- a) Not further disturb or move these objects or bones.
- b) Immediately cease all work at the particular location.
- c) In the case of suspected human remains, notify NSW Police.
- d) Notify the Heritage NSW Environment Line on 131 555 and the La Perouse LALC on (02) 9311 4282 as soon as practicable and provide available details of the objects or remains and their location.
- e) Not recommence any work at the particular location unless authorised in writing by Heritage NSW. Additional assessment and approval pursuant to the *National Parks* and Wildlife Act 1974 may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

Note: The Definition of Aboriginal object as per the Woollahra Local Environmental Plan 2014: any deposit, object or other material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of an area of New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.

Standard Condition: B10 (Autotext BB10)

3. Skeletal Remains

If any skeletal remains suspected of being human are found during construction works, work must cease immediately and no further disturbance of the site must occur. The NSW Police and the Department of Premier and Cabinet, Community Engagement, Heritage must be notified and details of the remains and their precise location are to be provided.

4. Aboriginal Heritage Due Diligence Responsibilities

Nothing in this approval allows to cause harm to an Aboriginal object as defined in the *National Parks & Wildlife Act 1974*. Under the *National Parks & Wildlife Act 1974*, it is an offence to harm Aboriginal 'objects' (consisting of any material evidence of the Aboriginal occupation of NSW) without a valid Aboriginal Heritage Impact Permit under Section 90 of the Act. This applies whether the harm occurs either knowingly [s86(1)] or unknowingly [s86(2)].

It is a defence to the strict liability offence of harm to an Aboriginal object under s86(2) if a process of Due Diligence was followed which reasonably determined that the proposed activity would not harm an Aboriginal object.

Standard Condition: B12 (Autotext BB12)

5. Aboriginal Heritage Induction

- All construction staff and contractors must be made aware of their statutory obligations for Aboriginal heritage under the National Parks and Wildlife Act 1974;
- b) An Aboriginal heritage induction is to be delivered by the La Perouse Local Aboriginal Land Council or by a heritage consultant with Aboriginal heritage expertise, (if a representative of the Local Land Council is not able to provide the induction), to explain what Aboriginal heritage may be found and outline the unexpected findings procedures;
- Documentary evidence demonstrating compliance with a. and b. above being submitted to Council and the Principal Certifier.

Standard Condition: B13 (Autotext BB13)

Page 6 of 7



6. Archaeological Monitoring

While site work is being carried out, a suitably qualified archaeologist and a representative of the La Perouse Local Aboriginal Land Council should be present to monitor the initial bulk earthworks to determine whether previously undisturbed sand deposits are present within the proposed maximum depth of excavation. Based on this inspection, a determination will be made as to whether further archaeological monitoring is required, or whether bulk excavation can continue under the recommended 'unexpected finds' protocol.

Vanessa Wood Heritage Officer 30 November 2023 **Completion Date**

Hi Sid,

I've no issues as long as below conditions met:

- Consultation with affected residents carried out by proponent and council and approval copy provided to TJHB.
- 30m bus zone installed at new location.
- New bus stop must be DDA compliant as per attached TfNSW guidelines.
- All cost associated with removal of existing bus stop and installing new bus covered by proponent.

Regards

Bushara Gidies Traffic and Events Manager M: 0455 199 780 Transdevjohnholland.com.au



From: Sid Ali < info@myttps.com > Sent: Monday, July 24, 2023 9:12 AM

To: Bushara Gidiess < Bushara. Gidies@transdevjohnholland.com.au > Cc: Bus Approval < busapproval@transport.nsw.gov.au >; Rino Mucciacciaro

<Rino.Mucciacciaro@transdevjohnholland.com.au>

Subject: Re: 79 Bellevue Road, Bellevue Hill - Proposed Development

Hi Bushara,

I hope you had a good weekend. Further to our conversation, we have prepared an alternative proposal to relocate the bus stop backwards where the existing access is (please see attached).

The proposal will take off at least one on-street parking adjacent to 81 Bellevue Road. Based on our discussion, it is understood that your consent will be subject to concurrence with neighbouring property owners impacted by this proposal. Please note that our client will lodge the DA with Woollahra Municipal Council today and proceed with the community consultation process as per Council's advice/direction. For now, can you please review the proposal and provide your feedback or conditional consent?

If you have any questions or require further information, please feel free to contact me.

Best regards,

Sid Ali

Technical Director

Traffic and Transport Planning Solutions | TTPS

Email: <u>info@myttps.com</u> Phone: 02 8005 8042 Website: <u>www.myttps.com</u> On Mon, Jul 17, 2023 at 8:59 AM Bushara Gidiess < Bushara. Gidies@transdevjohnholland.com.au > wrote:

Hi Sid,

Driveways should be positioned so that laybacks do not line up with the front or back door.

Regards

Bushara Gidies

Traffic and Events Manager

M: 0455 199 780

Transdevjohnholland.com.au



From: Sid Ali < info@myttps.com > Sent: Monday, July 17, 2023 8:29 AM

To: Bushara Gidiess < Bushara.Gidies@transdevjohnholland.com.au; Bus Approval

< busapproval@transport.nsw.gov.au >

Cc: Rino Mucciacciaro < Rino. Mucciacciaro @transdevjohnholland.com.au > **Subject:** Re: 79 Bellevue Road, Bellevue Hill - Proposed Development

Hi Bushara,

Thank you for your feedback. Can you please advise which standard you are referring to which makes it illegal to alight on driveways?

Our understanding from Section 4.1 of the State Transit Bus Infrastructure Guide (see snip below) is that driveways should be positioned so that laybacks do not line up with the front or back door. The clause mentions 'OR', which in our opinion, gives us the flexibility that if the front door is still aligned with the existing bus pad, the proposal won't impact the accessibility feature of the bus stop.

4 CIVIL CONSTRUCTION REQUIREMENTS

4.1 Kerb types and driveway laybacks

Standard barrier kerbs of 150mm minimum height are to be used at bus stops. Mountable kerbs should not be used at bus stops.

In residential areas it is inevitable that bus stops will be located adjacent to driveways. This is considered acceptable for a small residential complex and fast turnover bus stop. Driveways should be positioned so that laybacks do not line up with the front or back door.

Please see below a few examples of bus stops within Bellevue Hill, where bus stops are aligned with the adjacent property driveway. Can you please review your decision or provide advice in light of the below examples?

25 Drumalbyn Rd, Belevue Hill



52 Drumalbyn Rd, Bellevue Hill



I look forward to your further feedback.

Best regards,

Sid Ali

Technical Director

Traffic and Transport Planning Solutions | TTPS

Email: info@myttps.com

Phone: 02 8005 8042

Website: www.myttps.com

On Fri, Jul 14, 2023 at 11:32 AM Bushara Gidiess < Bushara. Gidies@transdevjohnholland.com.au > wrote:

Hi Sid,

Unfortunately TJHB object to this design as buses centre door will be opening on a driveway, it's illegal to let passenger alight on driveways.

Regards

Bushara Gidies

Traffic and Events Manager

M: 0455 199 780

<u>Transdevjohnholland.com.au</u>



From: Sid Ali <<u>info@myttps.com</u>>
Sent: Friday, July 14, 2023 7:20 AM

To: Bushara Gidiess <<u>Bushara.Gidies@transdevjohnholland.com.au</u>>
Cc: Bus Approval <<u>BusApproval@transport.nsw.gov.au</u>>; Rino Mucciacciaro

<Rino.Mucciacciaro@transdevjohnholland.com.au>

Subject: Re: 79 Bellevue Road, Bellevue Hill - Proposed Development

Hi Bushara,

Yes, I meant a proposed driveway. You can find the details in the attached package.

If you need more information, please feel free to contact me.

Regards Sid

On Thu, 13 Jul 2023 at 2:45 am, Bushara Gidiess < Bushara. Gidies@transdevjohnholland.com.au > wrote:

Hi Sid,

Before providing feedback or consent, may I ask what you mean by new vehicle crossing? is that means driveway?

Regards

Bushara Gidies

Traffic and Events Manager

M: 0455 199 780

<u>Transdevjohnholland.com.au</u>



From: Bus Approval < BusApproval@transport.nsw.gov.au >

Sent: Thursday, July 13, 2023 4:21 PM

To: 'Sid Ali' <
info@myttps.com; Bushara Gidiess <
Bushara.Gidies@transdevjohnholland.com.au; Rino

Mucciacciaro < Rino. Mucciacciaro @transdeviohnholland.com.au > Subject: RE: 79 Bellevue Road, Bellevue Hill - Proposed Development

Hello All

I have included the local operators for comment

Once all comments / issues that they may raise have been addressed I have no objections.

Regards

Rabih Bekdache

Transport Planning Project Manager

Customer Journey Planning - Short Term & Temporary Transport Planning

Greater Sydney

Transport for NSW

M_0415 472 898 E rabih.bekdache@transport.nsw.gov.au

transport.nsw.gov.au

231 Elizabeth Street Sydney NSW 2000



Transport for NSW



I acknowledge the Aboriginal people of the country on which I work, their traditions, culture and a shared history and identity. I also pay my respects to Elders past and present and recognise the continued connection to country.

Please consider the environment before printing this email

OFFICIAL

From: Sid Ali < info@myttps.com>
Sent: Thursday, 13 July 2023 6:09 AM

To: Bus Approval < BusApproval@transport.nsw.gov.au >

Subject: 79 Bellevue Road, Bellevue Hill - Proposed Development

You don't often get email from info@myttps.com. Learn why this is important

CAUTION: This email is sent from an external source. Do not click any links or open attachments unless you recognise the sender and know the content is safe.

Dear Representative,

I hope you are well. We are currently working on a proposed redevelopment at <u>79 Bellevue Road</u>, <u>Bellevue Hill</u>. The proposed development is adjacent to a bus stop on Bellevue Road (see below for location plan) serviced by bus route 327 (Bondi Junction to Edgecliff via Bellevue Road & Manning Road).



The proposal includes the construction of a new vehicle crossing adjacent to the existing bus stop. As such, the proposed crossover does not impact the existing bus pad, whilst the bus operations at this bus stop can continue as per existing conditions.

To present the proposal for your initial feedback, we have compiled a package including existing and proposed scenarios with swept paths of vehicles entering and exiting the proposed dwelling (see attached).

Please note, our client is preparing the DA, and we would like to request your initial feedback or consent at this stage to finalise the design for the DA process.

Please let me know if you have any questions or require any further information.

Best regards,

Sid Ali

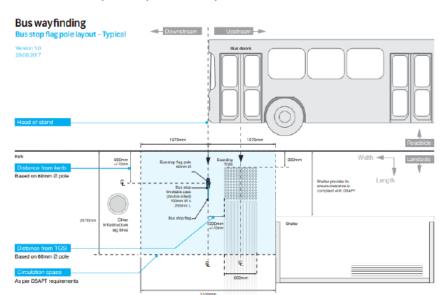
Technical Director

Traffic and Transport Planning Solutions | TTPS

Email: info@myttps.com

Phone: 02 8005 8042

Website: www.myttps.com

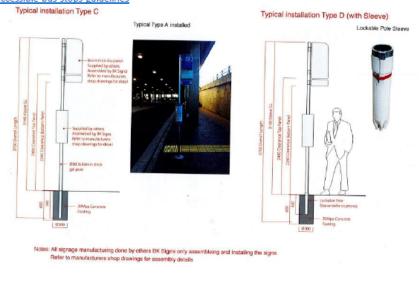


Below is the DDA compliance required at bus stops

Please contact Singleton Moore Signs https://www.smsco.com.au/ for installation or the local bus operator for their bus stop installer to make the stop DDA compliant

Below is the DDA legislation link which needs to be followed

https://humanrights.gov.au/our-work/disability-rights/australian-human-rights-commissionaccessible-bus-stops-guidelines



OFFICIAL

1 November 2023

LOCAL ABORIGINAL LAND COUNCIL

Dominic Steele

Dominic Steele Consulting Archaeology

21 Macgregor Street CROYDON NSW 2132

Dear Mr Steele

Aboriginal Heritage Impact Assessment - 79 Bellevue Rd, Bellevue Hill

I write in regards to the above mentioned assessment dated October 2023. I have reviewed the draft assessment report and provide the following information and recommendations on behalf of the La Perouse Local Aboriginal Land Council (La Perouse LALC).

As you may be aware, the La Perouse LALC was established and operates within the provisions of the Aboriginal Land Rights Act 1983 (NSW) (ALRA) and currently represents a membership of approximately 620 Aboriginal persons who reside within or have an association with the La Perouse LALC area. In accordance with Section 52 of the ALRA the La Perouse LALC has a statutory function to "take action to protect the culture and heritage of Aboriginal persons in the Council's area".

The Bellevue Hill area holds heritage significance to the La Perouse Aboriginal community due to the full time occupation of the area by our direct ancestors until 1883. The La Perouse LALC can provide further significance information on request.

Following the site inspection on 22 September 2023 and review of the assessment, I can provide the following recommendations:

Recommendation 1:

The La Perouse LALC agrees with recommendations as set out on page 23 of the assessment.

Recommendation 2:

The La Perouse LALC advises that if any Aboriginal objects (such as human or animal bone, shell material or stone artifacts) are impacted or unearthed during any activity on the property, the activity must cease and the NSW Heritage and La Perouse LALC be contacted immediately.

If you would like to discuss this issue further please don't hesitate to contact the La Perouse LALC office on 9311 4282 during business hours.

Yours sincerely,

Chris Ingrey
Chief Executive Officer

www.laperouse.org.au

LOCAL PLANNING PANEL DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No. D3

FILE No. DA41/2024/1

ADDRESS 361-441 Glenmore Road PADDINGTON

COUNCIL WARD Paddington

ZONING RE1 Public Recreation

PROPOSAL Upgrade the grandstand amenities, sport facilities & change rooms

TYPE OF CONSENT Local Development

COST OF WORKS \$350,000.00 **DATE LODGED** 08/02/2024

APPLICANT SLR Consulting Australia Pty Ltd

OWNER Woollahra Municipal Council

AUTHOR Ms L Williams

TEAM LEADER Mr G Fotis

SUBMISSIONS Nil

RECOMMENDATION Conditional Approval

1. REASON FOR REPORT TO LOCAL PLANNING PANEL (LPP)

The application is to be determined by the Woollahra Local Planning Panel (LPP) as it falls under the category of:

• Conflict of interest
Development for which the applicant or land owner is:

a) the council

2. REASONS FOR RECOMMENDATION

The application has been assessed within the framework of the matters for consideration under section 4.15 of the Environmental Planning and Assessment Act 1979 and is recommended for approval because:

- It is considered to be satisfactory with all relevant planning policies including the objectives of the Woollahra Local Environmental Plan (WLEP 2014) and the Woollahra Development Control Plan (WDCP 2015);
- It will not have adverse effects on the local built and natural environment nor any adverse social and economic impacts in the locality;
- All likely impacts to adjoining properties have been addressed in the report, or are considered to be satisfactory;
- The site is suitable for the proposed development; and
- The proposal is in the public interest.

3. LOCALITY PLAN



4. PROPOSAL

The proposed development includes alterations and additions to the existing grandstand amenities, sport facilities and change rooms, including the following works:

<u>Internal</u>

- Removal of all benches and fixtures within the existing change rooms and bathroom areas
- Construction of new internal wall partitions establishing larger storage room with mezzanine access stairs
- Establishment of new toilet facilities including accessible WC, revised male and female WC, and revised umpire room along with associated toilets, basins, showers, and fixtures
- New fit out to existing change rooms and including partitions to access doorways;
- Demolition of existing wall sections to the mezzanine
- New chain wire fencing to the underside of roof on the mezzanine.

External

- Demolition of existing wall sections to the mezzanine
- Repair and replacement of all existing windows
- Infill of an existing window to the southern elevation
- Demolition of a half-height brick wall and the existing roller shutter window to the western elevation

PROPERTY DETAILS AND REFERRALS

5. SITE AND LOCALITY

Physical features

The grandstand area is built across four (4) separate Lots (being legally identified as LOT 10 DP1156846; LOT 2 DP186703; LOT 48 SEC B DP1783 and LOT 49 SEC B DP1783), and occupies approximately 332m² (inclusive of the external covered area). The grandstand is bounded by Hampden Street to the west and Roylston Street to the east.

The nearby Trumper Park Oval is approximately 2.1 hectares in size and forms part of the public domain lands that comprise Trumper Park which has an overall area of 7.3 hectares.

Topography

Trumper Park Oval and the associated grandstand is a low lying area located in the north-west corner of the Trumper Park. Topography in the vicinity rises in a south-easterly direction throughout the wider Trumper Park and towards the south into Paddington.

Existing buildings and structures

The existing grandstand building internally accommodates both male and female bathrooms, storage space, and team change rooms with shower/bathroom areas. Externally, the grandstand stairs are covered by a large verandah which is north-facing towards Trumper Oval. There is a separate 'canteen' structure to the west of the grandstand.

The nearby Trumper Park Oval consists of a large oval-shaped playing field with associated infrastructure including cricket practice nets, score boards, floodlight poles with lights and a Playground.

Surrounding Environment

The Trumper Park Grandstand is located within the Paddington Heritage Conservation Area, the character of the surrounding environment is largely characterised by Victorian/Federation period terrace house development and Interwar period residential flat buildings.

Directly to the north, is the Trumper Park Oval.

To the west, is a separate canteen structure of the same character and Hampden Street.

To the east, is an attached storage shed and Roylston Street.

To the south, are properties located at No.4, 6, 8, 10 and 10A Roylston Street. No's 4-8 are residential dwellings and No's 10 and 10A are utilised commercially.

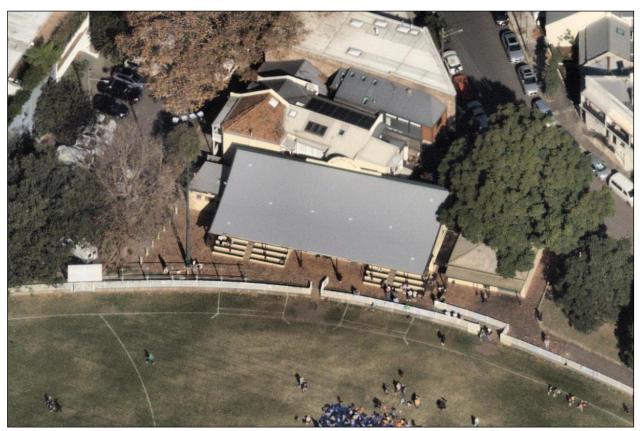


Figure 1: Oblique aerial from the north of the Trumper Oval Grandstand (Nearmap)



Figure 2: The Trumper Park Grandstand as viewed from the north-west; the separate 'canteen' structure located to the west of the structure (Author).



Figure 3: Existing openings to the bathrooms on the western elevation; screening to be removed (Author).



Figure 4: Existing changeroom to be re-fitted (Author).



Figure 5: Mezzanine level as viewed from the existing changeroom 2 (Author).

6. RELEVANT PROPERTY HISTORY

Current use

Recreation Facility (Outdoor)

Relevant Application History

BA1995/499 - Construction of a bore hole (Approved 10 July 1995)

BA1992/897 - Construction of an outbuilding (storage shed adjacent to grandstand) (Approved 30 November 1992)

DA1992/185 - Construction of little athletics storage block, (Approved 6 October 1992)

BA1978/4 - Construction of practice wall (tennis courts) (Approved 20 January 1978)

DA130/2015/1 - Replacement of four (4) x 18m high existing floodlight poles & luminaires with four (4) x 25m high floodlight poles & luminaires to Trumper Park (Approved 15 June 2015)

DA283/2016/1 – Replacement of the existing scoreboard with a new electronic scoreboard in Trumper Park (Approved 28 November 2016)

Relevant Compliance History

N/A

Pre-DA

<u>N/A</u>

Requests for Additional Information and Replacement Applications

On **22 February 2024**, a Stop the Clock (STC) letter was issued to the Applicant requesting the following information:

- Clarification of proposed works to ascertain if there will be an impact on the large tree to the south-west
 of the existing building
- Heritage Impact Statement

On **5 March 2024**, the Applicant provided the following information in response:

- Letter response to RFI clarifying any impact to the tree south-west of the building (SLR Consulting Australia, dated 4 March 2024)
- Heritage Impact Statement (Heritage Design John Carr, dated 4 March 2024)

On 4 June 2024, a satisfactory referral response was received from Council's Tree & Landscape Officer.

On 7 June 2024, a satisfactory referral response was received from Council's Heritage Officer.

Land and Environment Court Appeal(s)

N/A

7. REFERRALS

Referral	Summary of Referral Response	Attachments
Trees and Landscaping	Satisfactory, subject to conditions.	2
Heritage	Satisfactory, subject to conditions.	3
Drainage	Satisfactory, subject to conditions	4

Council's Technical Services raised on objection via the Development Application Review Committee (DARC).

ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 include the following:

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

8. ADVERTISING AND NOTIFICATION

8.1 Submissions

The application was advertised and notified from 28 February 2024 to 14 March 2024 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. There were no submissions received.

8.2 Replacement Application

The additional information noted above was not renotified to surrounding residents under Schedule 1 of the Woollahra Community Participation Plan 2019 because the proposal would have no greater impacts than the previously advertised application.

8.3 Statutory Declaration

The applicant has completed the statutory declaration dated 9/05/2024 declaring that the site notice for DA41/2024/1 was erected and maintained during the notification period in accordance with Schedule 1 of the Woollahra Community Participation Plan 2019.

9. SEPP (BIODIVERSITY & CONSERVATION) 2021

Chapter 2 – Vegetation in non-rural areas

Council's Tree and Landscaping Officer has raised no objections to the proposal subject to the recommended conditions of consent which have been included. The proposal is considered to be acceptable having regard to Chapter 2 of the SEPP.

Chapter 6 – Water Catchments

Chapter 6 (Water Catchments) of the SEPP applies to the subject land which is located within a regulated catchment being the Sydney Harbour Catchment.

The land is within the Sydney Harbour Catchment but is outside the Foreshores and Waterways Area and therefore only the provisions in Part 6.2 of the SEPP applies.

In deciding whether to grant development consent to development on land in a regulated catchment, matters relating to water quality and quantity, aquatic ecology, flooding, recreation and public access and total catchment management must be considered.

The proposal will have no significantly adverse impacts on the Sydney Harbour Catchment, subject to standard conditions including erosion and sedimentation, stormwater and flood risk management control.

10. SEPP (RESILIENCE & HAZARDS) 2021

Chapter 2 – Coastal Management

Chapter 2 (Coastal Management) gives effect to the objectives of the Coastal Management Act 2016 from a land use planning perspective, by specifying how development proposals are to be assessed if they fall within the Coastal Zone.

The subject site is located wholly outside of the Coastal Environment Area (Section 2.10) and the Coastal Use Area (Section 2.11). Furthermore, sub-clauses 2.10(3) and 2.11(2) state:

This section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

On the basis, no further consideration is required under Chapter 2 of the Resilience and Hazards SEPP 2021.

Chapter 4 – Remediation of Land

The Object of this Chapter aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

Under Clause 4.6(a) of Chapter 4 – Remediation of Land, consideration has been given as to whether the subject site on which the development is occurring is contaminated.

The subject site is identified as potentially contaminated, however, given the minor extent of the proposed works, it is considered that the land does not require further consideration under Section 4.6(3) and 4.6(4) of Chapter 4 – Remediation Of Land of the Resilience and Hazards SEPP 2021.

The proposal is acceptable with regard to the relevant matters for consideration in Section 4.6 of Chapter 4 – Remediation of Land of the Resilience and Hazards SEPP 2021.

11. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

11.1 Part 1.2: Aims of Plan

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

11.2 Land Use Table

The proposal is defined as alterations and additions to an existing recreation facility and is permitted and consistent with the objectives of the RE1 Public Recreation zone.

11.3 Part 5.10: Heritage Conservation

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

The subject site is not a heritage item in Woollahra Local Environment Plan 2014 'the LEP' but is located within the boundaries of the Paddington Heritage Conservation Area. There are no listed heritage items in close proximity that would be adversely affected by the proposal.

Council's Heritage Officer reviewed the proposal and provided the following assessment:

"As discussed above, the existing grandstand building is a modified built form, as a result of works carried out in the 1980s. While the interiors of the building does retain some significant/original elements, there are no heritage objections to the proposed internal fitout works within the ground and mezzanine levels of the Grandstand building. The majority of the existing internal walls and structure would be retained, and existing internal elements proposed for removal have either already been modified, or are considered to be of little heritage significance.

The proposal includes the addition of a chain wire fence to the interiors of the building at mezzanine level for ventilation purposes. As this addition is confined to the interiors of the building, it would not be visible from the public domain, and would have no visual impact on the setting of the building. In addition, it is a reversible addition and can be removed at a later date if required. As a result, the proposed new internal fence is supported in this instance.

There are also no heritage objections to the proposed external demolition works including the removal of half height brick wall, roller shutter window, existing screen and existing doors/gates, all of which are located along the western elevation. The gates proposed to be removed would be retained and reused within the existing development. The removal of the door and roller shutter window along the western elevation is considered to be minor and would not have any adverse impacts on the significance of the contributory building. In addition, the new proposed door would be vertically proportioned which is supported. Its materiality is however not clear. Its materiality should match the materiality of the other existing doors, so that it is in keeping with the character of the existing building and in keeping with its design intent. A condition of consent will be provided below. The proposal to brick up an existing opening is also supported, as the finish would match the existing in terms of materiality and colour.

Due to the minor nature of the works, there would be no visual impact on the form of the grandstand or its setting, which is also supported.

The proposed plans indicate that existing windows and doors would be repainted, made good and repaired. A new colour scheme has not been submitted with the application. All repair and repainting works are to be on a like for like basis in all aspects including materials, detail and colour. A condition of consent will be provided below."

As conditioned, the proposal is acceptable with regard to Part 5.10 of the Woollahra LEP 2014.

11.4 Part 5.21: Flood Planning

The objectives of Part 5.21 are:

- a) to minimise the flood risk to life and property associated with the use of land,
- b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,
- c) to avoid adverse or cumulative impacts on flood behaviour and the environment,
- d) to enable the safe occupation and efficient evacuation of people in the event of a flood.

Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development:

- a) is compatible with the flood function and behaviour on the land, and
- b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and
- c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and
- d) incorporates appropriate measures to manage risk to life in the event of a flood, and
- e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.

In deciding whether to grant development consent on land to which Part 5.21 applies, the consent authority must consider the following matters:

- a) the impact of the development on projected changes to flood behaviour as a result of climate change.
- b) the intended design and scale of buildings resulting from the development,
- c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,
- d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion

Council's Drainage Engineer reviewed the proposal and provided a Flood Protection condition. Refer to **Condition D.7** for further detail.

As conditioned, the proposal is acceptable with regard to Part 5.21 of Woollahra LEP 2014.

11.5 Part 6.1: Acid Sulfate Soils

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

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

12. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

Chapter C1: Paddington Heritage Conservation Area

Section C1.2.4: Desired future character

• The proposal retains the desired future character of the Paddington HCA, and is therefore acceptable with regard to the principles established in this section.

Section C1.3: Buildings Types

Council's Heritage Officer reviewed the proposal and provided the following assessment:

"The subject building does not fall under any of the 'building types' listed in the Paddington HCA chapter of the DCP. As a result, a merit based assessment will be undertaken instead in this section of the DCP.

As discussed above, there are no heritage objections to the proposed internal and external works to the existing grandstand building, as the works would generally affect fabric which has already been modified, or fabric that is of little significance. Due to the minor nature of the works there would also be no visual impact on the form of the grandstand or its setting, which is also supported. Conditions of consent regarding the materiality, detailing and finish of the windows and doors will be provided below to ensure that the new works are in keeping with the existing."

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

- The proposal generally retains the principal building form of the grandstand which is supported.
 Minor modifications are proposed to the side (western) elevation and repair works are
 proposed to the existing openings. Conditions D.1 (a) and (b) are provided below to ensure
 that the proposed works retain the heritage significance of the building and the HCA (O1, O4,
 C1).
- The proposed internal reconfiguration works would generally retain the existing internal layout through the retention of the majority of the existing internal walls. This is supported from a heritage perspective (C7, C8).

Section C1.4.2: Side Elevations to Streets and Lanes

- The proposal generally retains and conserves the architectural character of the side elevation of the contributory building which is supported (O1, O2, O3, O4)
- As discussed above, the proposed external demolition works along the western elevation are generally supported from a heritage perspective. In addition, the proposal to brick up an existing opening along the western elevation is supported, as the finish would match the existing (C1, C2).
- As discussed above, the gates proposed to be removed would be retained and reused within
 the existing development. In addition, the removal of a door and roller shutter window is
 considered to be minor and would not have any adverse impacts on the significance of the
 contributory building or the HCA. In addition, the new door would be vertically proportioned
 which is supported. The materiality of the door is to match the materiality of the other existing
 doors, so that it is in keeping with the character of the existing building. See Condition D.1 (a).

Section C1.4.4: Roofs and Roof Forms

• The proposal retains the existing roof to the grandstand which is supported. The proposal accords with the relevant objectives and controls under C1.4.4.

Section C1.4.5: Building Height, Bulk, Form and Scale Section C1.4.6: Site Coverage, Setbacks and Levels

• The proposed works to the grandstand do not result in any change to the height, form or site coverage of the existing building. The proposal accords with the relevant objectives and controls under C1.4.5 and C1.4.6.

Section C1.4.10: Acoustic and Visual Privacy

• The proposed alterations and additions to the grandstand would not result in any adverse acoustic or visual privacy impact to existing development on neighbouring lands. The proposal accords with the relevant objectives and controls under C1.4.10.

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

- The proposed bricking up of an existing opening along the western elevation is supported.
- The removal of existing doors/gates along the western elevation is generally supported from a heritage perspective. The gates proposed to be removed would be retained and reused within the existing development which is supported.
- As discussed above, the provision of the new door is generally supported. The materiality of the new door is to match other existing doors of the building, so that it is in keeping with the character of the existing building and in keeping with the design intent. See **Condition D.1 (a).**
- As discussed above, where existing windows and doors would be repainted, made good and repaired, all repair and repainting works are to be on a like for like basis in all aspects including materials, detail and colour. See **Condition D.1 (b).**

The proposal accords with the relevant objectives and controls under C1.5.3.

Section C1.5.4: Verandahs and Balconies

The proposed alterations and additions do not involve any work to the significant grandstand verandah to the northern elevation. The proposal accords with the relevant objectives and controls under C1.5.4.

Section C1.5.8: Materials, Finishes and Details Section C1.5.9: Exterior Colours

- As discussed above, where existing windows and doors would be repainted, made good and repaired, all repair and repainting works are to be on a like for like basis in all aspects including materials, detail and colour (O2, C4, C5).
- As discussed above, the materiality of the new door is to match other existing doors of the building, so that it is in keeping with the character of the existing building and in keeping with the design intent (O2).

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

The proposed alterations and additions to the existing grandstand accord with the relevant objectives and controls under C1.5.11.

Section C1.6.2: Views and Vistas

The proposed alterations and additions to the existing grandstand would not result in any adverse impacts to existing views and vistas in the public domain. The proposal accords with the relevant objectives and controls under C1.6.2.

Chapter E2: Stormwater and Flood Risk Management

Council's Development and Stormwater Engineers reviewed the proposal and recommended a number of conditions which have been included.

As conditioned, the proposal is acceptable with regard to Chapter E2 of the Woollahra DCP 2015.

Chapter E3: Tree Management

Council's Tree & Landscape Officer reviewed the proposal and provided the following comment:

"One neighbouring tree (Jacaranda) located at 4 Roylston Street PADDINGTON extends part of its crown towards the subject grandstand building and adjacent canteen building.

Minor pruning of the Jacaranda may be required for clearance to the building envelopes. Council's pruning guidelines indicate a 2m clearance around building envelopes as a reasonable offset to provide appropriate building maintenance.

Conditions are recommended below for the protection of the Jacaranda"

Conditions to the above effect have been included.

Therefore as conditioned, the proposal is acceptable with regard to Chapter E3 of the Woollahra DCP 2015.

Chapter E4: Contaminated Land

The subject site has been identified as potentially contaminated on Council's Mapping System. Given the minor extent of the works and the ongoing use of the site, no further investigation is required.

The proposal is therefore acceptable with regard to the objectives and controls in Chapter E4 of the Woollahra DCP 2015.

Chapter E5: Waste Management

Chapter E5 is applicable to all development and seeks to establish waste minimisation and sustainable waste management during demolition and construction phases and throughout the ongoing use of the building.

The SWMMP addresses volume and type of waste and recyclables to be generated, storage and treatment of waste and recyclables on site, disposal of residual waste and recyclables and operational procedures for ongoing waste management once the development is complete.

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

13. CONTRIBUTION PLANS

Contributions plans allow funds to be raised from approved development applications. The funds are used for the intended provision, extension or augmentation of public facilities, or towards recouping the cost of facilities that have been provided, extended or augmented. These contributions relate to sections 7.11 and 7.12 of the EP&A Act, formerly known as section 94 and section 94A.

13.1 Section 7.12 Contributions Plan

A 1% levy applies with the monies being used for a variety of works as outlined in Schedule 1 of the Section 7.12 Contributions Plan 2022.

Refer to Condition D.3.

13.2 Application of Contributions

The consent authority cannot impose conditions under both Section 7.11 and Section 7.12 on the same development consent.

In this instance, Section 7.12 contributions have been applied.

14. APPLICABLE ACTS/REGULATIONS

14.1 Environmental Planning and Assessment Regulation 2021

Clause 61(1) Additional matters that consent authority must consider

Clause 61(1) of the EPA Regulation 2021 requires Council to take into consideration Australian Standard AS 2601-2001: The demolition of structures. This requirement is addressed by Council's standard condition.

15. TRUMPER PARK PLAN OF MANAGEMENT (DECEMBER 2023)

The proposal is in accordance with the Trumper Park Plan of Management (2023).

16. THE LIKELY IMPACTS OF THE PROPOSAL

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

17. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

18. THE PUBLIC INTEREST

The proposal is considered to be in the public interest.

19. CONCLUSION

The proposal is acceptable against the relevant considerations under Section 4.15.

20. DISCLOSURE STATEMENTS

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

21. RECOMMENDATION: PURSUANT TO SECTION 4.16 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

THAT the Woollahra Local Planning Panel, exercising the functions of Council, grant development consent to Development Application No. 41/2024/1 for upgrade the grandstand amenities, sport facilities & change rooms on land at 361-441 Glenmore Road Paddington, subject to the following conditions:

ALL DEVELOPMENT TYPES

A. GENERAL CONDITIONS

A. 1. Conditions

Consent is granted subject to the following conditions imposed under section 4.16 of the Environmental Planning and Assessment Act 1979 ("the Act"), and the provisions of the Environmental Planning and Assessment Regulation 2021 ("the Regulations") and the provisions of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 ("the Development Certification and Fire Safety Regulations"), such conditions being reasonable and relevant to the development as assessed under section 4.15 of the Act.

Notes

- 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.
- Maximum penalties under NSW environmental laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.
- 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.
- 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.

Condition Reason: To ensure all parties are aware of the relevant legislation that applies to the development.

A. 2. Definitions

Unless specified otherwise, words have the same meaning as defined by the *Act*, the *Regulations*, the *Development Certification and Fire Safety Regulations* 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.

Local native plants means species of native plant endemic to Sydney's eastern suburbs.

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

PC means the Principal Certifier 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 meaning 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.

Site work means any work that is physically carried out on the land to which the development the subject of this development consent is to be carried out, including but not limited to building work, subdivision work, demolition work, clearing of vegetation or remediation work.

Woollahra LEP means Woollahra Local Environmental Plan 2014

Woollahra DCP means Woollahra Development Control Plan 2015

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,
- the occupation of the site by any person unless authorised by an occupation certificate.

Condition Reason: To ensure all parties are aware of the relevant definitions.

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 both the architectural plans to which is affixed a Council stamp "Approved" and supporting documents listed below unless modified by any following condition.

Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author	Date
A1.00 Rev D	Demolition Plan	AriiSmits	27/10/2023
A2.00 Rev E	Partition Plan		12/12/2023
A3.00 Rev E	FFE Plan		12/12/2023
A4.00 Rev E	Finishes Plan		12/12/2023
A5.00 Rev E	Reflected Ceiling Plan		12/12/2023
A6.00 Rev C	Change Rooms Elevation & Section		19/10/2023
A6.01 Rev A	Grandstand External Elevation		19/10/2023
A7.00 Rev C	Partition Details		19/10/2023
A7.01 Rev C	Stair Details		17/12/2023
A9.00 Rev E	Changeroom 1 WC		12/12/2023
A9.01 Rev C	Changeroom 2 WC		19/10/2023
A9.02 Rev E	Umpires Room WC		13/12/2023
A9.03 Rev D	Accessible WC		13/12/2023
A9.04 Rev E	Female WC		13/12/2023
A9.05 Rev E	Male WC		14/12/2023

Notes:

- Warning to Principal Certifier You must always insist on sighting the original Council stamped approved plans. You must 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 plans.
- These plans and supporting documentation may be subject to conditions imposed under section 4.17(1)(g) of the Act modifying or amending the development.

Condition Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

A. 4. Ancillary Aspects of Development (section 4.17(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 (2012) unless expressly provided otherwise by these conditions at the Owner's expense.

Notes:

 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.

Condition Reason: To ensure all parties are aware of works required to public infrastructure and to ensure payment for works.

A. 5. Tree Preservation and Landscaping Works

While site work is being carried out, 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 may be pruned:

Council Ref No	Species	Location	Approved pruning (extent of pruning
Tree 1	Jacaranda mimosifolia (Jacaranda)	4 Roylston St. Rear	Pruning of branches under 80mm in diameter to provide up to 2m clearance to the building envelope

This consent does not permit the holder, or any other person or agent, to enter any property for the purpose of undertaking approved tree works, without the consent of the owner of the property.

All pruning works must be undertaken by a qualified arborist with a minimum AQF Level 3 in Arboriculture in accordance with *Australian Standard AS4373-2007 Pruning of Amenity Trees* and *WorkCover Code of Practice 'Amenity Tree Industry'*, 1998.

Condition Reason: To ensure all landscape works are undertaken in accordance with the approved plans and documents.

Standard Condition A.22 (Autotext 22A)

DEMOLITION WORK

B. BEFORE DEMOLITION WORK COMMENCES

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" under section 6.6 of the Act.

In such circumstance all conditions included at the following development stages of this consent must be satisfied prior to any demolition work:

- Before issue of a construction certificate
- Before building work commences

This includes, but is not limited to, the issue of a Construction Certificate, appointment of a Principal Certifier, and Notice of Commencement under the Act.

Note:

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

Condition Reason: To ensure appropriate conditions are complied with for development for the alteration and extension of an existing building.

B. 2. Erosion and Sediment Controls – Installation

Before any site work commences, water pollution, erosion and sedimentation controls must be installed and maintained in accordance with:

- a) "Do it Right On Site, Soil and Water Management for the Construction Industry" and accompanying factsheets published by the Southern Sydney Regional Organisation of Councils, and
- b) "Managing Urban Stormwater Soils and Construction" 2004 published by the NSW Government (The Blue Book).

Where there is any conflict The Blue Book takes precedence.

Notes:

- The "Do it Right On Site, Soil and Water Management for the Construction Industry" publication and accompanying factsheets can be downloaded from www.woollahra.nsw.gov.au and The Blue Book is available at www.environment.nsw.gov.au
- 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.
- 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.

Condition Reason: To prevent potential water pollution and dust nuisance.

B. 3. Identification of Hazardous Material

Prior to any site works, and in accordance with Australian Standard AS2601: The Demolition of Structures, all hazardous substances located on the site must be identified, including asbestos, polychlorinated biphenyls (PCBs), lead paint, underground storage tanks, chemicals, etc.

In this regard, prior to any site works, Council must be provided with a written report prepared by a suitably qualified competent person detailing:

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

Condition Reason: To protect the health and safety of all persons while works are being undertaken and to ensure all safety measures have been identified and are in place to protect all parties in the immediate vicinity of the site.

B. 4. Public Road Assets Prior to Any Work/Demolition

Prior to any site works, a full record of the condition of the public infrastructure on public land adjacent to the development site must be submitted to Council.

The report must include photographs and/or CCTV footage showing the current condition and any existing damage fronting and adjoining the site to the:

- road pavement,
- street signage including street lights,
- kerb and gutter,

- footway including pedestrian crossings, footpath, and driveways,
- retaining walls, or other significant structures,
- Heritage Items, including street name inlays,
- · utility service items including historical utility covers, and
- drainage structures/pits/pipes (CCTV footage).

The reports are to be supplied in electronic format in Word and if applicable accompanied by CCTV footage. Photographs are to be in colour, digital and date stamped.

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

Condition Reason: To clarify the condition of the existing public infrastructure prior to the commencement of any site works.

B. 5. Payment of Security and Fees

Prior to any site works, the following security and fees must be paid in full:

Description	Amount	Indexed	Council Fee Code	
SECURITY under section 4.17(6) of the Environmental Planning and Assessment Act 1979				
Property Damage Security Deposit -making good any damage caused to any property of the Council	\$12,995.00	No	T115	
INSPECTION FEES under section 608 of the Local Government Act 1993				
Security Deposit Administration Fee	\$225.00	No	T16	
TOTAL SECURITY AND FEES	\$13,220.00			

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 any site works being undertaken, 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.

Notes:

- An application must be made to Council by the person who paid the security for release of the securities held under section 4.17 of the Act.
- The securities will not be released until the Occupation Certificate has been 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.
- The Refund of Security Bond Application form can be downloaded from www.woollahra.nsw.gov.au

Condition Reason: To ensure any relevant security and fees are paid.

B. 6. Adjoining Buildings Founded on Loose Foundation Materials

Before any site work commences, a professional engineer must determine the possibility of any adjoining buildings founded on loose foundation materials being affected by piling, piers or excavation. The professional engineer (geotechnical consultant) must assess the requirements for underpinning any adjoining or adjacent buildings founded on such soil on a case by case basis, and any reasonable direction of the professional engineer must be complied with.

Notes:

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

Condition Reason: To ensure professional engineering advice is obtained to confirm that appropriate underpinning and support to adjoining land is maintained.

B. 7. Works (Construction) Zone – Approval and Implementation

If the Construction Management Plan relies upon a Works Zone, before any site work commences, a Works Zone application must be made.

If the works zone is approved, all fees for the Works Zone must be paid before it can be installed.

All Works Zone signs must have been erected by Council to permit enforcement of the Works Zone by Council's Rangers and NSW Police before commencement of any site work. Signs are not erected until full payment of Works Zone fees is made.

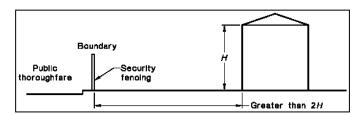
Notes:

- A minimum of four to six weeks must be allowed (for routine applications) from the date
 of making an application to the Traffic Committee (Woollahra Local Traffic Committee)
 constituted under clause 20 of the Transport Administration (General) Regulation 2018
 to exercise those functions delegated by Transport for New South Wales under section
 31(3) of the Transport Administration Act 1988.
- The enforcement of the Works Zone is at the discretion of Council's Rangers and the NSW Police Service. Any breach of the Works Zone must be reported to either Council or the NSW Police Service.

Condition Reason: To facilitate the efficient operation of construction projects and to minimise traffic disruption.

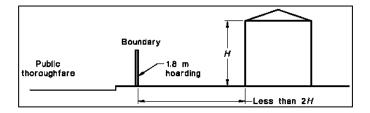
B. 8. Security Fencing, Hoarding (including 'Creative Hoardings') and Overhead Protection

Before any site work commences, 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.



Type A Hoarding

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



Type B Hoarding

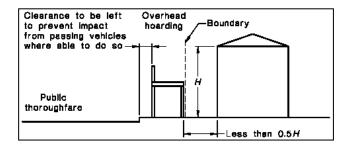
Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure and the facing facade protected by heavy-duty scaffolding, unless either:

a) the vertical height above footpath level of the structure being demolished is less than 4.0m; 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 2.1m,
- 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 0.5m 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 overhead protective structures must be installed and maintained in accordance with the NSW "Code of Practice - Overhead Protective Structures 1995". This is code available at

www.safework.nsw.gov.au/__data/assets/pdf_file/0008/52883/Overhead-protective-structures-Code-of-practice.pdf

All Hoardings

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.

Hoardings on Public Land including 'Creative Hoardings'

All fees associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection must be paid in full.

A creative hoarding (i.e. an approved artwork or historic image affixed to the hoarding) is required if the hoarding meets the criteria in Council's Creative Hoardings Policy (adopted March 2020). The cost of printing and affixing the creative hoarding is the responsibility of the person with the benefit of this consent. The Creative Hoardings Policy can be downloaded from Council's website www.woollahra.nsw.gov.au

Notes:

- A minimum of two (2) weeks from the date of making a hoarding application to determination must be allowed. Any approval for a hoarding or overhead protection under the Roads Act 1993 will be subject to its own conditions and fees.
- Council seeks to increase public art in the public domain by requiring artwork or historic
 images on hoardings located on public land. Under the Creative Hoardings Policy an
 application for a hoarding proposed on public land will require an approved artwork or
 historic image affixed to the hoarding if the hoarding meets the criteria in section 3 of the
 Policy:
 - A. Hoardings proposed on land zoned E1 Local Centre, or MU1 Mixed Use, or SP2 Infrastructure under Woollahra Local Environmental Plan 2014 AND erected for 8 weeks or more

OR

- B. Hoardings proposed on land located along a State classified road (regardless of the zone) AND erected for 8 weeks or more
- C. Hoardings proposed in any other location than that referred to in A. and B. above AND erected for 12 weeks or more, except where:
 - 1. the capital investment value of the work to which the hoarding relates is less than \$1 million, or
 - 2. the land is zoned R2 Low Density Residential, or
 - 3. the land is zoned R3 Medium Density Residential and the hoarding is located in a lane or street that does not have through traffic (e.g. a cul-de-sac or no through road).
- Artwork and historic images for the hoardings are assessed and approved in accordance
 with the Creative Hoardings Policy. Details of the artwork or images proposed to be
 affixed to the hoardings must be submitted with Council's form "Application for a permit
 to use a footpath for the erection of a hoarding/scaffolding". The Creative Hoardings
 Policy can be downloaded from www.woollahra.nsw.gov.au

Condition Reason: To ensure public safety.

B. 9. Site Signs

Before any site work commences, the sign/s required by clauses 70 of the Regulation and 75 of the Development Certification and Fire Safety Regulation must be erected and maintained at all times.

Clause 70 of the Regulation provides:

Erection of signs

- For the purposes of section 4.17(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 certifier 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 6.28 of the Act, to comply with the Building Code of Australia.

Clause 75 of the Development Certification and Fire Safety Regulation provides:

Signs on development sites

If there is a person who is the Principal Certifier 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.

Notes:

- Clause 75 of the Development Certification and Fire Safety Regulations imposes a maximum penalty of 55 penalty units if these requirements are not complied with.
- If Council is appointed as the Principal Certifier 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 70 of the Regulation and clause 75 of the Development Certification and Fire Safety Regulation.

Condition Reason: To ensure that contact details for the principal certifier and principal contractor are provided on a sign at the development site.

B. 10. Toilet Facilities

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

Each toilet provided:

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

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

Notes:

- In this condition 'sewage management facility' and 'public sewer' are as defined by clause 25 of the Local Government (Approvals) Regulation 1999.
- This condition does not set aside the requirement to comply with SafeWork NSW requirements.

Condition Reason: To ensure toilet facilities are provided for workers at the work site

B. 11. Establishment of Boundary Location, Building Location and Datum

Before any site work commences, a surveyor registered under the Surveying and Spatial Information Act 2002 must:

- a) set out the boundaries of the site by permanent marks (including permanent recovery points),
- b) set out 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) establish a permanent datum point (bench mark) within the boundaries of the site relative to AHD, and
- d) provide a copy of a survey report, prepared by the registered surveyor, detailing the title boundaries, pegs/profiles, recovery points and bench mark locations as established under this condition to the Principal Certifier.

Notes

- Where there is 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 site works must not proceed until the variations as shown are consistent with the consent. Failure to do so may result in a breach of development consent.
- On larger developments, or where boundary redefinition is required, the placement of new State Survey Marks as permanent marks must be considered by the registered surveyor.

Condition Reason: To ensure that the boundary locations, building location, and a datum point is established by a surveyor.

B. 12. Compliance with Australian Standard for Demolition

While site work is being carried out, the demolition of buildings and structures must comply with Australian Standard AS 2601—2001: The Demolition of Structures.

Condition Reason To control the risks of demolition work.

REMEDIATION WORK

C. ON COMPLETION OF REMEDIATION WORK

Nil.

BUILDING WORK

D. BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

D. 1. Modification of Details of the Development (section 4.17(1)(g) of the Act

Before the issue of any construction certificate, the approved plans and the construction certificate plans and specification, required to be submitted to the Principal Certifier under clause 7 of the Development Certification and Fire Safety Regulations, must detail the following amendments:

a) The materiality of the new accessible door along the western elevation of the grandstand building is to match other existing doors of the grandstand, so that it is in keeping with the character and design intent of the building.

This is in order to comply with: Woollahra LEP 2014, Clause 5.10 Heritage Conservation, 1(a), (b); Woollahra DCP 2015, Chapter C1, Clause 1.4.2, Objectives O1, O2, O3, Control C2; Woollahra DCP 2015, Chapter C1, Clause 1.5.3, Objective O3, Control C4; Woollahra DCP 2015, Chapter C1, Clause 1.5.8, Objectives O2, Controls C4, C5.

b) All make good, repainting and repair works to the existing windows and doors are to be like for like, including materiality, detailing, design and colour.

This is in order to comply with: Woollahra LEP 2014, Clause 5.10 Heritage Conservation, 1(a), (b); Woollahra DCP 2015, Chapter C1, Clause 1.5.3, Objectives O1, O3, Control C4; Woollahra DCP 2015, Chapter C1, Clause 1.5.8, Objective O2, Controls C4, C5.

Notes:

- Clause 20 of the Development Certification and Fire Safety Regulations prohibits the
 issue of any construction certificate subject to this condition unless the Principal Certifier
 is satisfied that the condition has been complied with.
- Clause 19 of the Development Certification and Fire Safety Regulations prohibits the issue of any construction certificate that is inconsistent with this consent.

Condition Reason: To require design changes and/or further information to be provided to address specific issues identified during the assessment under section 4.15 of the Act.

D. 2. Erosion and Sediment Control Plan – Submission and Approval

Before the issue of any construction certificate, an erosion and sediment control plan, prepared by a suitably qualified person in accordance with the following documents, must be submitted to the Principal Certifier. The erosion and sediment control plan must comply with:

- a) "Do it Right On Site, Soil and Water Management for the Construction Industry" and the accompanying factsheets published by the Southern Sydney Regional Organisation of Councils; and
- b) "Managing Urban Stormwater Soils and Construction" 2004 published by the NSW Government (The Blue Book).

Where there is any conflict The Blue Book takes precedence.

The Principal Certifier must be satisfied that the erosion and sediment control plan complies with the publications above prior to issuing any construction certificate.

Notes:

- The International Erosion Control Association Australasia 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.
- The "Do it Right On Site, Soil and Water Management for the Construction Industry" publication and accompanying factsheets can be downloaded from www.woollahra.nsw.gov.au, and The Blue Book is available at www.environment.nsw.gov.au
- Under clause 73(2)(a)(v) of the Development Certification and Fire Safety Regulation an Accredited Certifier may be satisfied as to this matter.

Condition Reason: To prevent potential water pollution and dust nuisance.

D. 3. Payment of S7.12 Contributions Levy

A payment of a levy authorised by section 7.12 of the Environmental Planning and Assessment Act 1979 must be paid prior to the issue of any Construction Certificate or Subdivision Works Certificate. The Principal Certifier is to be provided with the original receipt for payment under the Woollahra Section 7.12 Development Contributions Plan 2022.

A cost estimate report, no more than 3 months old, demonstrating the proposed cost of carrying out the development must be completed and submitted to Council for determination of the costs of work. This report must incorporate all approved modification applications. The costs and expenses of the proposed cost of development must be established in accordance with clause 208 of the Environmental Planning and Assessment Regulation 2021.

The cost estimate report must be in the form of:

- A cost summary report, prepared by the applicant or a suitably qualified person for a development up to \$749,999; or
- A quantity surveyor's report, for development over \$750,000.

The applicable levy rate is to be calculated using the summary schedule below.

Summary Schedule				
Development Cost	Levy Rate			
 Up to and including \$100,000 	Nil			
 More than \$100,000 and up to and including \$200,000 	0.5% of the cost			
 More than \$200,000 	1% of the cost			

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.

Deferred or periodic payment of section 7.12 levy

Where the Applicant makes a written request supported by reasons for payment of the section 7.12 levy other than as required by clause 2.9, the Council may accept deferred or periodic payment. The decision to accept a deferred or periodic payment is at the sole discretion of the Council, which will consider:

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

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

- the guarantee is by an Australian bank for the amount of the total outstanding contribution,
- the bank unconditionally and irrevocably agrees to pay the guaranteed sum to the Council on written request by Council prior to the issue of an occupation certificate,
- 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 recourse 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, and
- the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

Any deferred or periodic payment of the section 7.12 levy will be adjusted in accordance with clause 2.12 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.

Do you need HELP indexing the levy?

Please contact Council's Customer Service Team on 02 9391 7000. Failure to correctly calculate the adjusted development levy will delay the issue of any certificate issued under section 6.4 of the Act and could void any such certificate (e.g. construction certificate, subdivision certificate, or occupation certificate).

Condition Reason: To ensure any relevant contributions are paid.

D. 4. Structural Adequacy of Existing Supporting Structures

Before the issue of any construction certificate, a certificate from a professional structural engineer, certifying the adequacy of the existing supporting structure to support the additional loads proposed to be imposed by the development, must be provided to the Principal Certifier and submitted with the construction certificate application.

Condition Reason: To ensure that the existing structure is able to support the additional loads proposed.

D. 5. Professional Engineering Details

Before the issue of any construction certificate, the construction certificate plans and specifications, required under clause 7 of the Development Certification and Fire Safety Regulation, must include detailed professional engineering plans and/or specifications for all structural, electrical, hydraulic, hydrogeological, geotechnical, mechanical and civil work complying with this consent, approved plans, and supporting documentation.

Detailed professional engineering plans and/or specifications must be submitted to the Principal Certifier with the application for any construction certificate.

Notes:

• This does not affect the right of the developer to seek staged construction certificates.

Condition Reason: To ensure professional engineering details and technical specifications are provided.

D. 6. Stormwater Discharge to Existing Stormwater Drainage System

Before the issue of any construction certificate, the applicant must submit, for approval by the Principal Certifier, detailed stormwater management plans prepared by a chartered professional civil engineer, which include the following:

 a) The stormwater management plans must specify any components of the existing drainage system to be retained and certified to be in good condition and of adequate capacity to convey additional runoff and be replaced or upgraded if required.

- b) Detail the location of the existing stormwater drainage system including all pipes, inspection openings, surface drains, pits and their discharge location as well as any new stormwater drainage system.
- c) Detail any remedial works required to upgrade the existing stormwater drainage system.
- d) Internal stormwater drainage pipes and pits are to be designed for rainfall intensities up to and including the 1% AEP event if an unimpeded overland flow path to the street drainage system is not available. Design details and calculations must be included in the stormwater management plans.
- e) The discharge of stormwater from the site to the street drainage system. The stormwater outlet pipe across the Council's property must have a minimum grade of 1% to comply with Council's DCP and AS3500.3.
- f) All below ground structures are to be fully tanked such that subsoil drainage/seepage water is NOT discharged to the kerb and gutter to comply with Chapter E2.2.5 of Council's DCP. Notation to this requirement must be clearly depicted on the drawings.
- g) Dimensions of all drainage pits and access grates must comply with AS3500.3 and the Council's DCP.
- h) Interceptor drain(s) at the site boundary to prevent stormwater flows from the site crossing the footpath; and General compliance with the Woollahra DCP 2015 Chapter E2 Stormwater and Flood Risk Management.
- i) General compliance with the Woollahra DCP 2015 Chapter E2 Stormwater and Flood Risk Management.

The Stormwater Management Plan must also 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 Australian Government publication, Australian Rainfall and Run-off, 2019 edition or most current version thereof. It must include:

- a) All pipe layouts, dimensions, grades, lengths and material specification.
- b) Location and dimensions of all downpipes.
- c) All invert levels reduced to Australian Height Datum (AHD).
- d) Location and dimensions of all drainage pits.
- e) Point and method of connection to Councils drainage infrastructure.
- f) Overland flow paths over impervious areas.

Where 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 before 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 (2012).

Notes:

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

Condition Reason: To ensure that site stormwater is disposed of in a controlled and sustainable manner.

D. 7. Flood Protection

Before the issue of any construction certificate, the construction certificate plans and specifications required under clause 7 of the Development Certification and Fire Safety Regulation, must include a Flood Risk Management Plan on the basis of the Flood Planning Level (FPL).

Flood Warning:

a) A permanent flood risk management plan shall be installed in an area frequented by the users.

Flood Proof Material

a) Flood compatible materials shall be used for all flood exposed construction.

Electricals

a) All flood exposed electrical wiring and equipment shall be waterproofed or able to be quickly isolated,

Flood protection is to comply with Woollahra DCP 2015, Part E General Controls for All Development, Chapter E2 –Stormwater and Flood Risk Management.

Notes:

 The revised driveway profile, gradients and transitions must be in accordance with Australian Standard 2890.1, Part 1: Off-street car parking. The driveway profile submitted to Council must contain all relevant details: reduced levels, proposed grades and distances. Council will not allow alteration to existing reduced levels within the road or any other public place to achieve flood protection.

Condition Reason: To ensure the development incorporates flood inundation protection measures.

E. BEFORE BUILDING WORK COMMENCES

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

Before any building work commences, and under section 4.17(11) of the Act, the following conditions are prescribed in relation to a development consent for development that involves any building work:

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

This condition does not apply:

- a) to the extent to which an exemption is in force under the Home Building Regulation 2014, or
- 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.

Notes:

- 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.
- All new guttering is to comply with the provisions of AS3500.

Condition Reason: To ensure that works are carried out in accordance with the Building Code of Australia and any required contract of insurance is in force.

E. 2. Erosion and Sediment Controls – Installation

Before any building work commences, water pollution, erosion and sedimentation controls must be installed and maintained 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" and accompanying factsheets published by the Southern Sydney Regional Organisation of Councils, and
- c) "Managing Urban Stormwater Soils and Construction" 2004 published by the NSW Government (The Blue Book).

Where there is any conflict The Blue Book takes precedence.

Notes:

- The International Erosion Control Association Australasia (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.
- The "Do it Right On Site, Soil and Water Management for the Construction Industry" publication and the accompanying factsheets can be downloaded from www.woollahra.nsw.gov.au and The Blue Book is available at www.environment.nsw.gov.au
- 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.
- 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.

Condition Reason: To prevent potential water pollution and dust nuisance.

E. 3. Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 of the Act)

Building work must not commence, until:

- 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 Certifier for the building work, and

- notified the Principal Certifier that the person will carry out the building work as an Owner-builder, if that is the case, and
- c) The Principal Certifier 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 Certifier 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.

Notes:

- **Building** has the same meaning as in section 1.4 of the Act and includes part of a building and any structure or part of a structure.
- **New building** has the same meaning as in section 6.1 of the Act and includes an altered portion of, or an extension to, an existing building.
- 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 6.6(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.
- Construction Certificate Application, PC Service Agreement and Notice of Commencement forms can be downloaded from Council's website www.woollahra.nsw.gov.au
- 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 6.6(2) of the Act.
- 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 NSW Fair Trading.

Condition Reason: To ensure a construction certificate has been issued, a Principal Certifier is appointed, a Principal Contractor (if applicable) is appointed, and a notice of commencement has been submitted.

F. DURING BUILDING WORK

F. 1. Compliance with BCA and Insurance Requirements under the Home Building Act 1989

While site work is being carried out:

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

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

This condition does not apply:

- a) to the extent to which an exemption is in force under the Development Certification and Fire Safety Regulations, 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.

For the purposes of section 4.17(11) of the Act, the above condition is prescribed in relation to a development consent for development that involves any building work.

Notes:

· All new guttering is to comply with the provisions of AS 3500.

Condition Reason: To ensure compliance with the BCA and Home building Act 1989.

F. 2. Requirement to Notify about New Evidence

While site work is being carried out, any new information that comes to light, 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 Certifier.

Condition Reason: To ensure Council and the Principal Certifier are made aware of new information.

F. 3. Critical Stage Inspections

While site work is being carried out, critical stage inspections must be called for by the Principal Contractor or Owner-builder as required by the Principal Certifier, any PC service agreement, the Act, the Development Certification and Fire Safety Regulation, and the Regulation.

Work must not proceed beyond each critical stage until the Principal Certifier 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 Development Certification and Fire Safety Regulations, and Regulations for the purposes of section 6.5 of the Act or as required by the Principal Certifier and any PC Service Agreement.

Notes:

- The Principal Certifier may require inspections beyond mandatory critical stage inspections in order that the Principal Certifier be satisfied that work is proceeding in accordance with this consent.
- The Principal Certifier may, in addition to inspections, require the submission of Compliance Certificates, survey reports or evidence of suitability in accordance with Part A2G2 of the BCA in relation to any matter relevant to the development.

Condition Reason: To ensure that building work progresses in accordance with the approved plans, conditions of consent, and requirements of the act.

F. 4. Hours of Work – Amenity of the Neighbourhood

While site work is being carried out:

- a) No work must take place on any Sunday or public holiday.
- b) No work must take place before 7am or after 5pm any weekday.
- c) No work must take place before 7am or after 1pm any Saturday.
- d) The following work must not take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday:
 - i. piling,
 - ii. piering,
 - iii. rock or concrete cutting, boring or drilling,
 - iv. rock breaking,
 - v. rock sawing,
 - vi. jack hammering, or
 - vii. machine excavation.
- e) No loading or unloading of material or equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.
- f) No operation of any equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.
- g) No rock excavation being cutting, boring, drilling, breaking, sawing, jack hammering or bulk excavation of rock, must occur without a 15 minute interval break within every hour.

Notes:

- 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.
- Each and every breach of this condition by any person may be subject to a separate penalty infringement notice or prosecution.
- The delivery and removal of plant, equipment and machinery associated with wide loads subject to Transport for NSW and NSW Police restrictions on their movement outside the approved hours of work will be considered on a case by case basis.
- 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 2017.
- NSW EPA Noise Guide is available at www.epa.nsw.gov.au/noise/nglg.htm

Condition Reason: To mitigate the impact of work upon the amenity of the neighbourhood.

F. 5. Public Footpaths – Safety, Access and Maintenance

While site work is being carried out, any person acting with the benefit of this consent must:

- a) Not erect or maintain any gate or fence that swings out, or encroaches upon the road or the footway.
- b) Not use the road or footway for the storage of any article, material, matter, waste or thing.
- c) Not use the road or footway for any work.
- d) Keep the road and footway in good repair free of any trip hazard or obstruction.
- e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be immediately made safe and then repaired, to the satisfaction of Council.
- f) Not stand any plant and equipment upon the road or footway.
- g) If it is proposed to locate any site fencing, hoardings, skip bins or other articles upon any part of the footpath, nature strip or any public place, or operate a crane, hoist or concrete pump on or over Council land, an application must be submitted to and approved by Council beforehand.
- h) Provide a clear safe pedestrian route a minimum of 1.5m wide.
- Protect heritage listed street name inlays located in the footpath, kerb and gutter, and any other structure, to ensure they are not removed or damaged during development.

This condition does not apply to the extent that a permit or approval exists under the section 148B of the Road Transport Act 2013, section 138 of the Roads Act 1993 or section 68 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.

Notes

- Section 148B of the Road Transport Act 2013 allows the NSW Police to close any road or road related area to traffic during any temporary obstruction or danger to traffic or for any temporary purpose.
- 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.
- 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.

Condition Reason: To ensure safe access is maintained to footpaths and roads during building works.

F. 6. Maintenance of Environmental Controls

While site work is being carried out, the following monitoring, measures and controls must be maintained:

- a) erosion and sediment controls,
- b) dust controls,
- c) dewatering discharges,
- d) noise controls,
- e) vibration monitoring and controls, and
- f) ablutions.

Condition Reason: To ensure that environmental controls are maintained during building works to protect the public and surrounding environment.

F. 7. Support of Adjoining Land and Buildings

While site work is being carried out, 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.

Notes:

- 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:
 - the consent of the owners of such adjoining or supported land to trespass or encroach, or
 - an access order under the Access to Neighbouring Land Act 2000, or
 - an easement under section 88K of the Conveyancing Act 1919, or
 - an easement under section 40 of the Land and Environment Court Act 1979 as appropriate.
- 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).
- Clause 17 of the Roads Regulation 2018 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.
- 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.

Condition Reason: To ensure that the support of adjoining land is not removed.

F. 8. Erosion and Sediment Controls – Maintenance

While site work is being carried out, water pollution, erosion, and sedimentation controls must be maintained 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" and the accompanying factsheets published by the Southern Sydney Regional Organisation of Councils, and
- c) "Managing Urban Stormwater Soils and Construction" 2004 published by the NSW Government (The Blue Book).

Where there is any conflict The Blue Book takes precedence.

Notes:

- 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.
- 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.

Condition Reason: To prevent potential water pollution and dust nuisance.

F. 9. Disposal of Site Water During Construction

While site work is being carried out:

- a) Prior to pumping any water into the road or public stormwater system, approval must be obtained from Council under section 138(1)(d) of the Roads Act 1993.
- b) Water pollution, as defined by the Protection of the Environment Operations Act 1997, must not occur as the result of the discharge to the road, public stormwater system or other place of 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.

Condition Reason: To ensure that adjoining and neighbouring land is not adversely affected by unreasonable overland flows of stormwater and that site water does not cause erosion and water pollution.

F. 10. Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum

While site work is being carried out, a registered surveyor must carry out check surveys and provide survey certificates confirming the location of the building(s), ancillary works, flood protection works and the stormwater drainage system relative to the boundaries of the site and that the height of buildings, ancillary works, flood protection works and the stormwater drainage system relative to Australian Height Datum complies with this consent at the following critical stages.

Work must not proceed beyond each of the following critical stages until compliance has been demonstrated to the Principal Certifier's satisfaction:

- a) Upon the completion of foundation walls prior to the laying of any floor or the pouring of any floor slab and generally at damp proof course level.
- b) Upon the completion of formwork for floor slabs prior to the laying of any floor or the pouring of any concrete and generally at each storey.
- c) Upon the completion of formwork or framework for the roof(s) prior to the laying of any roofing or the pouring of any concrete roof.
- d) Upon the completion of formwork and steel fixing prior to pouring of any concrete for any ancillary structure, flood protection work, swimming pool or spa pool or the like.
- e) Upon the completion of formwork and steel fixing prior to pouring of any concrete for driveways showing transitions and crest thresholds confirming that driveway levels match Council approved driveway crossing levels and minimum flood levels.
- f) Stormwater drainage Systems are in place prior to back filling over pipes confirming location, height and capacity of works.
- g) Flood protection measures are in place confirming location, height and capacity.

Condition Reason: To ensure that development occurs in the location and at the height approved under this consent, which is critical to ensure that buildings are constructed to minimum heights for flood protection and maximum heights to protect views and the amenity of neighbours.

F. 11. Placement and Use of Skip Bins

While site work is being carried out, 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 68 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.

Notes:

 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.

Condition Reason: To ensure waste storage containers are appropriately located.

F. 12. Prohibition of Burning

While site work is being carried out, there must be no burning of any waste or other materials. The burning of copper chrome arsenate (CCA) or pentachlorophenol (PCP) treated timber is prohibited in all parts of NSW. All burning is prohibited in the Woollahra local government area.

Notes:

 Under the Protection of the Environment Operations (Clean Air) Regulation 2021 all burning (including burning of vegetation and domestic waste) is prohibited except with approval. No approval is granted under this consent for any burning.

Condition Reason: To ensure no burning of waste occurs.

F. 13. Dust Mitigation

While site work is being carried out, dust mitigation must be implemented in accordance with "Dust Control - Do it right on site" and the accompanying facts sheets 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.

Notes:

- "Dust Control Do it right on site" and the accompanying factsheets can be downloaded from Council's website www.woollahra.nsw.gov.au
- Special precautions must be taken when removing asbestos or lead materials from development sites. Additional information can be obtained from www.safework.nsw.gov.au and www.epa.nsw.gov.au. Other specific conditions and advice may apply.
- 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.

Condition Reason: To mitigate the impact of dust upon the amenity of the neighbourhood and prevent water pollution.

F. 14. Site Waste Minimisation and Management – Demolition

While site work is being carried out, in order to maximise resource recovery and minimise residual waste from demolition activities:

- a) the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work,
- b) an area is to be allocated for the storage of materials for use, recycling and disposal (giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation and access and handling requirements),
- c) separate collection bins and/or areas for the storage of residual waste are to be provided.
- d) the purpose and content of the bins and/or storage areas are to be clearly 'signposted',
- e) measures to prevent damage by the elements, odour, health risks and windborne litter are to be implemented, and
- f) site disturbance must be minimised, and unnecessary excavation limited.

When implementing the SWMMP the Applicant must ensure:

- a) footpaths, public reserves and street gutters are not used as places to store demolition waste or materials of any kind without Council approval,
- b) any material moved offsite is transported in accordance with the requirements of the Protection of the Environment Operations Act 1997,

- c) waste is only transported to a place that can lawfully be used as a waste facility,
- d) generation, storage, treatment and disposal of hazardous waste and special waste (including asbestos) is conducted in accordance with relevant waste legislation administered by the NSW Environment Protection Authority, and relevant occupational health and safety legislation administered by SafeWork NSW, and
- e) evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained.

Notes

 Materials that have an existing reuse or recycling market must not be disposed of in a land fill. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.

Condition Reason: To maximise resource recovery and minimise residual waste from demolition activities.

F. 15. Site Waste Minimisation and Management – Construction

While site work is being carried out, in order to maximise resource recovery and minimise residual waste from construction activities:

- a) the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work,
- b) deliveries of materials must be arranged so that materials are delivered 'as needed' to prevent the degradation of materials through weathering and moisture damage,
- c) consideration must be given to returning excess materials to the supplier or manufacturer,
- d) an area must be allocated for the storage of materials for use, recycling and disposal (considering slope, drainage, location of waterways, stormwater outlets and vegetation),
- e) the purpose and content of the storage areas must be clearly 'signposted',
- f) contractors must be arranged for the transport, processing and disposal of waste and recycling and all contractors must be aware of the legal requirements for disposing of waste,
- g) separate collection bins or areas for the storage of residual waste must be promoted,
- h) measures to prevent damage by the elements, odour and health risks, and windborne litter must be implemented,
- i) site disturbance must be minimised and unnecessary excavation limited,
- j) all waste must be transported to a place that can lawfully be used as a waste facility, and
- k) records demonstrating lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as Council, the NSW EPA or SafeWork NSW.

Condition Reason: To maximise resource recovery and minimise residual waste from construction activities.

F. 16. Asbestos Removal

While site work is being carried out, all asbestos removal work must be carried out safely according to NSW work health and safety legislation.

Where hazardous material, including bonded or friable asbestos has been identified in accordance with the conditions in Section B above, and such material must be demolished, disturbed and subsequently removed, all such works must comply with the following criteria:

- a) Be undertaken by contractors who hold a current SafeWork NSW "demolition licence" and a current SafeWork NSW "Class A licence" for friable asbestos removal.
- b) Be carried out in accordance with the relevant SafeWork NSW codes of practice.
- c) No asbestos products may be reused on the site.
- d) No asbestos laden skip or bins must be left in any public place.

Notes:

- Before starting work, a work site-specific permit approving each asbestos project must be obtained from SafeWork NSW. A permit will not be granted without a current SafeWork licence.
- All removal, repair or disturbance of or to asbestos material must comply with:
 - Work Health and Safety Act 2011,
 - Work Health and Safety Regulation 2017,
 - SafeWork NSW "Code of Practice: How to Safely Remove Asbestos" (2016), and
 SafeWork NSW "Code of Practice: How to Manage and Control Asbestos in the
 - SafeWork NSW "Code of Practice: How to Manage and Control Asbestos in the Workplace" (2016).
- For more information go to the SafeWork NSW website on asbestos www.safework.nsw.gov.au/health-and-safety/safety-topics-a-z/asbestos, and www.safework.nsw.gov.au/law-and-policy/legislation-and-codes/codes-ofpractice or call 131 050

Condition Reason: To ensure the safe removal of asbestos and protect the health and safety of persons working on the site and the public.

F. 17. Classification of Hazardous Waste

While site work is being carried out, and prior to the exportation of hazardous waste (including hazardous fill or soil) from the site, the waste materials must be classified in accordance with the provision of the Protection of the Environment Operations Act 1997 and the NSW EPA Waste Classification Guidelines, Part1: Classifying Waste, 2014.

Condition Reason: To ensure that where hazardous waste will be removed from a site an asbestos licensed contractor can definitively determine where the waste may be legally taken for disposal.

F. 18. Disposal of Asbestos and Hazardous Waste

While site work is being carried out, asbestos and hazardous waste, once classified in accordance with the hazardous waste classification condition must only be transported to waste facilities licensed to accept asbestos and appropriate classifications of hazardous waste.

Condition Reason: To ensure that asbestos and other hazardous waste is disposed of lawfully under the Protection of the Environment Operations Act 1997 and relevant NSW EPA requirements.

F. 19. Asbestos Removal Signage

While site work is being carried out and when asbestos is being removed, standard commercially manufactured signs containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm are to be erected in prominent visible positions on the site.

Condition Reason: To ensure awareness of any hazard to the health and safety of persons working on the site and public.

F. 20. Notification of Asbestos Removal

While site work is being carried out, in addition to the requirements for licensed asbestos removalists to give written notice to SafeWork NSW, all adjoining properties and those opposite the development site must be notified in writing of the dates and times when asbestos removal is to be conducted.

The notification is to identify the licensed asbestos removal contractor and include a contact person for the site together with telephone and facsimile numbers and email addresses.

Condition Reason: To ensure that local residents are informed and have adequate contact details for incidents of asbestos removal.

F. 21. Tree Preservation

While site work is being carried out, all persons must comply with Chapter E.3 – *Tree Management* of Council's Development Control Plan (DCP) 2015, other than where varied by this consent. The DCP applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.

General Protection Requirements:

- a) The tree protection measures must be maintained during all development work unless otherwise specified within these conditions of consent.
- b) Excavation must cease where tree roots with a diameter exceeding 50mm are exposed. The principal contractor must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.
- 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 arborist. The arborist is to supply a detailed report to the appointed certifier.

Trees must be pruned in accordance with Australian Standard AS 4373 "Pruning of Amenity Trees" and WorkCover NSW Code of Practice Amenity Tree Industry.

Condition Reason: To protect trees during the carrying out of sitework. Standard Condition F.8 (Autotext 8F)

G. BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

G. 1. Occupation Certificate (section 6.9 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 6.10 of the Act) unless an occupation certificate has been issued in relation to the building or part.

Notes:

· New building includes an altered portion of, or an extension to, an existing building.

Condition Reason: To ensure the building is suitable to occupy.

G. 2. Commissioning and Certification of Systems and Works

Before the issue of any occupation certificate, works-as-executed (WAE) plans prepared by a registered surveyor, compliance certificates, and evidence of suitability in accordance with Part A5G1 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 must be submitted to the satisfaction of the Principal Certifier.

Works-as-executed plans, compliance certificates, and evidence of suitability in accordance with Part A5G1 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 Certifier may require.

Notes:

- The PC 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).
- The PC must submit to Council, with any occupation certificate, copies of WAE plans, compliance certificates and evidence of suitability in accordance with Part A5G1 of the BCA upon which the PC has relied in issuing any occupation certificate.

Condition Reason: To ensure that systems and works as completed meet development standards as defined by the Act, comply with the BCA, and this consent, and to ensure a public record of works as executed is maintained.

G. 3. Removal of Ancillary Works and Structures

Before the issue of any occupation certificate for the whole of the building, The following articles must be removed 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.

Condition Reason: To ensure that all ancillary matter is removed prior to occupation.

G. 4. Works-As-Executed Certification of Stormwater Systems

Before the issue of an occupation certificate for the whole of the building, and on the completion of construction work, stormwater drainage works are to be certified by a professional engineer with works-as-executed drawings supplied to the Principal Certifier detailing:

- a) compliance with conditions of development consent relating to stormwater,
- b) pipe invert levels and surface levels to Australian Height Datum, and
- c) contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.

Notes:

 The occupation certificate for the whole of the building must not be issued until this condition has been satisfied.

Condition Reason: To ensure the certification and ongoing maintenance of the stormwater system prior to the occupation of the whole building.

H. OCCUPATION AND ONGOING USE

SUBDIVISION WORK

I. BEFORE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

Nil.

J. BEFORE SUBDIVISION WORK COMMENCES

Nil.

K. BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

Nil.

LAND SUBDIVISION

L. BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

Nil.

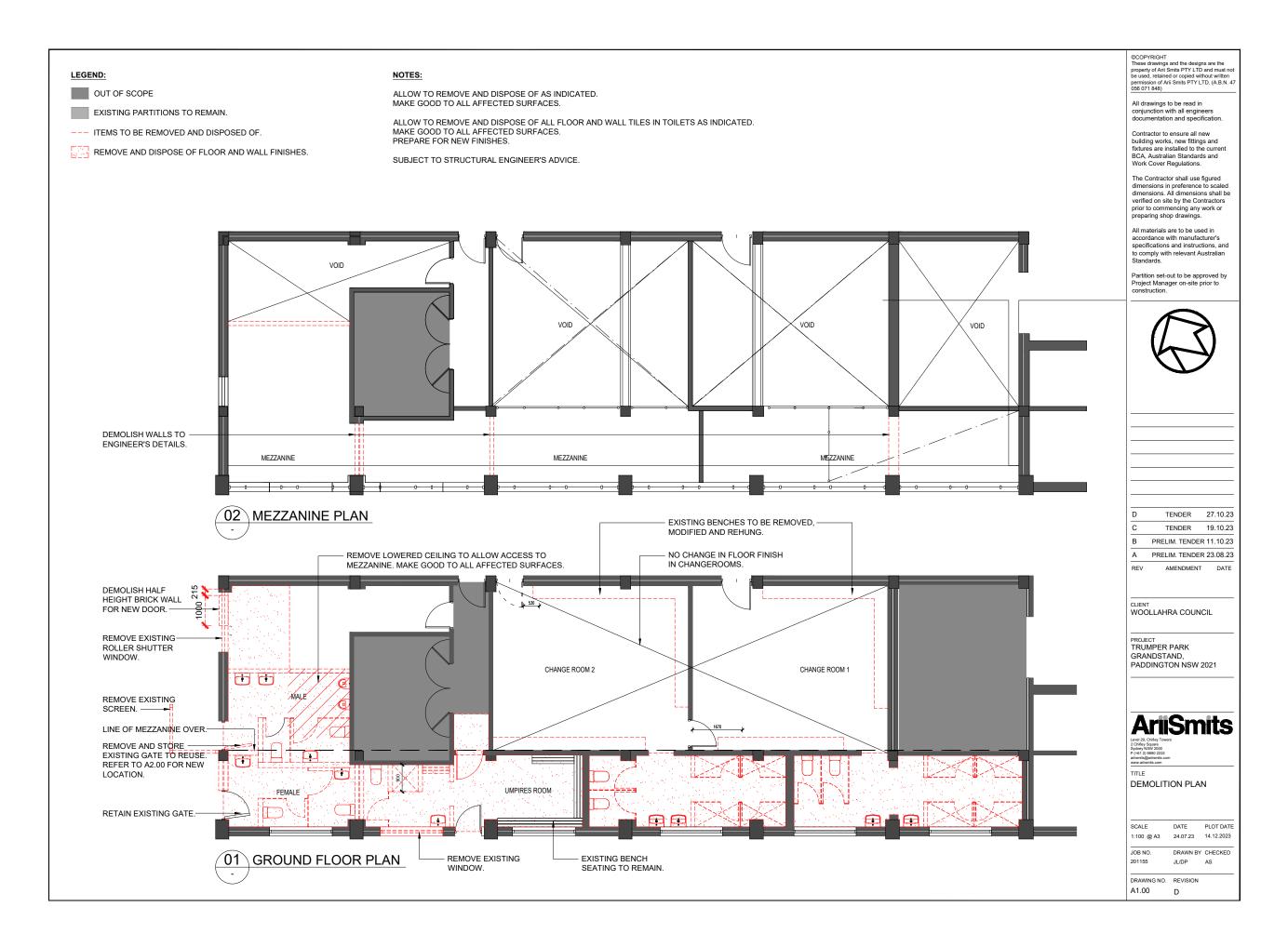
STRATA SUBDIVISION

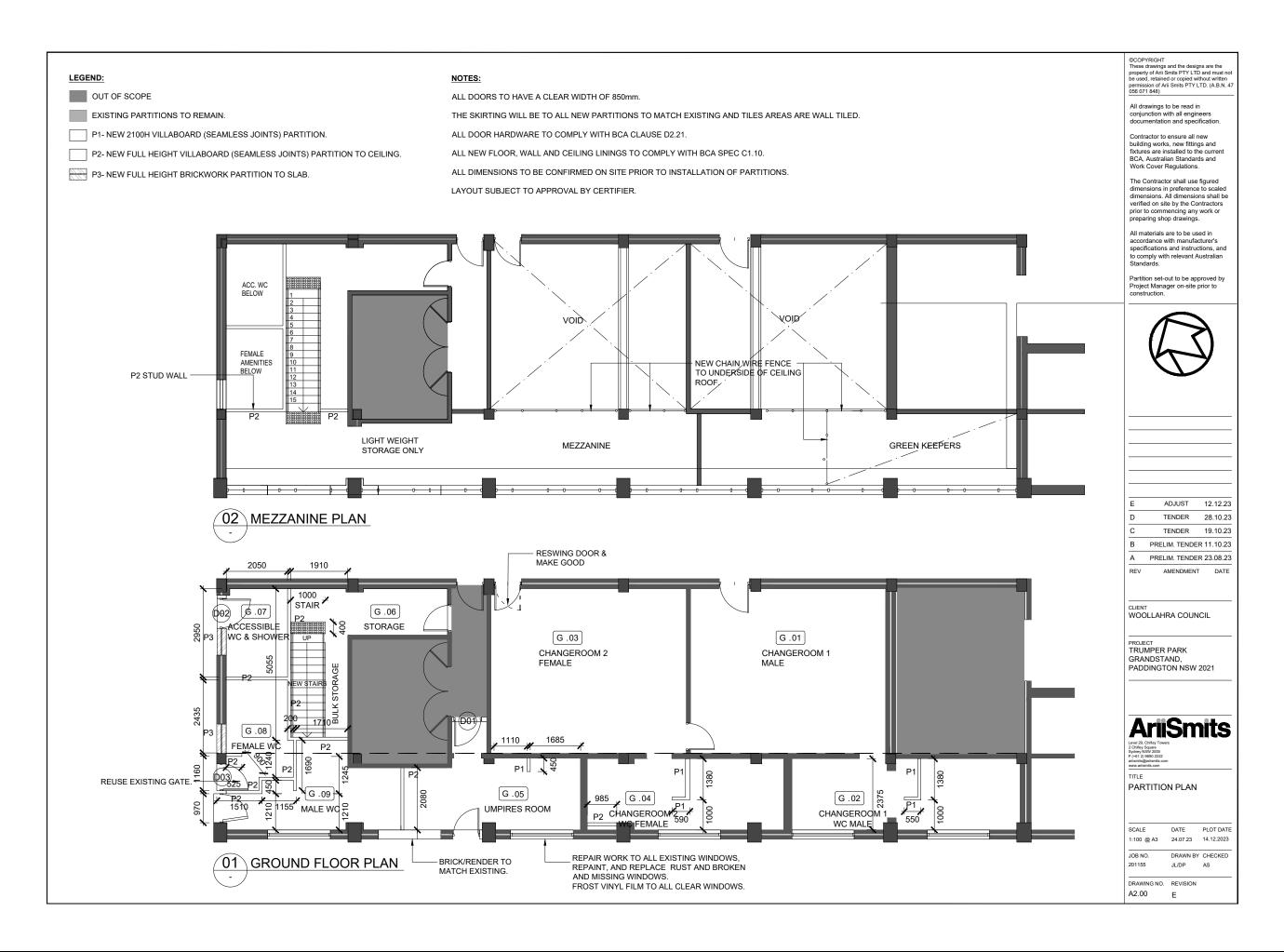
M. BEFORE ISSUE OF A STRATA CERTIFICATE

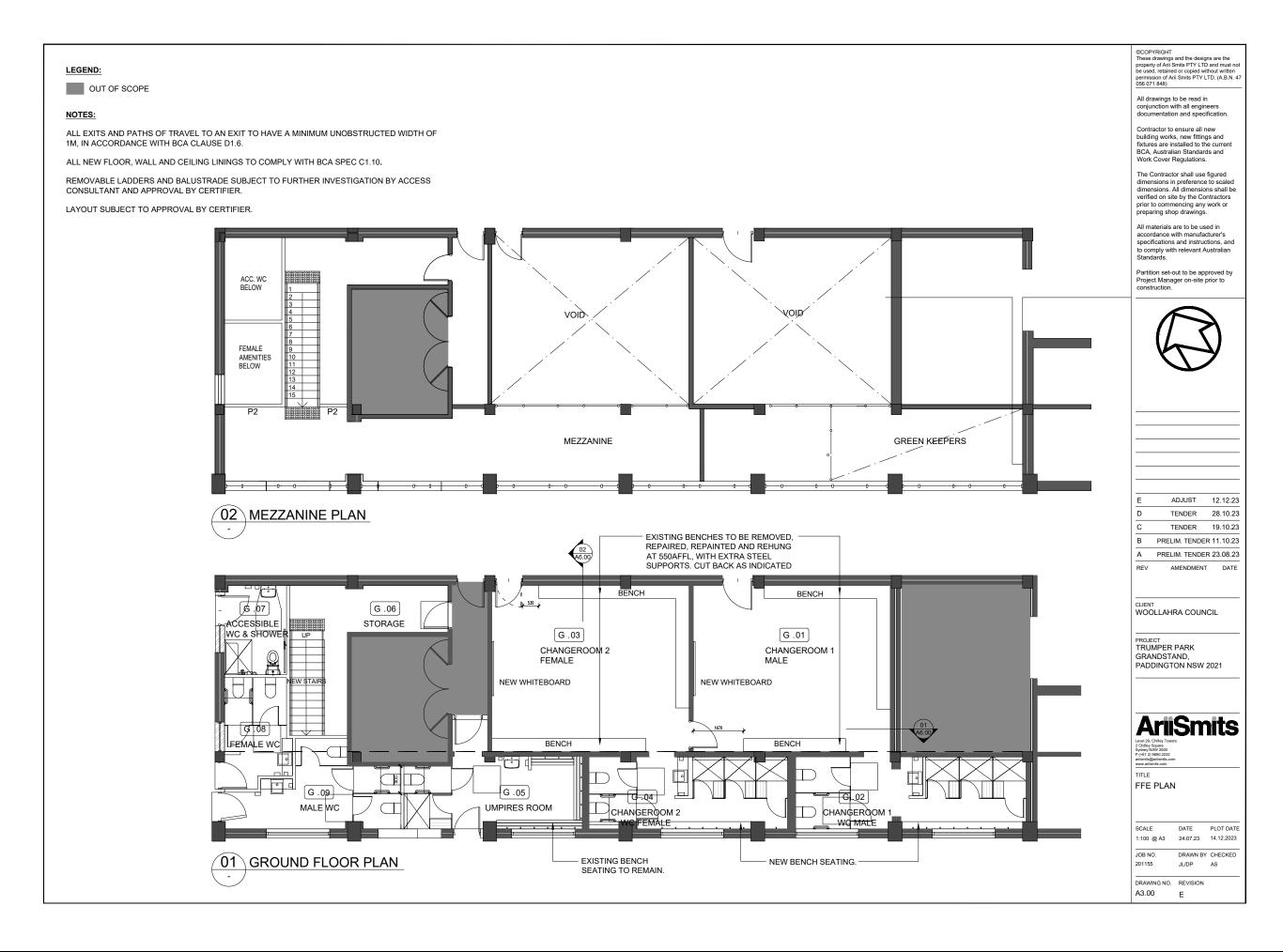
Nil.

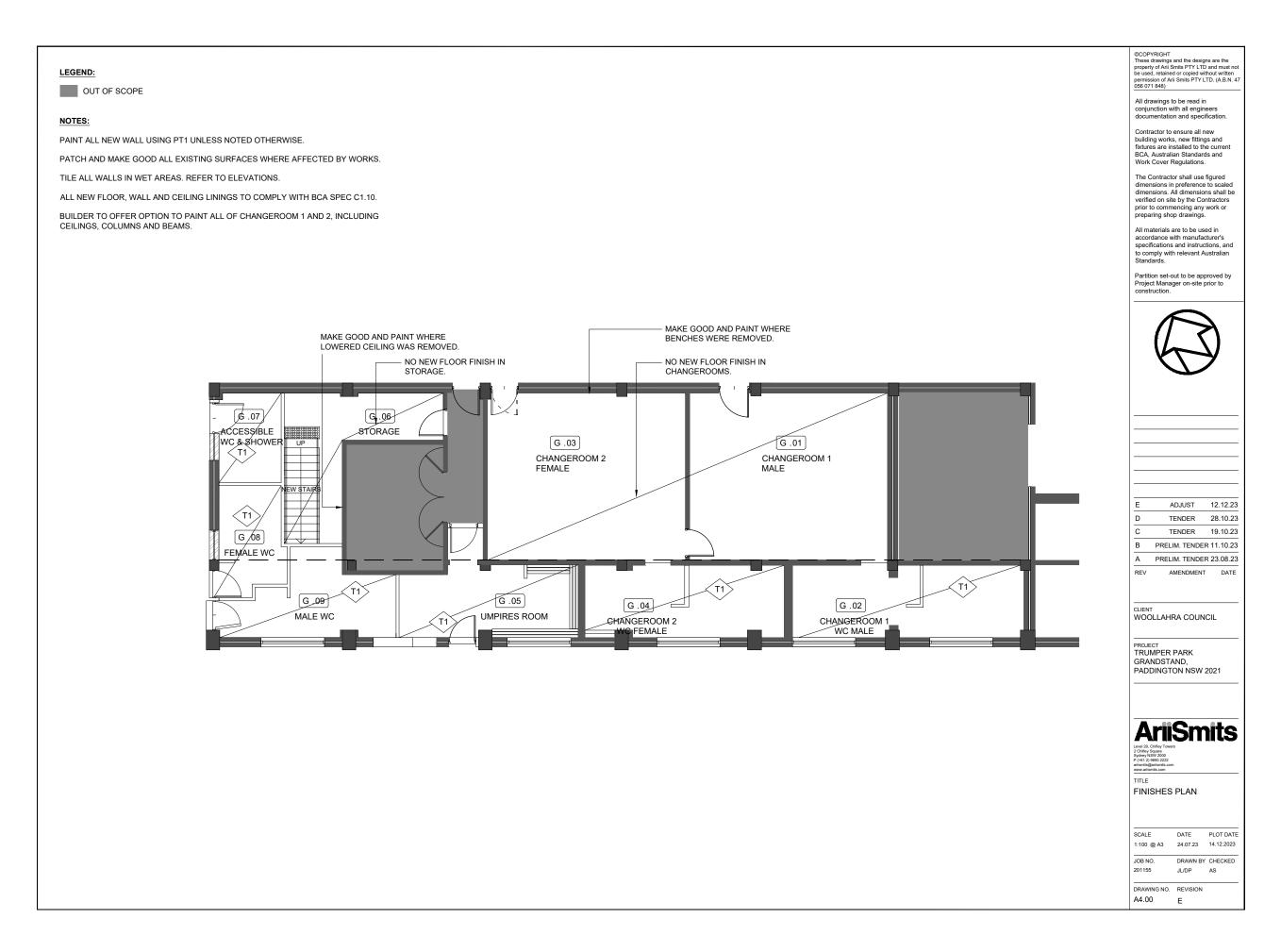
Attachments

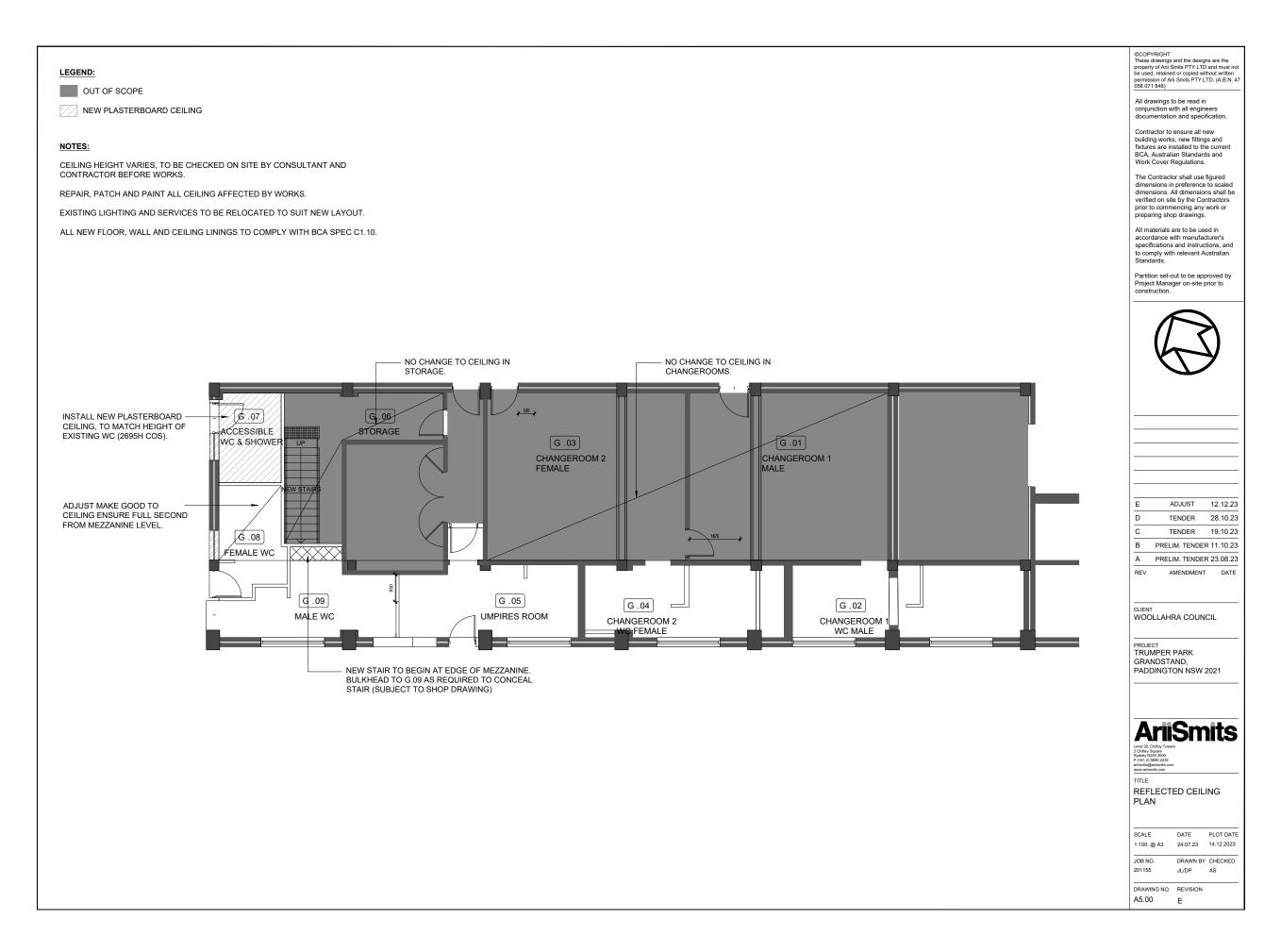
- 1. Plans and Elevations J.
- 2. Trees & Landscaping Referral Response 🗓 🖺
- 3. Heritage Referral Response J.
- 4. Drainage Referral Response J

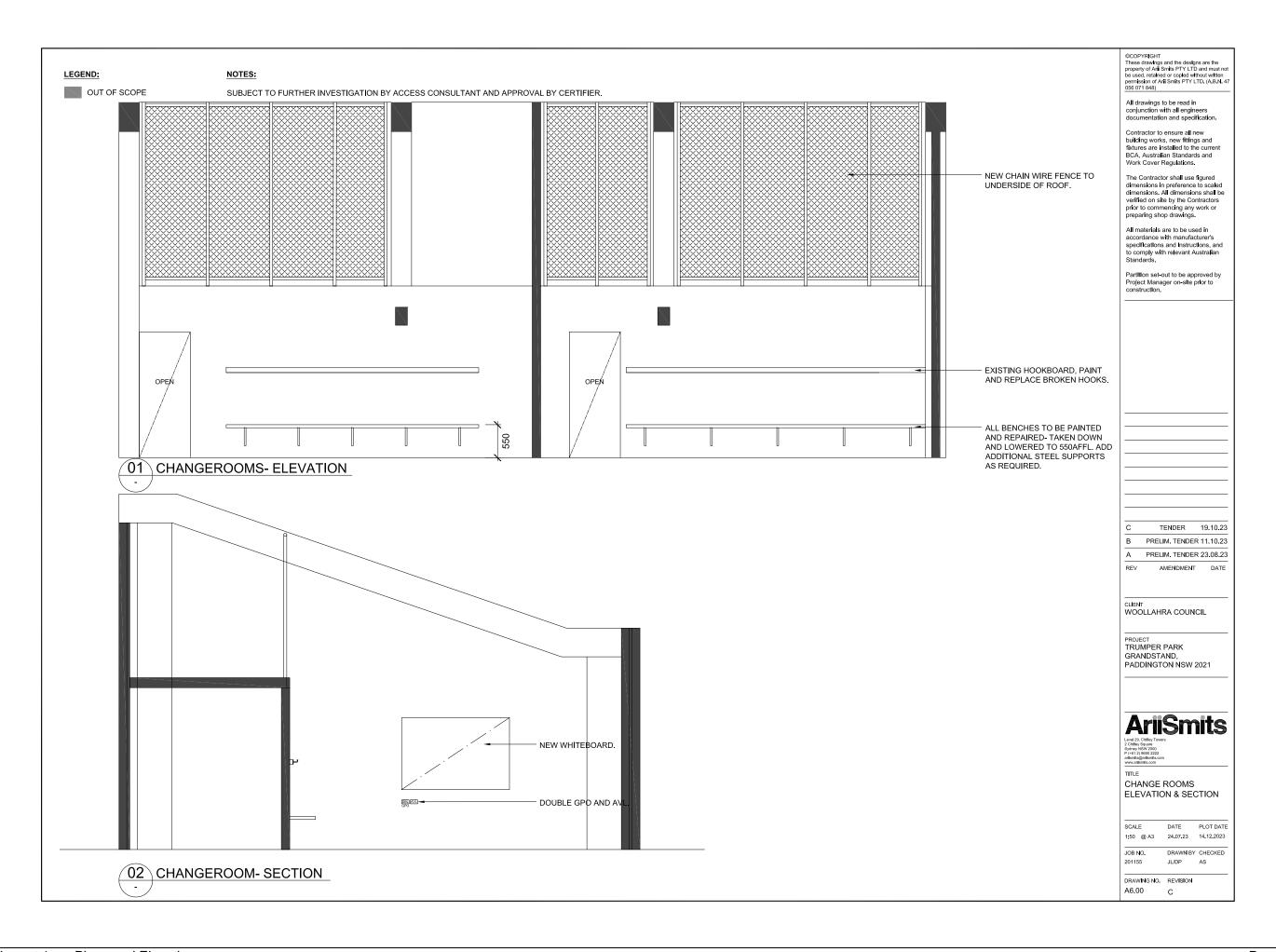


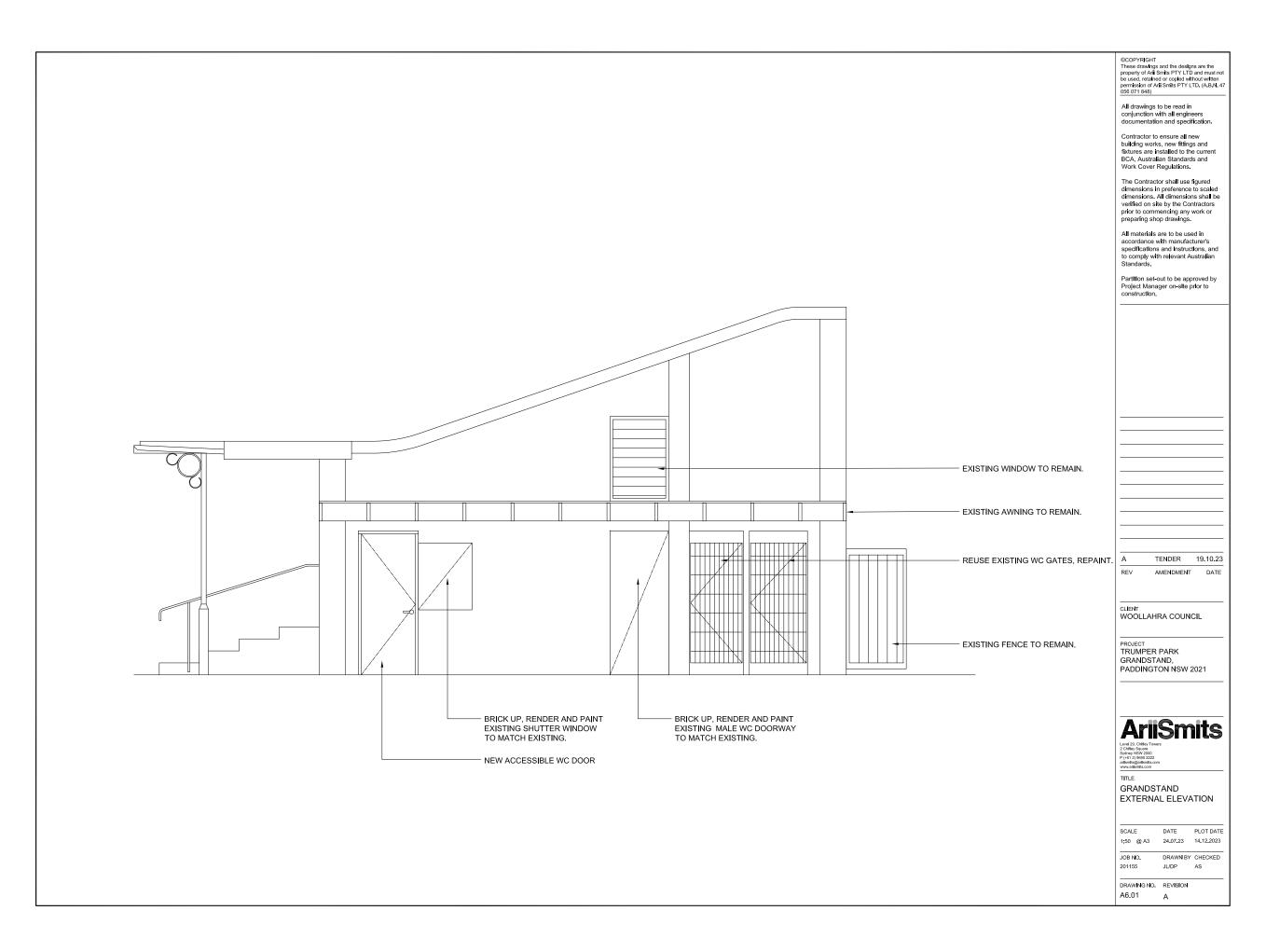


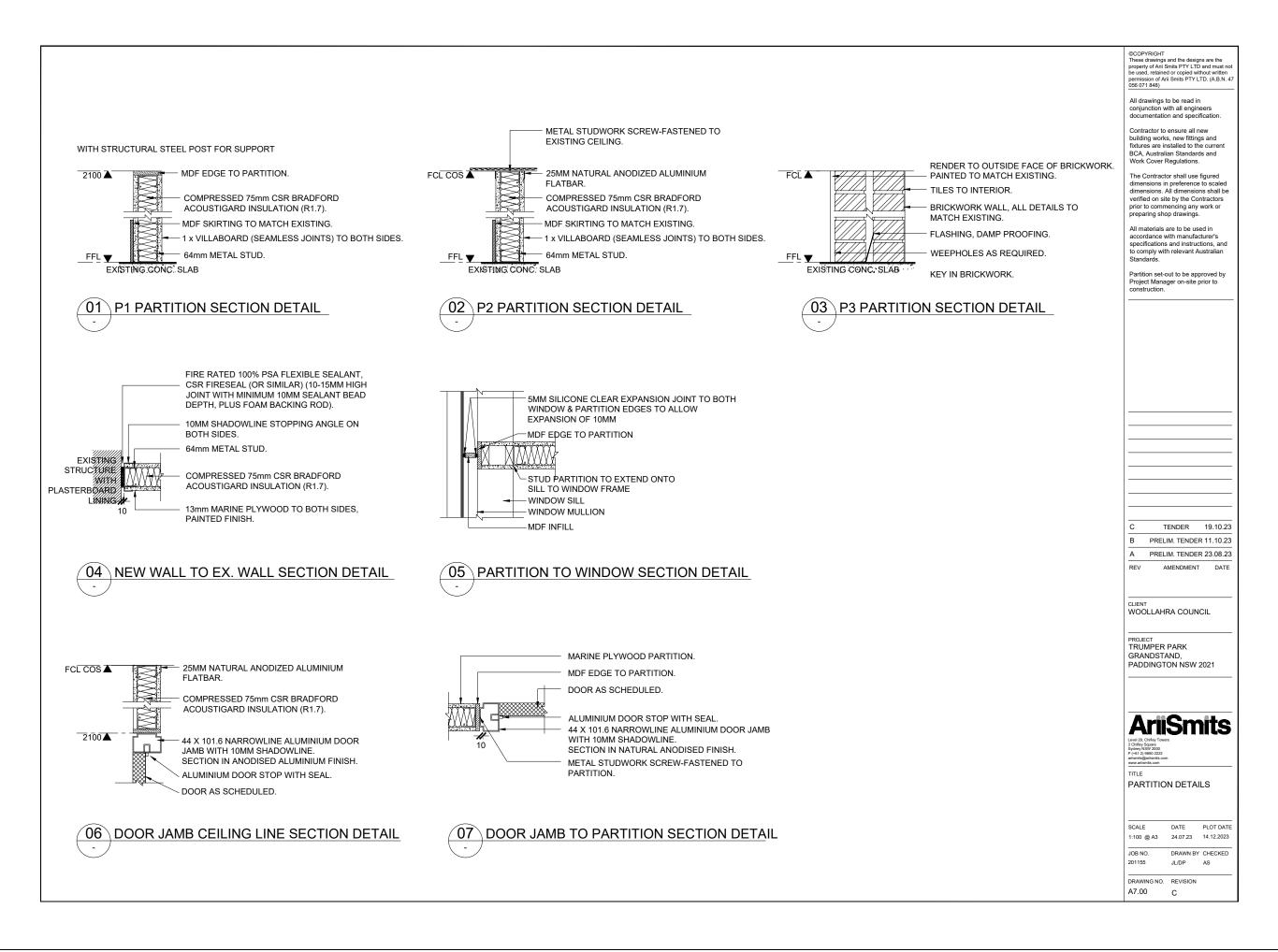


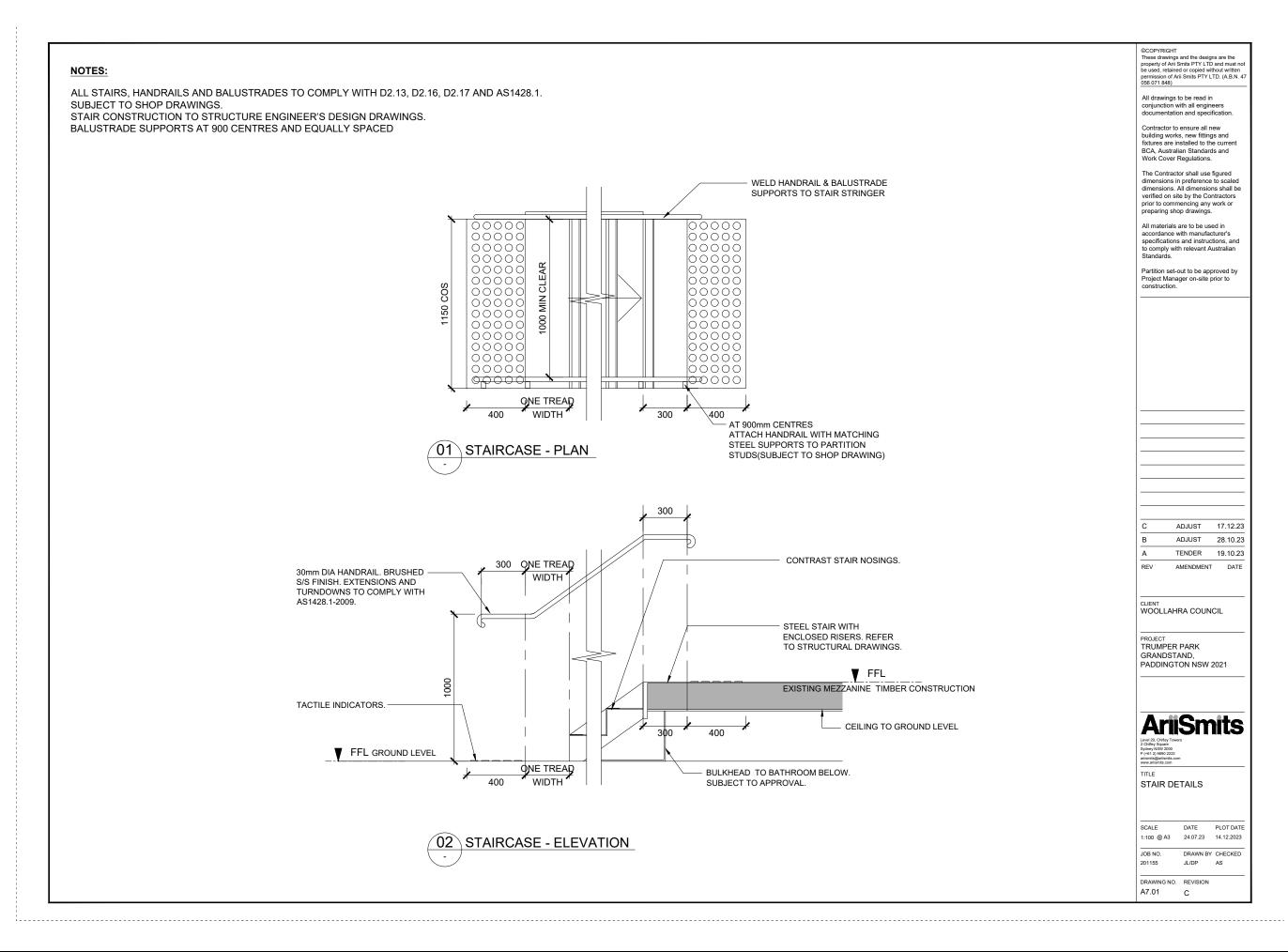


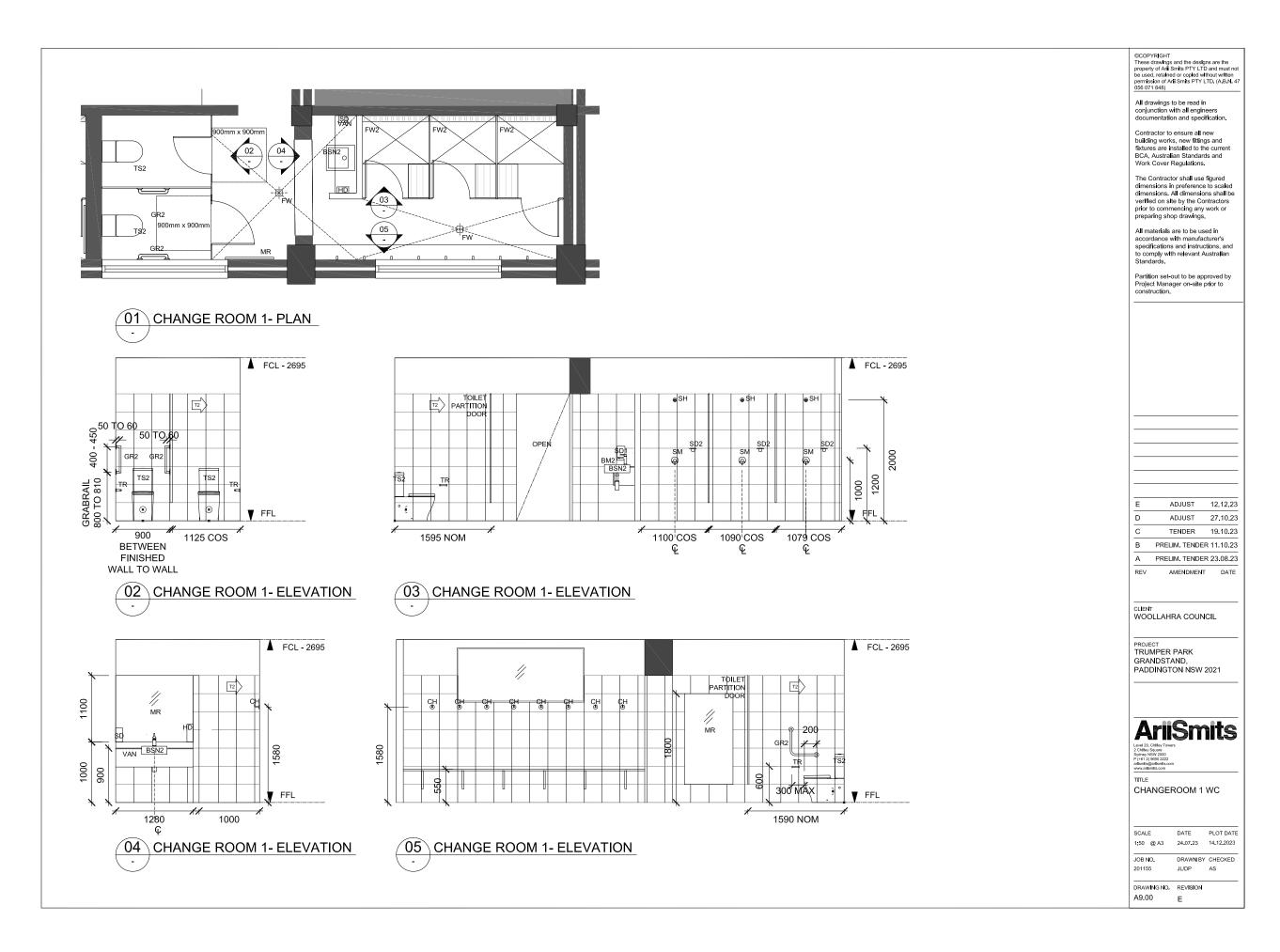


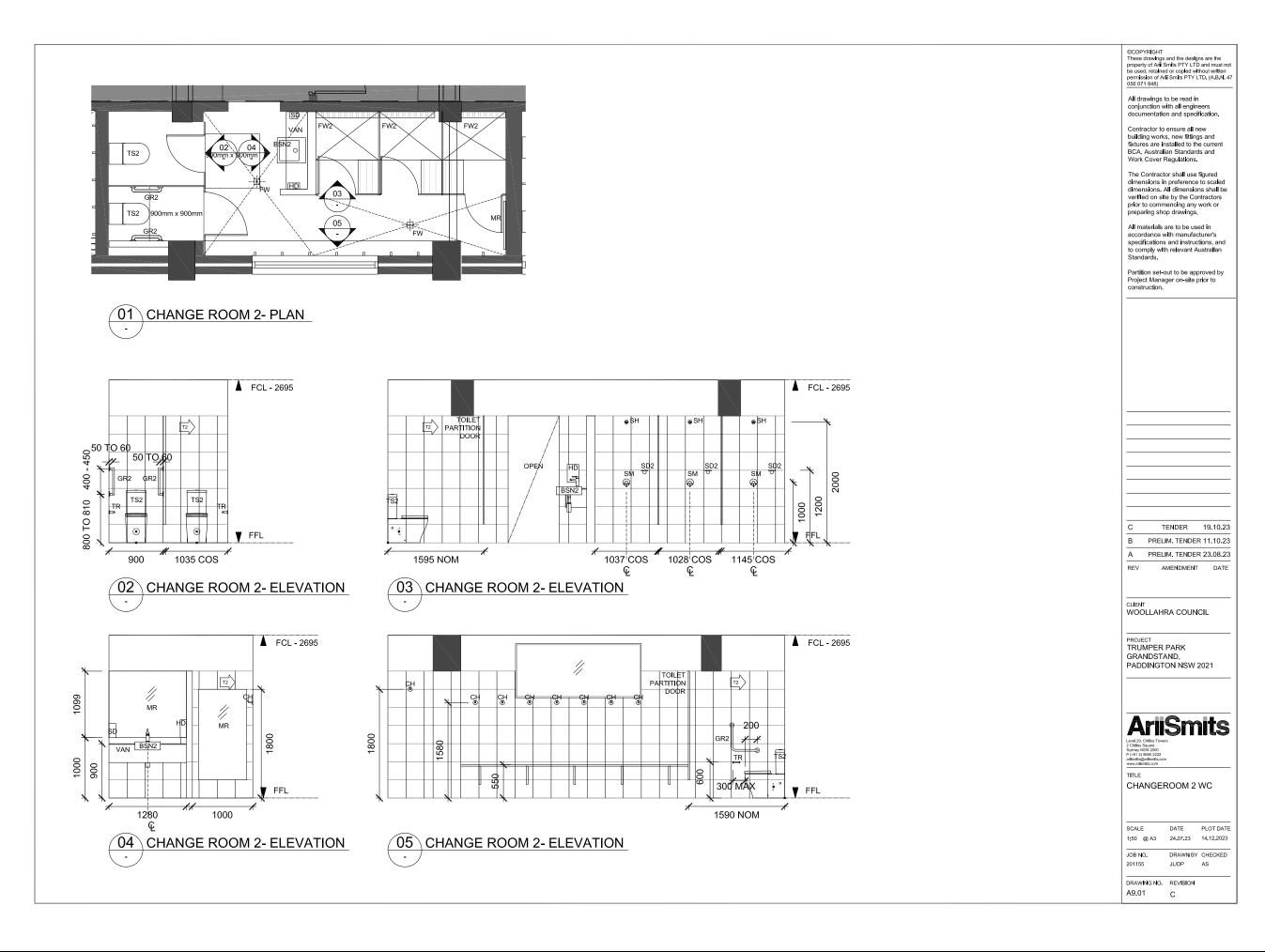


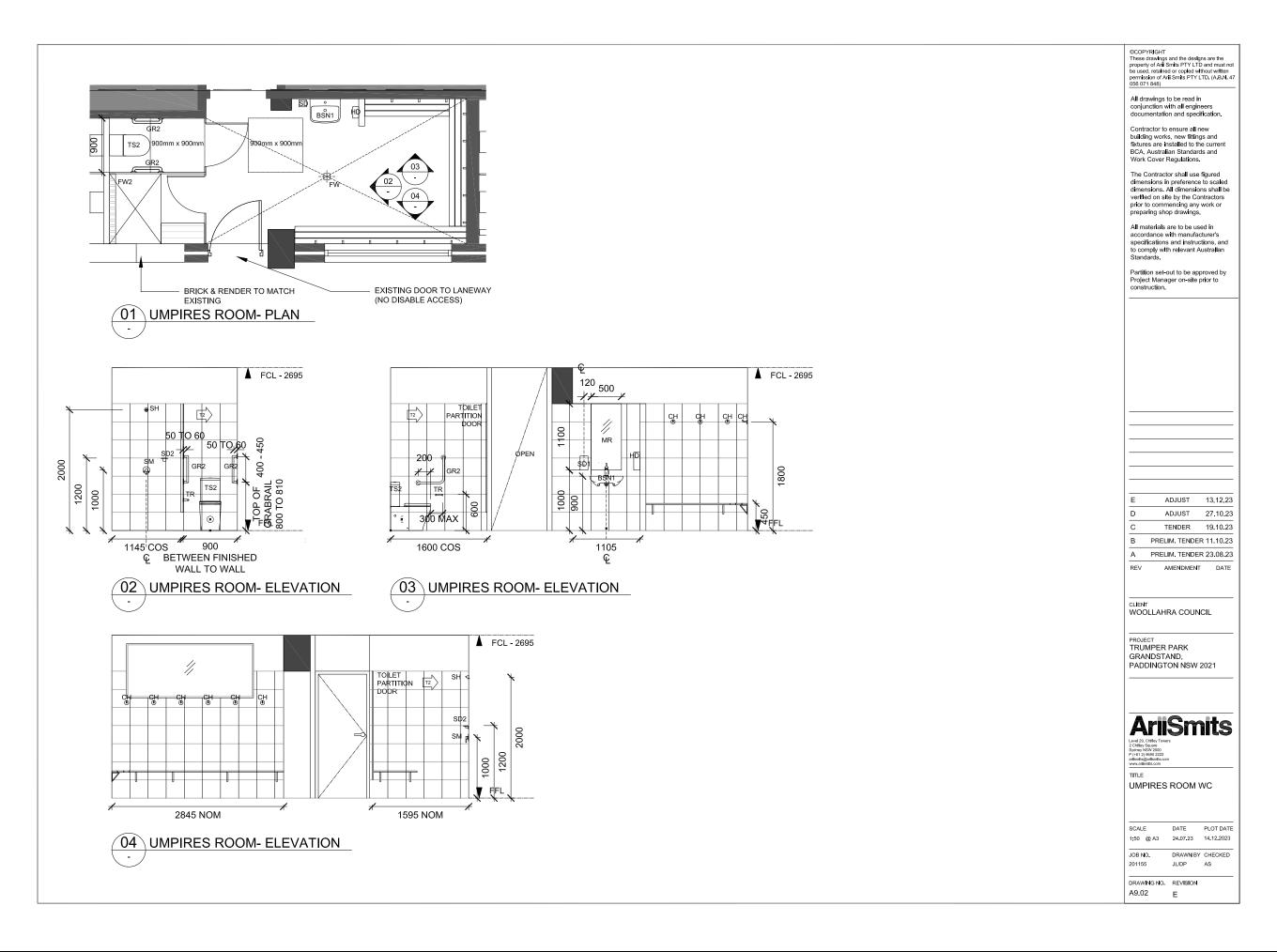


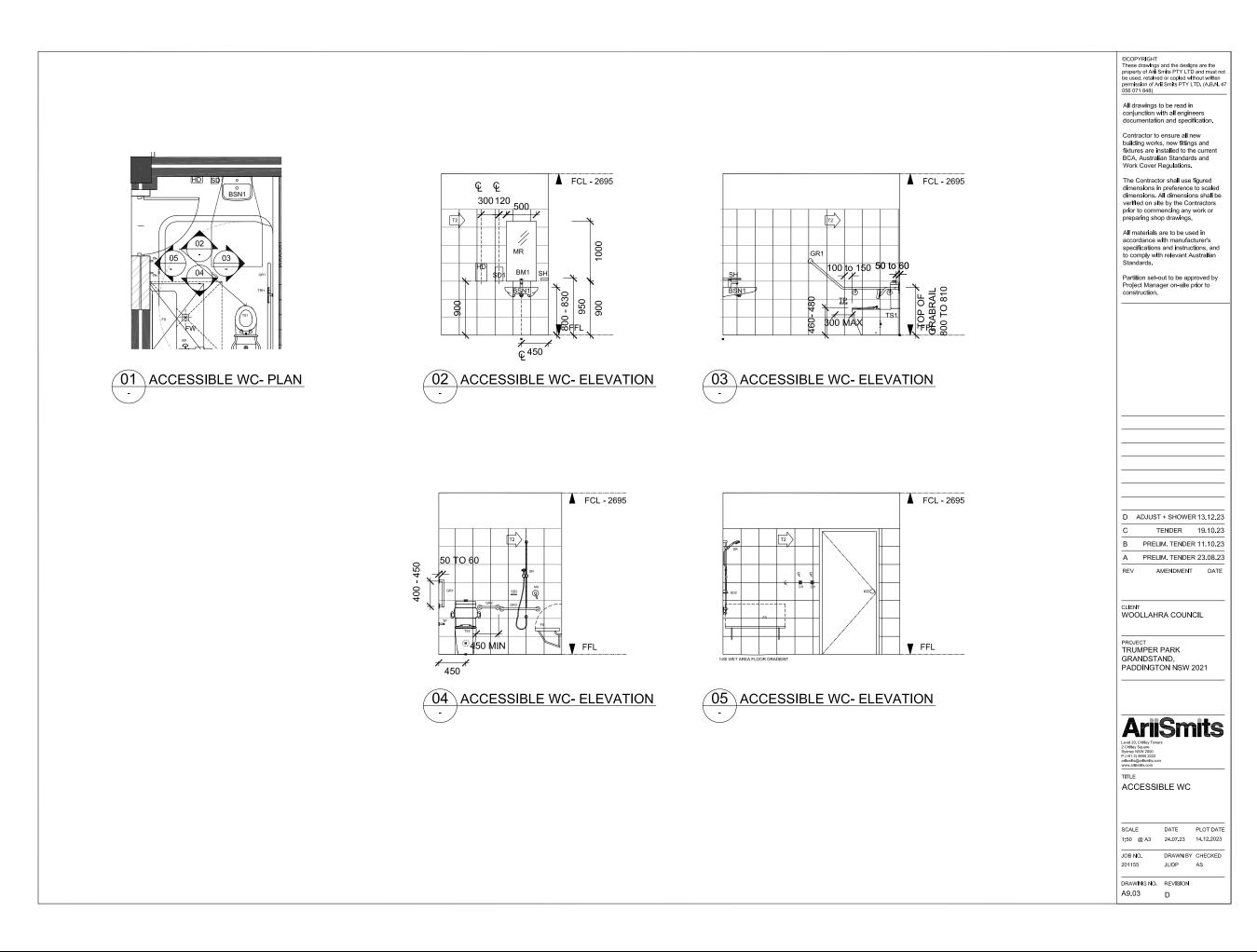






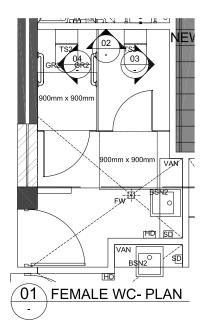


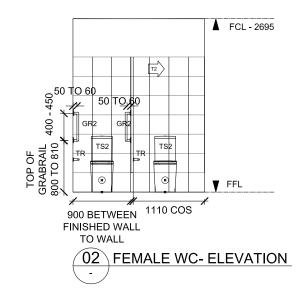


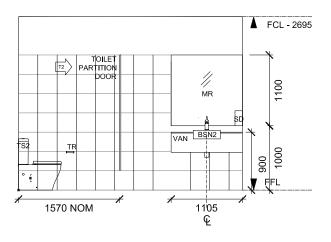


NOTES:

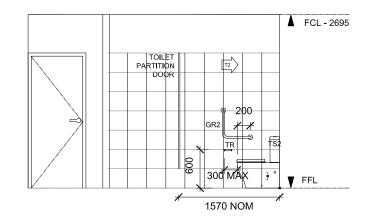
REFER TO RCP FOR CEILING WORKS.







FEMALE WC- ELEVATION



04 FEMALE WC- ELEVATION

©COPYRIGHT
These drawings and the designs are the property of Arii Smits PTV LTD and must not be used, retained or copled without written permission of Arii Smits PTY LTD. (A.B.N. 47 056 071 848)

All drawings to be read in conjunction with all engineers documentation and specification.

Contractor to ensure all new building works, new fittings and fixtures are installed to the current BCA, Australian Standards and Work Cover Regulations.

The Contractor shall use figured dimensions in preference to scaled dimensions. All dimensions shall be verified on site by the Contractors prior to commencing any work or preparing shop drawings.

All materials are to be used in accordance with manufacturer's specifications and instructions, and to comply with relevant Australian Standards.

Partition set-out to be approved by Project Manager on-site prior to construction.

E	ADJUST	13.12.2
D	ADJUST	28.10.2
С	TENDER	19.10.2

 B
 PRELIM. TENDER 11.10.23

 A
 PRELIM. TENDER 23.08.23

 REV
 AMENDMENT
 DATE

CLIENT WOOLLAHRA COUNCIL

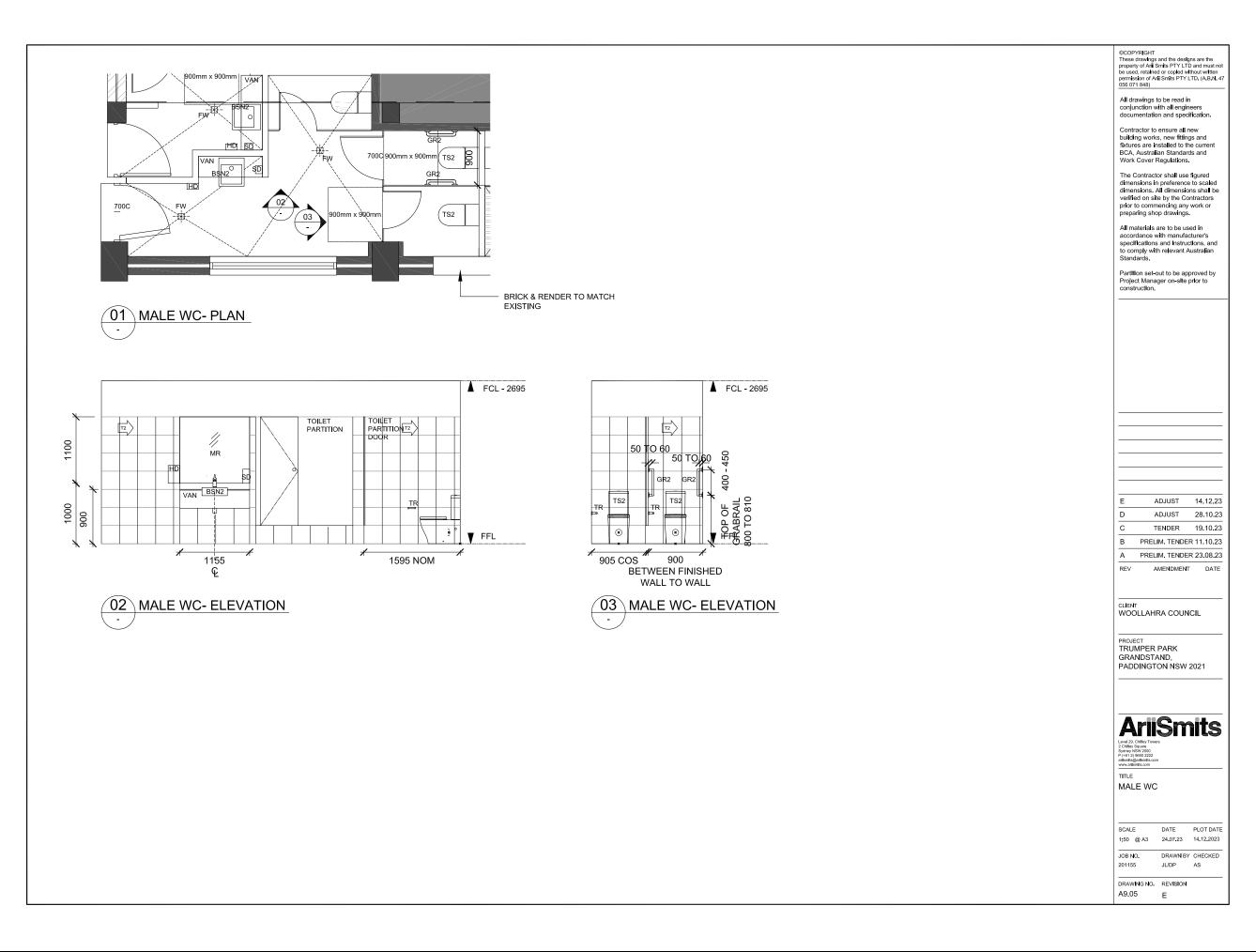
PROJECT TRUMPER PARK GRANDSTAND, PADDINGTON NSW 2021

AriiSmits Level 29, Chilley Towers

Level 29, Chiffey Towers 2 Chiffey Square Sydney NSW 2000 P (+61 2) 9690 2222 artsmits@artsmits.com www.artsmits.com

FEMALE WC

DRAWING NO. REVISION
A9.04 E





4 June 2024

REFERRAL RESPONSE - TREES AND LANDSCAPING

FILE NO: Development Applications: 41/2024/1

ADDRESS: 361-441 Glenmore Road PADDINGTON 2021

PROPOSAL: Upgrade the grandstand amenities, sport facilities & change rooms

FROM: Gorka Ojeda - Trees & Landscape Officer

TO: Ms L Williams

1. ISSUES

One large private tree in an adjacent property to the south west potentially affected.

2. DOCUMENTATION

I refer to the following documents received for this report:

- SEE Trumper Park Grandstand, prepared by SLR, dated 22 December 2023
- RFI response, prepared by SLR, dated 4 March 2024
- Architectural Drawing Set, drawn by Arii Smits P/L, dated 14/12/2023

A site inspection was carried out on 22/5/2024.

3. RELEVANT CONTROLS

- Woollahra Local Environment Plan 2014
- Woollahra Development Control Plan 2015
- The comments and recommendations within this Referral Response have taken into consideration the guidelines established within Australian Standard AS 4373 – Pruning of amenity trees and Australian Standard AS 4970 – Protection of trees on development sites

4. COMMENTS

One neighbouring tree (Jacaranda) located at 4 Roylston Street PADDINGTON extends part of its crown towards the subject grandstand building and adjacent canteen building.

Minor pruning of the Jacaranda may be required for clearance to the building envelopes. Council's pruning guidelines indicate a 2m clearance around building envelopes as a reasonable offset to provide appropriate building maintenance.

Conditions are recommended below for the protection of the Jacaranda

Page 1 of 6



5. PHOTOS



Eastern façade of Grandstan

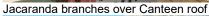


Western façade and canteen where minor pruning of the Jacaranda may be required

Page 2 of 6









Page 3 of 6



6. RECOMMENDATIONS

Council's Tree and Landscape Officer has determined that the development proposal is satisfactory in terms of tree preservation and landscaping, subject to compliance with the following Conditions of Consent.

A. GENERAL CONDITIONS

A. 1. Tree Preservation and Landscaping Works

While site work is being carried out, 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 may be pruned:

Council Ref No	Species	Location	Approved pruning (extent of pruning
Tree 1	Jacaranda mimosifolia (Jacaranda)	4 Roylston St. Rear	Pruning of branches under 80mm in diameter to provide up to 2m clearance to the building envelope

This consent does not permit the holder, or any other person or agent, to enter any property for the purpose of undertaking approved tree works, without the consent of the owner of the property.

All pruning works must be undertaken by a qualified arborist with a minimum AQF Level 3 in Arboriculture in accordance with *Australian Standard AS4373-2007 Pruning of Amenity Trees* and *WorkCover Code of Practice 'Amenity Tree Industry'*, 1998.

Condition Reason: To ensure all landscape works are undertaken in accordance with the approved plans and documents.

Standard Condition A.22 (Autotext 22A)

B. BEFORE DEMOLITION WORK COMMENCES

Nil

C. ON COMPLETION OF REMEDIATION WORK

Nil.

D. BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Nil

E. BEFORE BUILDING WORK COMMENCES

Nil.

Page 4 of 6



F. DURING BUILDING WORK

1. Tree Preservation

While site work is being carried out, all persons must comply with Chapter E.3 – *Tree Management* of Council's Development Control Plan (DCP) 2015, other than where varied by this consent. The DCP applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.

General Protection Requirements:

- a) The tree protection measures must be maintained during all development work unless otherwise specified within these conditions of consent.
- b) Excavation must cease where tree roots with a diameter exceeding 50mm are exposed. The principal contractor must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.
- 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 arborist. The arborist is to supply a detailed report to the appointed certifier.

Trees must be pruned in accordance with Australian Standard AS 4373 "Pruning of Amenity Trees" and WorkCover NSW Code of Practice Amenity Tree Industry.

Condition Reason: To protect trees during the carrying out of sitework.

Standard Condition F.8 (Autotext 8F)

G. BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Nil

H. OCCUPATION AND ONGOING USE

Nil

I. BEFORE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

Nil.

J. BEFORE SUBDIVISION WORK COMMENCES

Nil.

K. BEFORE ISSUE OF A SUBDIVISION CERTIFICATE (subdivision works)

Nil.

L. BEFORE ISSUE OF A SUBDIVISION CERTIFICATE (no subdivision works)

Page 5 of 6



Nil.

M. BEFORE ISSUE OF A STRATA CERTIFICATE

Nil.

Gorka Ojeda Tree & Landscape Officer

4/6/2024 **Completion Date**



7 June 2024

REFERRAL RESPONSE - HERITAGE

FILE NO: Development Applications: 41/2024/1

ADDRESS: 361-441 Glenmore Road PADDINGTON 2021

PROPOSAL: Upgrade the grandstand amenities, sport facilities & change rooms

FROM: Nastaran Forouzesh

TO: Ms L Williams

1. DOCUMENTATION

The following documentation provided by the applicant has been examined for this referral response:

- Drawing set by Arii Smits, dated 14 December 2023, Revision A
- Heritage Impact Statement by John Carr Heritage Design, dated 4 March 2024
- Statement of Environmental Effects by SLR Consulting Australia, dated 22 December 2023

2. SITE INSPECTION / RESEARCH

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

The site was inspected by Kristy Welfare (Team Leader – Heritage), on 7 June 2024, including the interior and the general locality.

Review of the following documents and photographic evidence:

- Council's property system, to establish dates of earlier building and development applications for the subject and surrounding properties.
- Council's photography files relevant to the immediate area
- Council's heritage inventory sheets
- Council's aerial photography and mapping database
- Google Maps street view

3. STATUTORY AND POLICY DOCUMENTS

The following statutory and policy documents are relevant to the application:

- National Parks & Wildlife Act 1974
- Woollahra LEP 2014
- Woollahra DCP 2015

4. ASSESSMENT OF HERITAGE IMPACT

Compliance with the relevant legislative framework and planning controls

SIGNIFICANCE OF SUBJECT PROPERTY/TO THE CONSERVATION AREA

The subject site is located in the Paddington HCA and is considered a contributory item. The proposal pertains to the existing Trumper Park Grandstand, which is located within Trumper Park.

The following historical development of Trumper Park has been extracted from the Heritage

Page 1 of 7



Impact Statement (HIS) submitted with the DA:

Originally named Hampden Park Oval, it was built on reclaimed swamp - Glenmore Brook runs down and under its middle. It was named in honour of Viscount Hampden, Governor of New South Wales (1895-99) with Hampden Street alongside the park was originally named Ebenezer Street.

The name of park was changed in 1931 to honour one of Paddington's cricketing heroes, Victor Trumper (1877-1915). He was an Australian cricketer known as the most stylish and versatile batsman of the Golden Age of cricket, capable of playing match-winning innings on wet wickets his contemporaries found unplayable. Archie MacLaren said of him, "Compared to Victor I was a cab-horse to a Derby winner". Trumper was also a key figure in the foundation of rugby league in Australia.

The oval has a long history of catering for Australian Football in the form of NSWFL foundation club, East Sydney, as well as catering for cricket and athletics. A series of walking trails connect surrounding streets.

Australian football has been played at this oval since at least 1903. To put this date of 1903 in perspective, Australian football was played on Trumper Oval five years prior to the establishment of the first rugby league competition in Australia and only one year after the establishment of the Hawthorn football club.

The following historical development of the Trumper Park grandstand has been sourced from the Local History File for Trumper Park, found on Council's Local History Digital Archive:

Tenders were called for construction of a new grandstand. A series of financial and work-related problems apparently ensued [1954].

The new grandstand at Trumper Oval was named after Frank Dixson, Alderman of Sydney City Council 1957-1962 and Deputy Mayor (1960-61). Mr Dixon was also prominent in Australian Rules football. The Granstand was opened by the Lord Mayor of Sydney City Council on 25 June [1960].

Woollahra Council reduced the size of the grandstand building to reflect current community use [1988-9]. It became a simple structure with four rows of seating, and a verandah motif of wrought iron that features a 'T' in a circle in reference to Victor Trumper. Refurbished of the Trumper Oval grandstand and the removal of the brick perimeter fence and caretaker's cottage took place.

A new storage building for the Eastern suburbs Little Athletics club was built on the western side of the grandstand. The building was opened on 22 October 1993.





Figure 1.'Grandstand in Trumper Park, Paddington, c1975'. Note that this image was taken prior to the late 1980s modifications to the grand stand which altered its form and reduced its size.

Source: Woollahra Municipal Council Local History Digital Archive

National Parks and Wildlife Act 1974

The larger site is partly in an area of No Aboriginal Heritage Sensitivity and partly in an area of Aboriginal Sensitivity. However, the building pertaining to this proposal is located in an area of No Aboriginal Sensitivity. Further, the proposed works are confined within the existing envelope and do not include any excavation works. As a result, an Aboriginal Heritage Impact Assessment was not required as part of the DA.

Woollahra LEP 2014

Clause 1.2 Aims of Plan

Subclause 1.2. (2) (f) – to conserve built and natural environmental heritage

Clause 5.10 Heritage Conservation

Subclause 1(a) to conserve the environmental heritage of Woollahra,

Sublcause 1(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views

Subclause 4 Effect of proposed development on heritage significance The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).

Significance of items in the vicinity

Page 3 of 7



There are no listed heritage items in close proximity that would be adversely affected by the proposal.

Consideration

The subject site is not a heritage item in Woollahra Local Environment Plan 2014 'the LEP' but is located within the boundaries of the Paddington Heritage Conservation Area (C8).

According to the Statement of Environmental Effects submitted with the DA, the proposal involves the following works:

- Demolition to facilitate works including:
 - Half height brick wall, roller shutter window, remove screening wall, wall section on western elevation, and window on southern elevation;
 - o Demolition of mezzanine wall sections;
 - o Existing toilet amenities in both public, umpire, and team changeroom toilets;
 - o Removal of changeroom benches, shower amenities etc;
 - Removal of lowered ceiling portion;
- Repair of all existing windows;
- Construction of infill wall sections along with new and reinstated doors to western and southern elevations:
- Construction of new internal wall partitions establishing larger storage room with mezzanine access stairs;
- Establishment of new toilet facilities including accessible WC, revised male and female WC, and revised umpire room along with associated toilets, basins, showers, and fixtures;
- New fitout works to existing team changerooms and changeroom amenity spaces including partitions to access doorways; New stairs, balustrades, and gates to existing mezzanine;
- Construction of new roof portions to Accessible WC space and make good portion above Female and Male WC spaces;

As discussed above, the existing grandstand building is a modified built form, as a result of works carried out in the 1980s. While the interiors of the building does retain some significant/original elements, there are no heritage objections to the proposed internal fitout works within the ground and mezzanine levels of the Grandstand building. The majority of the existing internal walls and structure would be retained, and existing internal elements proposed for removal have either already been modified, or are considered to be of little heritage significance.

The proposal includes the addition of a chain wire fence to the interiors of the building at mezzanine level for ventilation purposes. As this addition is confined to the interiors of the building, it would not be visible from the public domain, and would have no visual impact on the setting of the building. In addition, it is a reversible addition and can be removed at a later date if required. As a result, the proposed new internal fence is supported in this instance.

There are also no heritage objections to the proposed external demolition works including the removal of half height brick wall, roller shutter window, existing screen and existing doors/gates, all of which are located along the western elevation. The gates proposed to be removed would be retained and reused within the existing development. The removal of the door and roller shutter window along the western elevation is considered to be minor and would not have any adverse impacts on the significance of the contributory building. In addition, the new proposed door would be vertically proportioned which is supported. Its materiality is however not clear. Its materiality should match the materiality of the other existing doors, so that it is in keeping with the character of the existing building and in keeping with its design intent. A condition of consent will be provided below. The proposal to brick up an existing opening is also supported, as the finish would match the existing in terms of materiality and colour.

Page 4 of 7



Due to the minor nature of the works, there would be no visual impact on the form of the grandstand or its setting, which is also supported.

The proposed plans indicate that existing windows and doors would be repainted, made good and repaired. A new colour scheme has not been submitted with the application. All repair and repainting works are to be on a like for like basis in all aspects including materials, detail and colour. A condition of consent will be provided below.

Woollahra DCP 2015

The subject site is within the Paddington Heritage Conservation Area, and is considered a contributory item and a significant item.

Part C - Heritage Conservation Areas - C1 Paddington HCA DCP

UNDERSTANDING THE CONTEXT

Clause 1.2.4 Desired future character

The proposal generally retains the desired future character of the Paddington HCA.

BUILDING TYPES

The subject building does not fall under any of the 'building types' listed in the Paddington HCA chapter of the DCP. As a result, a merit based assessment will be undertaken instead in this section of the DCP.

As discussed above, there are no heritage objections to the proposed internal and external works to the existing grandstand building, as the works would generally affect fabric which has already been modified, or fabric that is of little significance. Due to the minor nature of the works there would also be no visual impact on the form of the grandstand or its setting, which is also supported. Conditions of consent regarding the materiality, detailing and finish of the windows and doors will be provided below to ensure that the new works are in keeping with the existing.

GENERAL CONTROLS FOR ALL DEVELOPMENTS

Clause 1.4.1 Principal building form and street front zone of contributory buildings Objectives O1, O4 Controls C1, C7, C8

- As discussed above, the proposal generally retains the principal building form of the
 grandstand which is supported. Minor modifications are proposed to the side
 (western) elevation and repair works are proposed to the existing openings.
 Conditions of consent will be provided below to ensure that the proposed
 modifications retain the heritage significance of the building and the HCA.
- The proposed internal reconfiguration works would generally retain the existing internal layout through the retention of the majority of the existing internal walls. This is supported from a heritage perspective.

Clause 1.4.2 Side elevations to streets and lanes Objectives O1, O2, O3, O4 Controls C1, C2

- The proposal generally retains and conserves the architectural character of the side elevation of the contributory building which is supported.
- As discussed above, the proposed external demolition works along the western elevation are generally supported from a heritage perspective.

Page 5 of 7



- As discussed above, the gates proposed to be removed would be retained and
 reused within the existing development. In addition, the removal of a door and roller
 shutter window is considered to be minor and would not have any adverse impacts on
 the significance of the contributory building or the HCA. In addition, the new door
 would be vertically proportioned which is supported. The materiality of the door is to
 match the materiality of the other existing doors, so that it is in keeping with the
 character of the existing building.
- As discussed above, the proposal to brick up an existing opening along the western elevation is supported, as the finish would match the existing.

SPECIFIC POLICY FOR BUILDING AND SITE ELEMENTS

Clause 1.5.3 Windows, doors, shutters and security Objectives O1, O3

Controls C1, C4

- As discussed above, the proposed bricking up of an existing opening along the western elevation is supported.
- As discussed above, the removal of existing doors/gates along the western elevation
 is generally supported from a heritage perspective. The gates proposed to be
 removed would be retained and reused within the existing development which is
 supported.
- As discussed above, the provision of the new door is generally supported. The
 materiality of the new door is to match other existing doors of the building, so that it is
 in keeping with the character of the existing building and in keeping with the design
 intent
- As discussed above, where existing windows and doors would be repainted, made good and repaired, all repair and repainting works are to be on a like for like basis in all aspects including materials, detail and colour.

Clause 1.5.8 Materials, finishes and details

Objective O2

Controls C4, C5

- As discussed above, where existing windows and doors would be repainted, made good and repaired, all repair and repainting works are to be on a like for like basis in all aspects including materials, detail and colour.
- As discussed above, the materiality of the new door is to match other existing doors
 of the building, so that it is in keeping with the character of the existing building and in
 keeping with the design intent.

5. CONCLUSION

Woollahra LEP 2014

 Clause 1.2 (2) (f) The development does conserve the built heritage of Woollahra, subject to conditions of consent.

Part 5.10

- Clause 1(a) The development does conserve the heritage of Woollahra, subject to conditions
 of consent.
- Clause 1(b) The impact upon the heritage significance of the conservation area will be neutral subject to conditions of consent.
- Clause 4 This referral constitutes an assessment under this clause.

6. RECOMMENDATION

Page 6 of 7



The proposal is generally acceptable, subject to conditions, as it complies with the relevant statutory and policy documents and would have a satisfactory impact.

Consent, subject to conditions:

Special Conditions

D 1. Modification of Details of the Development (section 4.17(1)(g) of the Act

Before the issue of any construction certificate, the approved plans and the construction certificate plans and specification, required to be submitted to the Principal Certifier under clause 7 of the Development Certification and Fire Safety Regulations, must detail the following amendments:

- a) The materiality of the new accessible door along the western elevation of the grandstand building has not been specified in the documentation. Its materiality is to match other existing doors of the grandstand, so that it is in keeping with the character and design intent of the building.
 - Woollahra LEP 2014, Clause 5.10 Heritage Conservation, 1(a), (b);
 - Woollahra DCP 2015, Chapter C1, Clause 1.4.2, Objectives O1, O2, O3, Control C2
 - Woollahra DCP 2015, Chapter C1, Clause 1.5.3, Objective O3, Control C4
 - Woollahra DCP 2015, Chapter C1, Clause 1.5.8, Objectives O2, Controls C4, C5,
- b) All make good, repainting and repair works to the existing windows and doors are to be on a like for like basis in all aspects including materiality, detailing, design and colour.
 - Woollahra LEP 2014, Clause 5.10 Heritage Conservation, 1(a), (b);
 - Woollahra DCP 2015, Chapter C1, Clause 1.5.3, Objectives O1, O3, Control C4
 - Woollahra DCP 2015, Chapter C1, Clause 1.5.8, Objective O2, Controls C4, C5,

Condition Reason: To require design changes and/or further information to be provided to address specific issues identified during the assessment under section 4.15 of the Act.

Nastaran Forouzesh Heritage Officer 7 June 2024 Completion Date

Page 7 of 7



6 June 2024

REFERRAL RESPONSE - DRAINAGE

FILE NO: Development Applications: 41/2024/1

ADDRESS: 361-441 Glenmore Road PADDINGTON 2021

PROPOSAL: Upgrade the grandstand amenities, sport facilities & change rooms

FROM: Michael Casteleyn

TO: Ms L Williams

1. ISSUES

None.

2. DOCUMENTATION

I refer to the following documents received for this report:

 Architectural 24/22917 plan - Architectural - DA2024/41/1 - 361-441 Glenmore Road PADDINGTON

3. ASSESSMENT

The DA submission has been reviewed.

4. RECOMMENDATION

Council's Drainage Engineer has determined that the proposal is satisfactory, subject to the following conditions:

D 1. Flood Protection

Before the issue of any construction certificate, the construction certificate plans and specifications required under clause 7 of the Development Certification and Fire Safety Regulation, must include a Flood Risk Management Plan on the basis of the Flood Planning Level (FPL).

Flood Warning:

 a) A permanent flood risk management plan shall be installed in an area frequented by the users,

Flood Proof Material

 a) Flood compatible materials shall be used for all flood exposed construction.

Page 1 of 2



Electricals

 a) All flood exposed electrical wiring and equipment shall be waterproofed or able to be quickly isolated,

Flood protection is to comply with Woollahra DCP 2015, Part E General Controls for All Development, Chapter E2 –Stormwater and Flood Risk Management.

Notes:

 The revised driveway profile, gradients and transitions must be in accordance with Australian Standard 2890.1, Part 1: Off-street car parking. The driveway profile submitted to Council must contain all relevant details: reduced levels, proposed grades and distances. Council will not allow alteration to existing reduced levels within the road or any other public place to achieve flood protection.

Condition Reason: To ensure the development incorporates flood inundation protection measures.

Michael Casteleyn Drainage Engineer 6/06/2024 **Completion Date**

LOCAL PLANNING PANEL DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No. D4

FILE No. DA301/2023/1

ADDRESS 464 Oxford Street PADDINGTON

COUNCIL WARD Paddington
SITE AREA 121.7m²

ZONING MU1 Mixed Use

PROPOSAL Alterations and additions to the existing building and change of use

from retail to a licensed restaurant

TYPE OF CONSENT Local development

COST OF WORKS \$550,000.00 **DATE LODGED** 24/08/2023

APPLICANT BJB Architects Pty Ltd

OWNER DJD Property Holdings Pty Ltd

AUTHOR Mr V Aleidzans

TEAM LEADER Mr G Fotis
SUBMISSIONS Three (3)

RECOMMENDATION Conditional Approval

1. REASON FOR REPORT TO LOCAL PLANNING PANEL (LPP)

The application is to be determined by the Woollahra Local Planning Panel (LPP) as it falls under the category of:

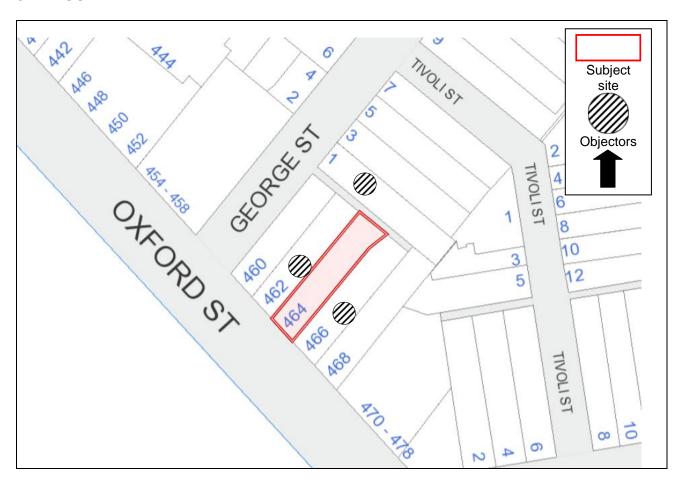
- Departure from development standards
 - (a) Development that contravenes a development standard imposed by an environmental planning instrument by more than 10%

2. REASONS FOR RECOMMENDATION

The application has been assessed within the framework of the matters for consideration under section 4.15 of the Environmental Planning and Assessment Act 1979 and is recommended for approval because:

- It is considered to be satisfactory with all relevant planning policies including the objectives of WLEP 2014 and WDCP 2015:
- It will not have adverse effects on the local built and natural environment nor any adverse social and economic impacts in the locality;
- All likely impacts to adjoining properties including any submissions made have been addressed in the report, or are considered to be satisfactory;
- The site is suitable for the proposed development;
- The Clause 4.6 is well-founded and as such, the exceedance of the statutory floor space ratio development standard is justified; and
- The proposal is in the public interest.

3. LOCALITY PLAN



Note: Where multiple objections have been received from the same property, these have only been identified once on the above locality plan. For a complete list of objectors refer to Section 10 of this assessment report.

4. PROPOSAL

The proposal involves alterations and additions to the existing building and change of use from retail to a licensed restaurant and will comprise of:

Ground Floor

- Demolition works;
- New enclosed addition along the north-western side boundary;
- New seating, bar area, kitchen and accessible WC;
- Retention of existing grease trap and cold store at the rear of the site; and
- Reconfigured commercial bin storage enclosure.

The key operational details as proposed are summarised as follows:

- Hours of Operation: Monday to Friday 5:00pm to Midnight, Saturday to Sunday 12:00pm to Midnight;
- Maximum patron capacity: 46

5. ISSUES

5.1 Exceptions to Development Standards in Woollahra Local Environmental Plan 2014

Clause	Development Standard	Departure from Control	Conclusion	
4.4	Floor Space Ratio	21.9m ² or 17.9% departure from the 121.7m ²	Satisfactory	
		standard		

5.2 Primary Issues

The primary issues raised in the objections pertained to the operation of the premises and management of any potentially adverse amenity impacts as a consequence. The proposal is considered to have acceptable impacts with operational matters addressed by the recommended conditions of consent.

PROPERTY DETAILS AND REFERRALS

6. SITE AND LOCALITY

Physical features

The subject site is generally regular in its shape comprising of a slight splay within the north eastern corner. The site benefits from rear lane pedestrian access along the north east. To Oxford Street, the site's front boundary length equals 5.205m with rear boundary length to the laneway equalling 5.52m. The sites side boundary lengths measure a total of 23.095m and 23.79m, respectively. Overall, the site area equals 121.7m².

Topography

The subject site is generally flat and does not experience any steep or dramatic changes in topography.

Existing buildings and structures

The subject site comprises a two storey mixed use building comprising commercial floor space at the ground floor and residential accommodation above. The residence is accessed via a set of external stairs located within the rear of the site. The site benefits from rear lane pedestrian access via the rear entry gate.

Surrounding Environment

The surrounding locality generally comprises two storey terrace style built forms. Along Oxford Street these are generally used for commercial and/or mixed use purposes. Built form to the north is residential in nature noting this land is zoned R2 Low Density Residential per the Woollahra LEP 2014.

Immediately adjoining the site to the west at No. 462 Oxford Street is a two storey mixed use building with commercial at the ground floor and residence above. Similarly No. 466 Oxford Street to the east comprises a two storey mixed use building with a ground floor commercial premises and residence above.

The subject site forms part of the Oxford Street shopping strip which generally comprises an array of commercial uses and is surrounded by such.



Image 1: Aerial view of the subject site



Image 2: Subject site as viewed from Oxford Street



Image 3: Existing built form at the subject site as viewed from the rear



Image 4: No. 466 Oxford Street, Paddington



Image 5: No. 462 Oxford Street, Paddington

7. RELEVANT PROPERTY HISTORY

Current use

Commercial premises.

Relevant Application History

Consent to a Development Application DA228/2004/1 was granted on 30/06/2004 for alterations to existing shop to increase ground floor retail areas, demolish toilets to replace with kitchenette for courtyard café, covered walkway to courtyard.

Relevant Compliance History

N/A

Pre-DA

N/A

Requests for Additional Information and Replacement Applications

Gross floor area calculation plans and a Clause 4.6 variation request pertaining to the floor space ratio development standard under the Woollahra LEP 2014 were requested on 26 October 2023. The requested information was submitted on 6 November 2023.

A request for additional information pertaining to service vehicles and waste collection along with acoustics and ventilation was made on 06 February 2024. This additional information request was satisfied on 11 March 2024 with an amended Plan of Management and Traffic Report submitted. After further consideration it was concluded that the issues pertaining to acoustics and ventilation could be addressed by conditions of consent.

A rear elevation drawing was requested on 04 April 2024 and was submitted on 08 April 2024. Notably shadow diagrams were also requested, however, given the scope of works, site context, orientation and surrounding land uses these were no longer considered necessary.

Land and Environment Court Appeal(s)

N/A

8. REFERRALS

Referral	Summary of Referral Response	Attachments
Troffic Engineering	Catiofactory subject to conditions	4
Traffic Engineering	Satisfactory, subject to conditions.	
Drainage Engineering	Satisfactory, subject to conditions.	5
Fire Safety	Satisfactory, subject to conditions.	6
Environmental Health	Satisfactory, subject to conditions.	7
NSW Police –	No response was received.	N/A
Licencing		
	Follow up emails were sent on 02/04/2024, 15/04/2024,	
	30/04/2024 and a phone call was made on 20 May 2024 to	
	which no replies were received.	
Development	Satisfactory, subject to conditions recommended at the	N/A
Engineering	Development Application Review Committee (DARC) stage.	
Heritage	Satisfactory, subject to conditions recommended at the	N/A
_	Development Application Review Committee (DARC) stage.	

ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 include the following:

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

9. ADVERTISING AND NOTIFICATION

9.1 Submissions

The application was advertised and notified from 13/09/2023 to 28/09/2023 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. Submissions were received from:

- 1. Keith Mayne and Gayle Preston 1 George Street, Paddington
- 2. James Lovell On behalf of 1/462 and 1/466 Oxford Street, Paddington
- 3. Ben Mulcahy 1/466 Oxford Street, Paddington

The submissions raised the following issues:

Issue	Conclusion	Section
Privacy.	The proposal would not result in any unreasonably adverse privacy impacts upon surrounding properties. Notably, conditions of consent have been recommended which are considered to appropriately manage acoustic privacy impacts upon surrounding development.	15.1.8 and 24
That no public access or waste removal be	Waste will be removed via the rear laneway as is in keeping with the existing configuration. This is common for development	15.5

Issue	Conclusion	Section
permitted via the	which addresses Oxford Street and benefits from rear lane	
laneway.	The group and protection of the the ground floor which is	
The restaurant should be confined to the first	The proposed restaurant is contained to the ground floor which is consistent with active land uses along Oxford Street.	N/A
floor and indoors only.	Consistent with active land uses along Oxford Street.	IN/A
That all licences	The proposal is considered to be a 'low risk' premises and	
including alcohol, food	Chapter F3 of Council's DCP 2015 permits operation until	
and entertainment be	midnight. The proposal achieves compliances in this regard.	15.7
until 10:00pm.		
The residential dwelling	The requirement for separate meters and utility supplies is	
above should have	considered to be outside the scope of this planning assessment	
access to a separate	and is matter that would need to be suitably addressed by the	
gas supply and	property owner if necessary.	
meter, water meter,	The proposal subject to the recommended conditions of	Attachment's
electricity supply and meter.	The proposal, subject to the recommended conditions of consent, is considered to be acceptable noting the application	6 and 7 and
meter.	has been reviewed by both Council's Environmental Health	Section 24
Significant noise and	Officer and Fire Safety Officer, respectively. Where necessary	0001101121
fire proofing should be	conditions of consent have been recommended.	
provided along with		
separate residential	No change is proposed to the residential waste management	
rubbish bins.	configurations.	
The original verandah	There are no works proposed to the front façade of the existing	
should be opened up	built form. Therefore there is no nexus between the proposal and	N/A
and reinstated.	requirement to open and reinstate any original verandahs. Therefore no further consideration is deemed necessary.	
The proposed hours of	The proposal is considered to be a 'low risk' premises and	
operation are excessive.	Chapter F3 of Council's DCP 2015 permits the proposed hours	15.7
	of operation.	
Significant road works	Council's Environmental Health Officer has raised no objections	
were undertaken at the	to the submitted Noise Impact Assessment and is satisfied that	
time of the acoustic	an appropriate acoustic amenity would be upheld subject to the	Attachment
assessment which may	recommended conditions of consent.	7 and
have distorted the data and findings. Additional		Section 24
noise testing should be		
undertaken.		
That no external seating	No external seating is proposed.	N1/A
areas be approved.		N/A
It is not appropriate to	It is considered that acoustic impacts from mechanical plant and	
defer the acoustic	equipment would be suitably addressed via the recommended	
impacts of mechanical	conditions of consent. Council's Environment Health Officer has	Attachment
equipment until the	raised no objections in this regard.	7
construction certificate stage.		
The acoustic	Suitable sound attenuation measures have been recommended	
assessment does not	in the submitted Noise Impact Assessment. Conditions of	
account for internal	consent reinforce that the recommended sound attenuation	Attachment
noise transmission	measures are to be incorporated at the premises.	7 and
through walls or		Section 24
opening and closing of		200001127
doors along Oxford		
Street. That conditions be	Suitable conditions of consent have been recommended to	
imposed to manage	address waste management procedures of the proposed land	
waste removal including	use.	
potential acoustic		24
impacts associated with		
the transfer of glass		
bottles.		

Issue	Conclusion	Section
That acoustic treatments to the front façade are suitable from a heritage perspective.	The sound attenuation measures are not considered to adversely alter the front façade of the premises. No concerns have been raised by Council's Heritage Officer in this regard.	N/A
Fire risks associated with the proposed restaurant.	Council's Fire Safety Officer has raised no objections in this regard subject to the recommended conditions of consent.	Attachment 6
The hours of operation are excessive and should be limited to 10:00pm noting the relationship with an adjoining R2 Low Density residential land zone and first floor residential units adjoining the site.	The proposal is considered to be a 'low risk' premises and Chapter F3 of Council's DCP 2015 permits the proposed hours of operation.	15.7

9.2 Replacement Application

The additional information noted in **Section 7** was not renotified to surrounding residents and previous objectors under Schedule 1 of the Woollahra Community Participation Plan 2019 because the proposal will have no greater impacts than the previously advertised application.

9.3 Statutory Declaration

The owner has completed the statutory declaration dated 16/04/2024 declaring that the site notice for DA301/2023/1 was erected and maintained during the notification period in accordance with Schedule 1 of the Woollahra Community Participation Plan 2019.

10. STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

10.1 Chapter 2 – Coastal Management

The provisions of this planning instrument that are relevant to the subject application involve managing development in the coastal zone and protecting the environmental assets of the coast. It is considered that the proposal, as conditioned, will not have any significant adverse environmental impact upon the harbour coastal locality and therefore satisfactory with regard to the relevant provisions of the planning instrument.

10.2 Chapter 4 – Remediation of Land

Under Clause 4.6(1)(a) of SEPP (Resilience and Hazards) 2021, consideration has been given as to whether the subject site on which the development is occurring is contaminated. The subject site is not identified as being potentially contaminated by Council's GIS data, and is currently occupied by a commercial and residential land use.

Furthermore, there are no excavation works proposed as per this application.

Overall, it is considered that the land does not require further consideration under Clause 4.6(1) (b) and (c) of SEPP (Resilience and Hazards) 2021. The proposal is therefore acceptable with regard to SEPP (Resilience and Hazards) 2021.

11. STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT & INFRASTRUCTURE) 2021

Clause 2.119 of the SEPP requires consideration of the impact upon the safety, efficiency and ongoing operation of Oxford Street, including the design of the vehicular access, the emission of smoke or dust, the nature, volume or frequency of vehicles.

The proposed land use is not considered to be adversely impacted by the operations of Oxford Street.

There are no vehicle crossings proposed.

The proposed land use is not considered to be of a nature that would unreasonably affect the operation of Oxford Street.

The proposal is therefore acceptable with regard to SEPP (Transport & Infrastructure) 2021

12. STATE ENVIRONMENTAL PLANNING POLICY (INDUSTRY AND EMPLOYMENT) 2021

12.1 Chapter 3 – Advertising and Signage

There is no detailed signage proposed per this application. **Condition A.4** reinforces that no approval is granted to any signage under this application.

No further consideration of Chapter 3 is therefore considered necessary.

13. STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

13.1 Chapter 2 – Vegetation in non-rural areas

The proposal does not involve any tree removal nor is it considered to have any adverse tree or landscaping impacts. Accordingly, the proposal is considered to be acceptable having regard to Chapter 2 of the SEPP.

13.2 Chapter 6 – Water Catchments

Chapter 6 (Water Catchments) of the SEPP applies to the subject land which is located within a regulated catchment being the Sydney Harbour Catchment.

The land is within the Sydney Harbour Catchment but is outside the Foreshores and Waterways Area and therefore only the provisions in Part 6.2 of the SEPP applies.

In deciding whether to grant development consent to development on land in a regulated catchment, matters relating to water quality and quantity, aquatic ecology, flooding, recreation and public access and total catchment management must be considered.

The proposal will have no significantly adverse impacts on the Sydney Harbour Catchment, subject to standard conditions. The proposal is therefore considered to be acceptable having regard to Chapter 6 of the SEPP.

14. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

14.1 Part 1.2: Aims of Plan

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

14.2 Land Use Table

The proposal is defined as a food and drink premises and is permitted and is consistent with the objectives of the MU1 Mixed Use zone.

14.3 Part 4.3: Height of Buildings

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

	Existing	Proposed	Control	Complies
Maximum Building Height	10.8m	3.5m (to the proposed works)	9.5m	Yes

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

14.4 Part 4.4: Floor Space Ratio

Part 4.4 limits development to a maximum floor space ratio of 1:1 for a mixed use development.

Site Area: 121.7m ²	Existing	Proposed	Control	Complies
Floor Space Ratio	1.12:1 (136.3m²)	1.179:1 (143.6m²)	1:1 (121.7m²)	No

The proposal does not comply with Part 4.4 of Woollahra LEP 2014 as detailed and assessed in Section 14.5.

14.5 Part 4.6: Exceptions to Development Standards

14.5.1. Departure

The proposal involves a non-compliance with the maximum floor space ratio (FSR) statutory control under Clause 4.4 of the Woollahra LEP 2014, as detailed in Section 14.4.

Clause 4.4 limits development to a maximum FSR of 1:1 and the proposal seeks a 21.9m² or 17.9% departure from the control. This is notably a 7.3m² increase from the exiting condition.

14.5.2. Purpose

Clause 4.6 facilitates the potential contravention of a development standard under certain circumstances where it can be adequately demonstrated that compliance is unreasonable or unnecessary and there are sufficient environmental planning grounds to justify the contravention.

14.5.3. Written Request

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

The applicant has provided a written request in relation to the departure to Cl. 4.4 which is attached as **Annexure 3**.

14.5.4. Assessment

Clause 4.6 (4) Consent must not be granted for development that contravenes a development standard unless:

- a) The consent authority is satisfied that:
 - i. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - ii. The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- b) The concurrence of the Secretary has been obtained.

Clause 4.6(4)(a)(i) - Assessment

Clause 4.6(4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be addressed by Cl 4.6(3). There are two separate matters for consideration contained within Cl 4.6(3) and these are addressed as follows:

a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Despite the numerical non-compliance, the applicant's written request has adequately demonstrated that the objectives of the floor space ratio development standard are achieved.

The applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by Cl 4.6(3)(a). The objectives of the development standard are discussed further in the assessment of Clause 4.6(4)(a)(ii).

b) That there are sufficient environmental planning grounds to justify contravening the development standard.

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be 'environmental planning grounds' by their nature: See Four2Five Pty Ltd. v Ashfield Council. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act including the objects in s1.3 of the EPA Act.

S1.3 of the EPA Act states:

1.3 Objects of Act

The objects of this Act are as follows:

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicant's written request, which supports the proposed non-compliance with the floor space ratio development standard, has adequately demonstrated that the proposed development satisfies objective (g) of the Environmental Planning and Assessment Act 1979 as copied above.

Therefore, it is considered that the applicant's written request has adequately demonstrated sufficient environmental planning grounds to justify the contravention of the development standard as required by Clause 4.6(3)(b) and the consent authority can be satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

Clause 4.6(4)(a)(ii) - Assessment

Clause 4.6(a)(a)(ii) requires the consent authority to be satisfied that:

The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the floor space ratio development standard and the objectives of the subject MU1 Mixed Use zone. An assessment against these objectives is provided below:

The objectives underlying Clause 4.4 – Floor Space Ratio

(b) for buildings in Zone E1 Local Centre and Zone MU1 Mixed Use—to ensure that buildings are compatible with the desired future character of the area in terms of bulk and scale.

It is not considered that the extent of variation would compromise the desired future character of the neighbourhood nor the consistent bulk and scale which is exhibited by predominantly two storey buildings which provide for a mixture of commercial and residential land uses along Oxford Street.

The proposed variation would allow for new internal layout which would suitably accommodate the proposed land use with the works being largely in keeping with the existing footprint of the built form along with the alignment of adjoining buildings. The additional floor area would be masked from the street given its location toward the rear and from neighbouring properties due the presence of the existing side walls and buildings. The overall height bulk and scale of the built form will remain consistent with the desired future character with additional floor areas having no unreasonably adverse impacts in this regard.

Objective (b) is thereby satisfied.

The objectives of the MU1 Mixed Use zone

• To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.

The proposed variation would support the maintenance of a commercial land use which would continue to generate and ensure future employment opportunities. This objective is upheld.

• To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.

The proposal will retain the existing front facade with the land use providing activation along Oxford Street. This objective is upheld.

• To minimise conflict between land uses within this zone and land uses within adjoining zones.

The proposed variations are not considered to generate any conflicts between land uses or adjoining zonings. This objective is upheld.

• To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.

A commercial land use is proposed at the ground floor which satisfies this objective.

• To provide for development of a scale and type that is compatible with the amenity of the surrounding residential area.

The proposal maintains the overall presentation of the existing built form to Oxford Street, with the proposed floor area having a sympathetic response to the existing envelope which will remain compatible with the amenity of the adjoining residential area. This objective is upheld.

 To ensure development is of a height and scale that achieves the desired future character of the centre.

The existing height of the built form will remain unchanged. The proposed alterations and additions along with additional floor area will result in a bulk and scale which is consistent with the desired future character of the area. This objective is upheld.

To maximise public transport patronage and encourage walking and cycling.

The subject site is located within proximity of public and active transport options, which would inherently promote such patronage. This objective is upheld.

To encourage the retention and planting of trees and other vegetation as part of development to minimise the urban heat island effect and to improve microclimates.

No tree removal is proposed and this objective is the relevant activities.

No tree removal is proposed and this objective is thereby satisfied.

Accordingly, the non-compliance is considered to be consistent with the objectives of the zone.

Clause 4.6(4)(a)(b) - Assessment

The Department issued Planning Circular No.PS20-002 (dated 5 May 2020) which notified Councils of arrangements "...where the Director General's concurrence may be assumed for exceptions to development standards under environmental planning instruments which adopt clause 4.6 ...of the Standard Instrument...". Clause 64 of the EPA Regulations provides that Council may assume the Director-General's [Secretary's] concurrence for exceptions to development standards, thus satisfying the terms of this clause.

In relation to this Part, Preston CJ in Initial Action Pty Ltd v Woollahra Municipal Council (2018) establishes *Planning Principles* which are summarised and assessed as follows:

- i. Does the applicant's written request demonstrate non-compliance with the development standard is unreasonable or unnecessary?
 - Yes. For the reasons already outlined and discussed in this assessment, the proposal satisfies the objectives which underpin the development standard.
- ii. Are there sufficient environmental planning grounds to justify contravening the development standard?
 - Yes. The submitted Clause 4.6 variation request has demonstrated that there are sufficient environmental grounds to justify contravening the development standard in this instance.
- iii. The public interest and whether the proposal is consistent with the objectives of the development standard.
 - Yes. The proposal is deemed to be in the public interest as it does not contravene the objectives of the development standard.

Conclusion

The written submission provided by the applicant has adequately demonstrated that the variation of the development standard prescribed by Clause 4.4 is justified pursuant to the relevant matters for consideration prescribed by Clause 4.6.

The consent authority can, in this instance, be satisfied that the applicant's written request has demonstrated that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and that sufficient environmental planning grounds have been demonstrated to justify the contravention of the standard.

Furthermore, the consent authority can be satisfied that the proposal upholds the public interest as the non-compliance is consistent with the objectives of the development standard and those applicable to development within the subject MU1 Mixed use zone. Departure from the control is supported.

14.6 Part 5.10: Heritage Conservation

The subject site has not been identified a heritage item, however, is located within the Paddington Heritage Conservation Area.

The proposal was reviewed by Council's Heritage Officer at the Development Application Review Committee (DARC) stage and was considered acceptable subject to the recommend conditions of consent.

This assessment is satisfied that the proposal will have acceptable heritage impacts in the context of the subject site and surrounds including any potential impacts to proximate heritage items subject to the recommended conditions.

Accordingly, it is acceptable with regard to the objectives in Part 5.10 of the Woollahra LEP 2014.

14.7 Part 5.21: Flood Planning

Although not located with a flood planning area, the application was reviewed by Council's Drainage Engineer who considers the proposal to be satisfactory subject to the recommended conditions of consent.

This assessment is thereby satisfied that the proposal is acceptable with regard to Part 5.21 of Woollahra LEP 2014.

14.8 Part 6.1: Acid Sulfate Soils

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

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

14.9 Part 6.2: Earthworks

The proposal does not involve any excavation work and is thereby acceptable with regard to Part 6.2 of the Woollahra LEP 2014.

15. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

15.1 Chapter C1: Paddington Heritage Conservation Area

15.1.1. Section C1.2.4: Desired Future Character

The proposal generally retains the desired future character of the Paddington HCA which is supported. Any non-compliances have been addressed in the recommended conditions of consent.

15.1.2. Section C1.3.8: Commercial and Industrial Buildings Including Shops

The proposal will comply with Objectives O1, O2, O3, O4 and Controls C1, C2, C7, C9, C13.

The proposal will maintain the existing façade (including windows) with the proposed works either being internalised or toward the rear of the existing built form. The presentation to the streetscape will essentially remain unchanged.

No works are proposed to the existing awning.

Commercial Development in Oxford Street

The proposal will comply with Objectives O1, O2, O4, O5, O9, O10, O12 and Controls C1, C3, C4, C5, C7, C8, C10, C11, C12, C19.

The proposal will maintain an active ground floor use along Oxford Street which is supported.

No change is proposed to the existing front façade including windows noting that existing awnings would also be retained. No concern has been raised to the proposed materials and finishes subject to the recommendations of **Condition D.1**.

The additional floor area toward the rear of the built form would not create any additional amenity impacts upon surrounding properties nor would this aspect of the development impact upon any landscaping or vibrancy of the rear lane.

No new signage is proposed per this application.

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

The proposal is satisfactory with regard to objectives O1, O4, O6, O7, O9, O11 and O12 and controls C1, C7, and C8.

The proposal would retain the principal building form with no works proposed to the street front zone. In turn the shared characteristics of the built form as viewed from Oxford Street would be retained. Generally, Council's Heritage Officer has raised no concerns regarding the proposed internal works which are therefore supported. **Condition D.1** does, however, require that the chimney breasts are to be retained as these are original.

15.1.4. C1.4.3 Rear Elevations, Rear Additions, Significant Outbuildings and Yards

The proposal is satisfactory with regard to objectives O1, O2, O3, O4 and controls C1, C2, C5 and C6.

The proposed works to the rear of the existing built form will maintain an appropriate form, scale, alignment and detail in the context of the existing building and surrounding development.

Subject to **Condition D.1**, the proposed roof would be of a traditional form appropriate to the building.

The proposed works to the rear would offer a sympathetic integration to the existing building and would be subservient in terms of bulk, scale and form. Furthermore, the proposal would not create any unreasonably adverse amenity impacts upon surrounding properties. The proposed boundary to boundary extension at the ground floor will not disrupt the existing pattern of development noting that this essentially infills an external area covered by the first floor above.

15.1.5. Section C1.4.4: Roofs and Roof Forms

Having considered objectives O1, and O3 and controls C3, C6, C8 and C10, the proposed roofing is acceptable subject to the requirements of **Condition D.1**.

The profile of the new metal roof has not been specified and any new meatal roofing is to be of a traditional corrugated profile similar to Colourbond Custom Orb in a light to mid grey.

C10 specifies that rear roof planes are not to incorporate more than 25% transparent material. This includes the area of skylights and dormer windows. The rear roof plane would incorporate less than 25% of transparent materials which achieves compliance.

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

The proposal will comply with controls C1, C4, C5, C7 and will achieve the relevant objectives O1, O3, O4, O5 and O6.

The height of the existing building on the street frontage will remain unchanged, achieving control C1.

The overall, bulk scale and form would be generally retained with the additional floor area being situated at the ground level in the north-western corner of the existing building. The general alignment of the built form would remain unchanged.

Given the orientation of the site, the predominant commercial nature of surrounding properties and pattern of nil side setbacks, the proposal is not considered to generate any unreasonably adverse overshadowing impacts upon private open spaces or north facing habitable rooms. Furthermore, given the location of the additional floor area it is considered that any additional shadow would be captured in the existing extent and would not exacerbate any current impacts.

Overall the proposal is considered acceptable having regard to the solar access requirements stipulated by C4.

The proposal would not further impact upon north facing habitable room windows and compliance with C5 is achieved.

The proposal conforms to the height of appropriate adjacent buildings in accordance with control C7 noting that no change to the existing building height is proposed.

15.1.7. Section C1.4.9: Views

The proposal will comply with controls C1, C2 and will achieve the relevant objectives O1, O2 and O3.

The proposal is not considered to give rise to any view loss impacts from the public domain nor from surrounding properties. No objections were raised on the basis of view loss and there are no view corridors across the site that the proposed works would interrupt.

This assessment has also considered the planning principle established by *Tenacity Consulting v Warringah (2004) NSWLEC 140*, the proposal is acceptable with respect to view loss. Compliance with C1 is achieved.

There are no public views identified in Part C1.6.2 that would be impacted by the proposal and compliance with C2 is achieved.

15.1.8. Section C1.4.10: Acoustic and Visual Privacy

The proposal will not result in any exacerbated visual privacy or overlooking impacts upon surrounding properties. At the ground floor, openings have been orientated over the rear portion of the subject site and would be masked by existing boundary fencing/walls. There are no works proposed to the first floor level therefore retaining the status quo.

Having regard to acoustic privacy impacts upon surrounding residential land uses, this assessment has had regard to Council's Environmental Health referral response. In summary, it is considered that acoustic impacts from mechanical plant and equipment would be suitably addressed via the recommended conditions of consent. Furthermore, with regard to the operation of the licenced premises it is also considered that appropriate amenity relationships would occur, subject to the recommended conditions of consent.

Overall and subject to the recommended conditions, the development as proposed will not result in any adverse acoustic or visual privacy impacts, and is acceptable with regard to controls C2, C4 and will achieve the relevant objectives O1, O2.

15.1.9. C1.5.2 Chimneys

Removal of existing chimney breasts within the ground floor level of the principal building form is not supported as these are original. The chimney breasts are to be retained per the recommendations of **Condition D.1** in order to achieve compliance with objectives O1, O2 and controls C1 and C2.

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

The proposed materiality is deemed acceptable subject to the requirements of **Condition D.1**.

No works are proposed to the front façade and there are no obtrusive security measures proposed.

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

Subject to **Condition D.1**, the proposal will comply with controls C4, C5 and Table 8 and will achieve the relevant objective O2.

Condition D.1 requires that any new meatal roofing is to be of a traditional corrugated profile similar to Colourbond Custom Orb in a light to mid grey.

15.1.12. Section C1.5.9: Exterior Colours

Subject to **Condition D.1**, the proposed exterior colour scheme is considered acceptable as it would have an appropriate relationship with surrounding and adjacent terraces. The proposal will comply with controls C1, C3, C4 and will achieve the relevant objective O1.

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

There are no satellite dishes, aerials, air conditioning units or similar devices nominated on the architectural plans.

15.2 Chapter E1: Parking and Access

This assessment has relied on Council's Traffic Engineer referral response which raises no issues with regard to the proposed parking and access configuration subject to the recommended conditions of consent.

In terms of parking, the proposal involves a change of use from retail to a food and drink premises at the ground floor of the existing building and therefore no additional off-street parking is required for the proposal as per Chapter E1.8.4 of the Woollahra DCP 2015. Furthermore, there are no changes to the provision of motorbike bicycle parking arrangements which is deemed acceptable noting the proposed change of use.

In terms of traffic generation, the proposal is not considered to create a significant increase in traffic beyond the existing use and would unlikely create unreasonably adverse impacts on the surrounding road network having regard to traffic flow, safety and efficiency.

With respect to deliveries and service arrangements, deliveries would be undertaken by light commercial vehicles using proximate and available on-street spaces and the loading zone within vicinity as is consistent with current arrangements.

Waste collection would be undertaken via nearby George Street where waste will be manually wheeled to the existing waste area and be collected by a private contractor every second day. This arrangement is deemed acceptable given the proposed quantity and frequency.

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

15.3 Chapter E2: Stormwater and Flood Risk Management

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

15.4 Chapter E3: Tree Management

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

15.5 Chapter E5: Waste Management

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

Part E5.2: Demolition and Construction Phase

The proposal is acceptable with regard to Part E5.2 of the Woollahra DCP 2015.

Part E5.3: On-Site

Waste and Recycling Controls for all Development

	Existing	Proposed	Control	Complies
Garbage and Recycling Areas	Separated	Separated	Separated	Yes
Location of Garbage and Recycling Areas	Behind Building Line or Non-Habitable Areas	Behind Building Line or Non- Habitable Areas	Behind Building Line or Non- Habitable Areas	Yes

The proposal is acceptable with regard to Part E5.3 of the Woollahra DCP 2015.

Part E5.6: Commercial and Non-Residential Developments

	Existing	Proposed	Control	Complies
Collection of Waste	From Rear Lane	From Rear Lane	From a Rear Lane	Yes

The proposal is acceptable with regard to Part E5.6 of the Woollahra DCP 2015.

15.6 Chapter E6: Sustainability

The proposal is largely contained within the existing building envelope, noting it involves the enclosure and internalisation of a partially covered space along the north-western portion of the current built form. The proposal retains the general location of windows and openings where practicable. The design is not deemed to restrict opportunities to provide sustainability measures such as solar access penetration and cross ventilation opportunities noting this is generally in keeping with the current configuration. At present there is no landscaping the subject site which is upheld by the proposal. In the circumstances of this case, the proposal is acceptable with regard to Chapter E6 of the Woollahra DCP 2015.

15.7 Chapter F3: Licensed Premises

15.7.1. Rating

The premises comprises a licensed restaurant with a capacity of 46 patrons and has a rating level of **LOW** in accordance with Table F3.2.

15.7.2. Assessment

In accordance with C1, assessment of the licensed premises must consider the following:

a) The location of the premises and the proximity of residential and other sensitive uses

The subject site is located within the MU1 Mixed Use land zone and directly adjoins properties that are similarly zoned, the north, on the opposite side of the rear laneway are properties which are zoned R2 Low Density residential.

The locality of Oxford Street within vicinity of the subject site is characterised by a mix of retail, food and drink premises along with other commercial uses.

b) The type of licensed premises

The proposed licence is an On-Premises Liquor Licence.

c) The size and capacity of the premises

The proposed premises has an internal floor area of 80.41m² noting that the first floor of the building will remain residential in use.

The submitted Plan of Management (PoM) details that the proposal will hold a maximum of 46 patrons at any one time. Patron capacity is reiterated by conditions of consent as required by C5.

Council's Fire Safety Officer has reviewed the proposal and raised no concerns in relation to fire safety for the patrons subject to the recommended conditions of consent.

d) Trading hours

In accordance with control C2, the core trading hours are to be limited to 8am-midnight for internal areas on Mondays – Saturdays and Sundays.

The submitted Plan of Management (PoM) details that the proposed hours of operation are as follows:

- Monday to Friday 5:00pm Midnight
- Saturday and Sunday 12:00pm Midnight

Trading hours are noted in the conditions of consent (as per C3) and are notably compliant with the requirements of C2.

Per C4, extended trading hours are not sought under this application.

e) Existing and likely cumulative impacts, including social impacts, of licensed premises on the amenity of surrounding areas

As already detailed throughout this assessment report, the proposal is not considered to generate any unreasonably adverse acoustic impacts to properties within the immediate vicinity, subject to the recommended conditions of consent.

The proposal will have a positive social impact as it will contribute to the activation of Oxford Street through the provision of a new business that will generate pedestrian traffic.

Subject to conditions of consent, it is considered that the acoustic and anti-social impacts that may/may not arise from the proposal can be appropriately managed and would not warrant the refusal of the proposal.

In accordance with C7(a) a Plan of Management accompanied this development application and is considered satisfactory.

C7(b) requires the submission of a Social Impact Report, however, this was not considered necessary in this case given the proposal relates to a low risk licensed restaurant land use which is comparable with other restaurants in the vicinity of the subject site

f) Existing and proposed management practices relating to the operation of the premises and of the areas in the vicinity of the premises

The proposed plan of management has been reviewed by Council's Senior Assessment Officer and is deemed to be acceptable. Satisfactory ongoing management is ensured by conditions of consent.

g) The density of licensed premises in the vicinity of the proposed development

There are several other licensed premises within vicinity of the subject site. The proposed restaurant will not present as incompatible with the setting.

h) Availability of car parking and proximity and access to public transport

The subject site is well serviced by public transport, with bus routes along Oxford Street connecting the site to surrounding and more distant suburbs and to a broader public transport network.

Restricted parking is available along both sides of Oxford Street in the vicinity of the site.

i) Any recommendations/comments provided by NSW Police

No response was received from the NSW Police. Follow up emails were sent on 02/04/2024, 15/04/2024, 30/04/2024 and a phone call was made on 20 May 2024 to which no replies were received.

It is considered that satisfactory ongoing management is ensured by conditions of consent.

15.7.3. Management Practices

The proposal will incorporate CCTV surveillance at the premises with passive surveillance achieved through the existing glazing and activation of the street. Compliance with C8 is achieved.

C10 requires that outdoor areas, openings, plant equipment, storage and waste collection spaces must take into account the amenity of surrounding residents. There is no outdoor dining or smoking area proposed per this application. Any likely acoustic amenity impacts from plant equipment would be addressed via the recommended conditions of consent. Waste collection would occur between 8am-6pm so as to minimise disruption and amenity impacts upon surrounding properties.

As per C11 a Noise Impact Assessment report was submitted which was reviewed by Council's Environment Health Officer. Subject to the recommended conditions the proposal is acceptable.

C12 promotes upgrades of fire services, building structure and toilet facilities where there is an intensification of use. Where upgrades are required for BCA purposes this has been addressed via a recommended condition of consent. Compliance is achieved.

C13 requires lighting to improve visibility of frontages, entrances and exits. Lighting will be upgraded per C13.

The proposal will activate the Oxford Street frontage and is therefore acceptable having regard to C14.

15.7.4. Conclusion

The proposal is acceptable with regard to the objectives and controls in Chapter F3 of the Woollahra DCP 2015.

16. DRAFT AMENDMENTS TO POLICIES AND PLANS

None relevant.

17. CONTRIBUTION PLANS

Contributions plans allow funds to be raised from approved development applications. The funds are used for the intended provision, extension or augmentation of public facilities, or towards recouping the cost of facilities that have been provided, extended or augmented. These contributions relate to sections 7.11 and 7.12 of the EP&A Act, formerly known as section 94 and section 94A.

17.1 Section 7.12 Contributions Plan

A 1% levy applies with the monies being used for a variety of works as outlined in Schedule 1 of the Section 7.12 Contributions Plan 2022.

Cost of Works	Rate based on cost of works
\$550,000.00	>\$200,000 = 1%

17.2 Application of Contributions

The consent authority cannot impose conditions under both Section 7.11 and Section 7.12 on the same development consent. In this instance, Section 7.12 contributions have been applied. Accordingly, Section 7.11 contributions are not applicable.

18. APPLICABLE ACTS/REGULATIONS

18.1 Environmental Planning and Assessment Regulation 2021

Clause 61(1) Additional matters that consent authority must consider

Clause 61(1) of the EPA Regulation 2021 requires Council to take into consideration Australian Standard AS 2601-2001: The demolition of structures. This requirement is addressed by Council's standard condition.

Clause 64: Consent authority may require upgrade of buildings

Clause 64 of the Environmental Planning and Assessment Regulation 2021 requires an assessment of the development application against the Building Code of Australia (BCA), with particular respect to the fire provisions within the development.

Council's Fire Safety Officer has undertaken an assessment of the application, as detailed in **Annexure 6**. Building upgrades, fire safety certificates and an annual fire safety statement is required to be submitted as detailed in the recommendation.

19. THE LIKELY IMPACTS OF THE PROPOSAL

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

20. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

21. THE PUBLIC INTEREST

The proposal is considered to be in the public interest.

22. CONCLUSION

The proposal is acceptable against the relevant considerations under Section 4.15.

23. DISCLOSURE STATEMENTS

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

24. RECOMMENDATION: Pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, is satisfied that the written request from the applicant under Part 4.6 of the Woollahra Local Environmental Plan 2014 to the Floor space ratio development standard under Clause 4.4 of Woollahra LEP 2014 has adequately addressed the relevant matters and the proposed development will be in the public interest because it is consistent with the relevant objectives of the particular standard and the zone. The Panel assumes the concurrence of the Secretary, Department of Planning, Industry and Environment.

AND

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, grant development consent to Development Application No. 301/2023/1 for alterations and additions to the existing building and change of use from retail to a licensed restaurant on land at 464 Oxford Street Paddington, subject to the following conditions:

ALL DEVELOPMENT TYPES

A. GENERAL CONDITIONS

A 1. Conditions

Consent is granted subject to the following conditions imposed under section 4.16 of the Environmental Planning and Assessment Act 1979 ("the Act"), and the provisions of the Environmental Planning and Assessment Regulation 2021 ("the Regulations') and the provisions of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 ("the Development Certification and Fire Safety Regulations"), such conditions being reasonable and relevant to the development as assessed under section 4.15 of the Act.

- 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.
- Maximum penalties under NSW environmental laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.
- 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.
- 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.

Condition Reason: To ensure all parties are aware of the relevant legislation that applies to the development.

A. 2. Definitions

Unless specified otherwise, words have the same meaning as defined by the *Act*, the *Regulations*, the *Development Certification and Fire Safety Regulations* 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.

Local native plants means species of native plant endemic to Sydney's eastern suburbs.

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

PC means the Principal Certifier 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 meaning 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.

Site work means any work that is physically carried out on the land to which the development the subject of this development consent is to be carried out, including but not limited to building work, subdivision work, demolition work, clearing of vegetation or remediation work.

Woollahra LEP means Woollahra Local Environmental Plan 2014

Woollahra DCP means Woollahra Development Control Plan 2015

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.

Condition Reason: To ensure all parties are aware of the relevant definitions.

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 both the architectural plans to which is affixed a Council stamp "Approved" and supporting documents listed below unless modified by any following condition.

Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author	Date
DA2023-019 A1001 (Rev 1)	Demolition Plan	BJB Architects	18.08.2023
DA2023-019 A1101 (Rev 1)	Ground Floor/Site Plan	BJB Architects	18.08.2023
DA2023-019 A1111(Rev 1)	First Floor Plan	BJB Architects	18.08.2023
DA2023-019 A1121(Rev 1)	Roof Plan	BJB Architects	18.08.2023
DA2023-019 A1131 (Rev 1)	Kitchen Bench Plan	BJB Architects	18.08.2023
DA2023-019 A1201(Rev 1)	Sections	BJB Architects	18.08.2023
DA2023-019 A1202(Rev 1)	Sections	BJB Architects	18.08.2023
DA2023-019 A1203(Rev 1)	Detail Sections	BJB Architects	18.08.2023
DA2023-019 A1301(Rev 1)	Elevations	BJB Architects	18.08.2023
DA2023-019 A1302 (Rev 1)	Elevations	BJB Architects	18.08.2023

DA2023-019	Elevations	BJB Architects	08.04.2024
A1303(Rev 1)			
	Operational Plan of Management (Submitted to Council on 11/03/2024)	BMA Urban	August 2023
230402	Noise Impact Assessment	Pulse White	16/08/2023
		Noise Acoustics	
23137	Amended Traffic and Parking	CJP Consulting	11 March 2024
23137	Assessment Report	Engineers	11 March 2024
	Site Waste Minimisation and	Jim Apostolou	17.08.2023
	Management Plan		

- Warning to Principal Certifier You must always insist on sighting the original Council stamped approved plans. You must 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 plans.
- These plans and supporting documentation may be subject to conditions imposed under section 4.17(1)(g) of the Act modifying or amending the development.

Condition Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

A. 4. Development Consent is Not Granted in Relation to these Matters

This approval does not give consent to any new signage. A separate Development Consent or Complying Development Certificate, and certificates under section 6.4 of the Act, as appropriate, will need to be obtained prior to such development work commencing.

Condition Reason: To ensure all parties are aware of works that have not been granted consent.

A. 5. Ancillary Aspects of Development (section 4.17(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 (2012) unless expressly provided otherwise by these conditions at the Owner's expense.

Notes:

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.

Condition Reason: To ensure all parties are aware of works required to public infrastructure and to ensure payment for works.

DEMOLITION WORK

B. BEFORE DEMOLITION WORK COMMENCES

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" under section 6.6 of the Act.

In such circumstance all conditions included at the following development stages of this consent must be satisfied prior to any demolition work:

- Before issue of a construction certificate
- Before building work commences

This includes, but is not limited to, the issue of a Construction Certificate, appointment of a Principal Certifier, and Notice of Commencement under the Act.

Note:

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

Condition Reason: To ensure appropriate conditions are complied with for development for the alteration and extension of an existing building.

B. 2. Erosion and Sediment Controls – Installation

Before any site work commences, water pollution, erosion and sedimentation controls must be installed and maintained in accordance with:

- a) "Do it Right On Site, Soil and Water Management for the Construction Industry" and accompanying factsheets published by the Southern Sydney Regional Organisation of Councils, and
- b) "Managing Urban Stormwater Soils and Construction" 2004 published by the NSW Government (The Blue Book).

Where there is any conflict The Blue Book takes precedence.

Notes:

- The "Do it Right On Site, Soil and Water Management for the Construction Industry" publication and accompanying factsheets can be downloaded from www.woollahra.nsw.gov.au and The Blue Book is available at www.environment.nsw.gov.au
- 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.
- 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.

Condition Reason: To prevent potential water pollution and dust nuisance.

B. 3. Identification of Hazardous Material

Prior to any site works, and in accordance with Australian Standard AS2601: The Demolition of Structures, all hazardous substances located on the site must be identified, including asbestos, polychlorinated biphenyls (PCBs), lead paint, underground storage tanks, chemicals, etc.

In this regard, prior to any site works, Council must be provided with a written report prepared by a suitably qualified competent person detailing:

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

Condition Reason: To protect the health and safety of all persons while works are being undertaken and to ensure all safety measures have been identified and are in place to protect all parties in the immediate vicinity of the site.

B. 4. Public Road Assets Prior to Any Work/Demolition

Prior to any site works, a full record of the condition of the public infrastructure on public land adjacent to the development site must be submitted to Council.

The report must include photographs and/or CCTV footage showing the current condition and any existing damage fronting and adjoining the site to the:

- road pavement,
- · street signage including street lights,
- kerb and gutter,
- footway including pedestrian crossings, footpath, and driveways,
- retaining walls, or other significant structures,
- Heritage Items, including street name inlays,
- · utility service items including historical utility covers, and
- drainage structures/pits/pipes (CCTV footage).

The reports are to be supplied in electronic format in Word and if applicable accompanied by CCTV footage. Photographs are to be in colour, digital and date stamped.

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

Condition Reason: To clarify the condition of the existing public infrastructure prior to the commencement of any site works.

B. 5. Payment of Security and Fees

Prior to any site works, the following security and fees must be paid in full:

Description	Amount	Indexed	Council Fee Code	
SECURITY under section 4.17(6) of the Environmental Planning and Assessment Act 1979				
Property Damage Security Deposit - making good any damage caused to any property of the Council	\$17,672.00	No	T115	
INSPECTION FEES under section 608 of the Local Government Act 1993				
Security Deposit Administration Fee	\$225.00	No	T16	
TOTAL SECURITY AND FEES \$17,897.00				

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 any site works being undertaken, 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.

Notes:

- An application must be made to Council by the person who paid the security for release of the securities held under section 4.17 of the Act.
- The securities will not be released until the Occupation Certificate has been 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.

 The Refund of Security Bond Application form can be downloaded from www.woollahra.nsw.gov.au

Condition Reason: To ensure any relevant security and fees are paid.

B. 6. Adjoining Buildings Founded on Loose Foundation Materials

Before any site work commences, a professional engineer must determine the possibility of any adjoining buildings founded on loose foundation materials being affected by piling, piers or excavation. The professional engineer (geotechnical consultant) must assess the requirements for underpinning any adjoining or adjacent buildings founded on such soil on a case by case basis, and any reasonable direction of the professional engineer must be complied with.

Notes:

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

Condition Reason: To ensure professional engineering advice is obtained to confirm that appropriate underpinning and support to adjoining land is maintained.

B. 7. Works (Construction) Zone – Approval and Implementation

If the Construction Management Plan relies upon a Works Zone, before any site work commences, a Works Zone application must be made.

If the works zone is approved, all fees for the Works Zone must be paid before it can be installed.

All Works Zone signs must have been erected by Council to permit enforcement of the Works Zone by Council's Rangers and NSW Police before commencement of any site work. Signs are not erected until full payment of Works Zone fees is made.

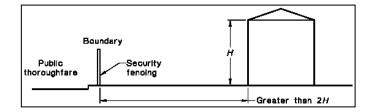
Notes:

- A minimum of four to six weeks must be allowed (for routine applications) from the date of making an application to the Traffic Committee (Woollahra Local Traffic Committee) constituted under clause 20 of the Transport Administration (General) Regulation 2018 to exercise those functions delegated by Transport for New South Wales under section 31(3) of the Transport Administration Act 1988.
- The enforcement of the Works Zone is at the discretion of Council's Rangers and the NSW Police Service. Any breach of the Works Zone must be reported to either Council or the NSW Police Service.

Condition Reason: To facilitate the efficient operation of construction projects and to minimise traffic disruption.

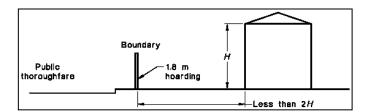
B. 8. Security Fencing, Hoarding (including 'Creative Hoardings') and Overhead Protection

Before any site work commences, 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.



Type A Hoarding

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



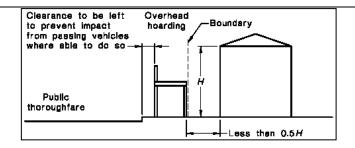
Type B Hoarding

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 4.0m; 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 2.1m,
- 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 0.5m 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 overhead protective structures must be installed and maintained in accordance with the NSW "Code of Practice - Overhead Protective Structures 1995". This is code available at

www.safework.nsw.gov.au/__data/assets/pdf_file/0008/52883/Overhead-protective-structures-Code-of-practice.pdf

All Hoardings

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.

Hoardings on Public Land including 'Creative Hoardings'

All fees associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection must be paid in full.

A creative hoarding (i.e. an approved artwork or historic image affixed to the hoarding) is required if the hoarding meets the criteria in Council's Creative Hoardings Policy (adopted March 2020). The cost of printing and affixing the creative hoarding is the responsibility of the person with the benefit of this consent. The Creative Hoardings Policy can be downloaded from Council's website www.woollahra.nsw.gov.au

Notes:

- A minimum of two (2) weeks from the date of making a hoarding application to determination must be allowed. Any approval for a hoarding or overhead protection under the Roads Act 1993 will be subject to its own conditions and fees.
- Council seeks to increase public art in the public domain by requiring artwork or historic
 images on hoardings located on public land. Under the Creative Hoardings Policy an
 application for a hoarding proposed on public land will require an approved artwork or
 historic image affixed to the hoarding if the hoarding meets the criteria in section 3 of the
 Policy:
 - A. Hoardings proposed on land zoned E1 Local Centre, or MU1 Mixed Use, or SP2 Infrastructure under Woollahra Local Environmental Plan 2014 AND erected for 8 weeks or more OR
 - Hoardings proposed on land located along a State classified road (regardless of the zone) AND erected for 8 weeks or more OR
 - C. Hoardings proposed in any other location than that referred to in A. and B. above AND erected for 12 weeks or more, except where:
 - 1. the capital investment value of the work to which the hoarding relates is less than \$1 million, or
 - 2. the land is zoned R2 Low Density Residential, or
 - 3. the land is zoned R3 Medium Density Residential and the hoarding is located in a lane or street that does not have through traffic (e.g. a cul-de-sac or no through road).

Artwork and historic images for the hoardings are assessed and approved in accordance
with the Creative Hoardings Policy. Details of the artwork or images proposed to be affixed
to the hoardings must be submitted with Council's form "Application for a permit to use a
footpath for the erection of a hoarding/scaffolding". The Creative Hoardings Policy can be
downloaded from www.woollahra.nsw.gov.au

Condition Reason: To ensure public safety.

B. 9. Site Signs

Before any site work commences, the sign/s required by clauses 70 of the Regulation and 75 of the Development Certification and Fire Safety Regulation must be erected and maintained at all times.

Clause 70 of the Regulation provides:

Erection of signs

- For the purposes of section 4.17(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 certifier 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 6.28 of the Act, to comply with the Building Code of Australia.

Clause 75 of the Development Certification and Fire Safety Regulation provides:

Signs on development sites

If there is a person who is the Principal Certifier 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.

- Clause 75 of the Development Certification and Fire Safety Regulations imposes a maximum penalty of 55 penalty units if these requirements are not complied with.
- If Council is appointed as the Principal Certifier 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 70 of the Regulation and clause 75 of the Development Certification
 and Fire Safety Regulation.

Condition Reason: To ensure that contact details for the principal certifier and principal contractor are provided on a sign at the development site.

B. 10. Toilet Facilities

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

Each toilet provided:

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

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

Notes:

- In this condition 'sewage management facility' and 'public sewer' are as defined by clause 25 of the Local Government (Approvals) Regulation 1999.
- This condition does not set aside the requirement to comply with SafeWork NSW requirements.

Condition Reason: To ensure toilet facilities are provided for workers at the work site.

B. 11. Establishment of Boundary Location, Building Location and Datum

Before any site work commences, a surveyor registered under the Surveying and Spatial Information Act 2002 must:

- a) set out the boundaries of the site by permanent marks (including permanent recovery points),
- b) set out 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) establish a permanent datum point (bench mark) within the boundaries of the site relative to AHD, and
- d) provide a copy of a survey report, prepared by the registered surveyor, detailing the title boundaries, pegs/profiles, recovery points and bench mark locations as established under this condition to the Principal Certifier.

- Where there is 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 site works must not proceed until the variations as shown are consistent with the consent. Failure to do so may result in a breach of development consent.
- On larger developments, or where boundary redefinition is required, the placement of new State Survey Marks as permanent marks must be considered by the registered surveyor.

Condition Reason: To ensure that the boundary locations, building location, and a datum point is established by a surveyor.

B. 12. Compliance with Australian Standard for Demolition

While site work is being carried out, the demolition of buildings and structures must comply with Australian Standard AS 2601—2001: The Demolition of Structures.

Condition Reason To control the risks of demolition work.

B. 13. Construction Management Plan

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

An application for the CMP must be submitted for approval, and all associated application fees must be paid.

The CMP must be submitted as a self-contained document that outlines the nature of the construction project and as applicable, include the following information:

- a) Detail the scope of the works to be completed including details of the various stages, e.g. demolition, excavation, construction etc. and the duration of each stage.
- b) Identify local traffic routes to be used by construction vehicles.
- c) Identify ways to manage construction works to address impacts on local traffic routes.
- d) Identify other developments that may be occurring in the area and identify ways to minimise the cumulative traffic impact of these developments. Should other developments be occurring in close proximity (500m or in the same street) to the subject site, the developer/builder is to liaise fortnightly with the other developers/builders undertaking work in the area in order to minimise the cumulative traffic and parking impacts of the developments.
- e) Detail how construction workers will travel to and from the site and parking arrangements for those that drive.
- f) Identify any proposed road closures, temporary traffic routes, loss of pedestrian or cyclist access, or reversing manoeuvres onto a public road, and provide Traffic Control Plans (TCPs) prepared by an accredited RMS Red or Orange card holder to manage these temporary changes.
- g) Detail the size (including dimensions), numbers and frequency of arrival of the construction vehicles that will service the site for each stage of works.
- h) Provide for the standing of vehicles during construction.
- i) If construction vehicles are to be accommodated on the site, provide a scaled drawing showing where these vehicles will stand and the vehicle swept path to show that these vehicles can access and egress the site in a forward direction

- (including dimensions and all adjacent traffic control devices, such as parking restrictions, pedestrian facilities, kerb extensions, etc.).
- j) If trucks are to be accommodated on Council property, provide a scaled drawing showing the location of any proposed Works Zone (including dimensions and all adjacent traffic control devices, such as parking restrictions, pedestrian facilities, kerb extensions, etc.).
- k) Show the location of any site sheds and any anticipated use of cranes and concrete pumps and identify the relevant permits that will be required.
- I) If a crane/s are to be accommodated on site, detail how the crane/s will be erected and removed, including the location, number and size of vehicles involved in the erection/removal of the crane/s, the duration of the operation and the proposed day and times, any full or partial road closures required to erect or remove the crane/s and appropriate Traffic Control Plans (TCPs) prepared by an approved RMS Red or Orange Card holder.
- m) Make provision for all materials, plant, etc. to be stored within the development site at all times during construction.
- n) State that any oversized vehicles proposed to operate on Council property (including Council approved Works Zones) will attain a Permit to Stand Plant on each occasion (Note: oversized vehicles are vehicles longer than 7.5m or heavier than 4.5T.)
- o) Show the location of any proposed excavation and estimated volumes.
- p) When demolition, excavation and construction works are to be undertaken on school days, all vehicular movements associated with this work must only be undertaken between the hours of 9.30am and 2.30pm, in order to minimise disruption to the traffic network during school pick up and drop off times.
- q) Show the location of all Tree Protection (Exclusion) zones (Note: storage of building materials or access through Reserve will not be permitted without prior approval by Council).

- A minimum of eight weeks will be required for assessment. Site work must not commence until the Construction Management Plan is approved.
- Failure to comply with this condition may result in fines and proceedings to stop work.
- Council and NSW Police approval is required prior to a partial or full temporary road closure. If you are seeking a partial or full temporary road closure you must comply with the relevant conditions of this consent and you must also gain the approval of the Eastern Suburbs Police Area Command.
- If you partial or full close a road without compliance with Council and NSW Police requirements Council Rangers or the Police can issue Penalty Infringement Notices or Court Attendance Notices leading to prosecution.
- Traffic Supervisors at the Eastern Suburbs Police Area Command can be contacted on eastsubtraffic@police.nsw.gov

Condition Reason: To facilitate the efficient operation of construction projects, minimise traffic disruption, and protect the public, and the surrounding environment, during site works and construction.

REMEDIATION WORK

C. ON COMPLETION OF REMEDIATION WORK

Nil.

BUILDING WORK

D. BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

D. 1. Modification of Details of the Development (section 4.17(1)(g) of the Act

Before the issue of any construction certificate, the approved plans and the construction certificate plans and specification, required to be submitted to the Principal Certifier under clause 7 of the Development Certification and Fire Safety Regulations, must detail the following amendments:

- a) The profile of the new metal roofing has not been specified. Any new metal roofing is to be of a traditional corrugated profile similar to Colorbond Custom Orb in a light to mid grey colour in order to comply with:
 - Woollahra DCP 2015, Chapter C1, Clause 1.4.4, Objective O3, Control C8
 - Woollahra DCP 2015, Chapter C1, Clause 1.5.8, Objective O2, Controls C4, C5, Table 8

<u>Details in accordance with this condition are to be submitted and approved by Council prior to the issue of a Construction Certificate</u>

- b) The removal of the existing chimney breasts within the ground floor level of the principal building form is not supported as they are original. The chimney breasts are to be retained.
 - Woollahra DCP 2015, Chapter C1, Clause 1.4.1, Objective O11, Control C7

<u>Details in accordance with this condition are to be submitted and approved by Council prior to the issue of a Construction Certificate</u>

Notes:

- Clause 20 of the Development Certification and Fire Safety Regulations prohibits the
 issue of any construction certificate subject to this condition unless the Principal Certifier is
 satisfied that the condition has been complied with.
- Clause 19 of the Development Certification and Fire Safety Regulations prohibits the issue of any construction certificate that is inconsistent with this consent.

Condition Reason: To require design changes and/or further information to be provided to address specific issues identified during the assessment under section 4.15 of the Act.

D. 2. Payment of Long Service Levy

Before the issue of any construction certificate, the original receipt(s) for the payment of all of the following levy and contributions must be provided to the Principal Certifier:

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Long Service Levy www.longservice.nsw.gov.au/bci/levy/ other-information/levy-calculator	Contact LSL Corporation or use online calculator	No	

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 Principal Certifier prior to the issue of any construction certificate. The levy can be paid directly to the Long Service Corporation or to Council. Further information can be obtained from the Long Service Corporation website www.longservice.nsw.gov.au or the Long Service Corporation on 131 441.

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.

How will the section 7.12 levy (formerly known as 94A levy) be indexed?

To ensure that the value of 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 2.12 of the Woollahra Section 7.12 Development Contributions Plan 2022 sets out the formula and index to be used in adjusting the levy.

Do you need HELP indexing the levy?

Please contact Council's Customer Service Team on 9391 7000. Failure to correctly calculate the adjusted development levy will delay the issue of any certificate issued under section 6.4 of the Act and could void any such certificate (e.g. construction certificate, subdivision certificate, or occupation certificate).

Deferred or periodic payment of section 7.12 levy (formerly known as 94A levy) under the Woollahra Section 7.12 Development Contributions Plan 2022 Where the Applicant makes a written request supported by reasons for payment of the section 7.12 levy other than as required by clause 2.9, the Council may accept deferred or periodic payment. The decision to accept a deferred or periodic payment is at the sole discretion of the Council, which will consider:

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

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

- the guarantee is by an Australian bank for the amount of the total outstanding contribution,
- the bank unconditionally and irrevocably agrees to pay the guaranteed sum to the Council on written request by Council prior to the issue of an occupation certificate,
- 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 recourse 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, and

• the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

Any deferred or periodic payment of the section 7.12 levy will be adjusted in accordance with clause 2.12 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.

Condition Reason: To ensure any relevant levy and contributions are paid.

D. 3. Erosion and Sediment Control Plan – Submission and Approval

Before the issue of any construction certificate, an erosion and sediment control plan, prepared by a suitably qualified person in accordance with the following documents, must be submitted to the Principal Certifier. The erosion and sediment control plan must comply with:

- a) "Do it Right On Site, Soil and Water Management for the Construction Industry" and the accompanying factsheets published by the Southern Sydney Regional Organisation of Councils; and
- b) "Managing Urban Stormwater Soils and Construction" 2004 published by the NSW Government (The Blue Book).

Where there is any conflict The Blue Book takes precedence.

The Principal Certifier must be satisfied that the erosion and sediment control plan complies with the publications above prior to issuing any construction certificate.

Notes:

- The International Erosion Control Association Australasia 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.
- The "Do it Right On Site, Soil and Water Management for the Construction Industry" publication and accompanying factsheets can be downloaded from www.woollahra.nsw.gov.au, and The Blue Book is available at www.environment.nsw.gov.au
- Under clause 73(2)(a)(v) of the Development Certification and Fire Safety Regulation an Accredited Certifier may be satisfied as to this matter.

Condition Reason: To prevent potential water pollution and dust nuisance.

D. 4. Structural Adequacy of Existing Supporting Structures

Before the issue of any construction certificate, a certificate from a professional structural engineer, certifying the adequacy of the existing supporting structure to support the additional loads proposed to be imposed by the development, must be provided to the Principal Certifier and submitted with the construction certificate application.

Condition Reason: To ensure that the existing structure is able to support the additional loads proposed.

D. 5. Professional Engineering Details

Before the issue of any construction certificate, the construction certificate plans and specifications, required under clause 7 of the Development Certification and Fire Safety Regulation, must include detailed professional engineering plans and/or specifications for all structural, electrical, hydraulic, hydrogeological, geotechnical, mechanical and civil work complying with this consent, approved plans, and supporting documentation.

Detailed professional engineering plans and/or specifications must be submitted to the Principal Certifier with the application for any construction certificate.

Notes:

• This does not affect the right of the developer to seek staged construction certificates.

Condition Reason: To ensure professional engineering details and technical specifications are provided.

D. 6. Stormwater Discharge to Existing Stormwater Drainage System

Before the issue of any construction certificate, the applicant must submit, for approval by the Principal Certifier, detailed stormwater management plans prepared by a chartered professional civil engineer, which include the following:

- a) The stormwater management plans must specify any components of the existing drainage system to be retained and certified to be in good condition and of adequate capacity to convey additional runoff and be replaced or upgraded if required.
- b) Detail the location of the existing stormwater drainage system including all pipes, inspection openings, surface drains, pits and their discharge location as well as any new stormwater drainage system.
- c) Detail any remedial works required to upgrade the existing stormwater drainage system.
- d) Internal stormwater drainage pipes and pits are to be designed for rainfall intensities up to and including the 1% AEP event if an unimpeded overland flow path to the street drainage system is not available. Design details and calculations must be included in the stormwater management plans.
- e) The discharge of stormwater from the site to the street kerb located within the frontage of the site. Only one stormwater outlet with a maximum discharge rate of 20 l/s in the 1% AEP storm event will be permitted. Full supporting calculations must be included in the stormwater management plans. The stormwater outlet pipe across the Council's property must have a minimum grade of 1% to comply with Council's DCP and AS3500.3.
- f) All below ground structures are to be fully tanked or appropriately designed such that subsoil drainage/seepage water is NOT discharged to the kerb and gutter to comply with Chapter E2.2.5 of Council's DCP. Notation to this requirement must be clearly depicted on the drawings.
- g) Dimensions of all drainage pit and access grates must comply with AS3500.3 and Council's DCP.
- h) Interceptor drain(s) at the site boundary to prevent stormwater flows from the site crossing the footpath; and General compliance with the Woollahra DCP 2015 Chapter E2 Stormwater and Flood Risk Management.
- i) General compliance with the Woollahra DCP 2015 Chapter E2 Stormwater and Flood Risk Management.

The Stormwater Management Plan must also 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 Australian Government publication, Australian Rainfall and Run-off, 2019 edition or most current version thereof. It must include:

- a) All pipe layouts, dimensions, grades, lengths and material specification.
- b) Location and dimensions of all downpipes.
- c) All invert levels reduced to Australian Height Datum (AHD).
- d) Location and dimensions of all drainage pits.
- e) Point and method of connection to Councils drainage infrastructure.
- f) Overland flow paths over impervious areas.

Where 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 before 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 (2012).

Notes:

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

Condition Reason: To ensure that site stormwater is disposed of in a controlled and sustainable manner.

D. 7. Flood Protection

Before the issue of any construction certificate, the construction certificate plans and specifications required under clause 7 of the Development Certification and Fire Safety Regulation, must include a Flood Risk Management Plan on the basis of the Flood Planning Level (FPL).

Flood Warning:

a) A permanent flood risk management plan shall be installed in an area frequented by the occupants such as the Kitchen,

Flood Proof Material

a) Flood compatible materials shall be used for all flood exposed construction,

Electricals

a) All flood exposed electrical wiring and equipment shall be waterproofed, Flood protection is to comply with Woollahra DCP 2015, Part E General Controls for All Development, Chapter E2 –Stormwater and Flood Risk Management.

Notes:

• The revised driveway profile, gradients and transitions must be in accordance with Australian Standard 2890.1, Part 1: Off-street car parking. The driveway profile submitted to Council must contain all relevant details: reduced levels, proposed grades and distances. Council will not allow alteration to existing reduced levels within the road or any other public place to achieve flood protection.

Condition Reason: To ensure the development incorporates flood inundation protection measures.

D. 8. Waste Storage – Commercial

Before the issue of any construction certificate, the construction certificate plans and specifications required by clause 7 of the Development Certification and Fire Safety Regulation, must make provision for:

a) A dedicated and enclosed waste and recycling storage area behind the building line or within non-habitable areas of the building.

Condition Reason: To ensure a waste and recycling storage area is provided.

D. 9. Light and Ventilation

Before the issue of any construction certificate, the construction certificate plans and specifications required under clause 7 of the Development Certification and Fire Safety Regulation, must detail all lighting, mechanical ventilation or air-conditioning systems complying with Part F.4 of the BCA or clause 3.8.4 and 3.8.5 of the BCA Housing Provisions, inclusive of AS 1668.1, AS 1668.2 and AS/NZS 3666.1.

If an alternate solution is proposed then the construction certificate application must include a statement as to how the performance requirements of the BCA are to be complied with and support the performance based solution by expert evidence of suitability.

This condition does not set aside the mandatory requirements for 'Legionella Control' under the Public Health Act 2010 and Public Health Regulation 2022 in relation to regulated systems. This condition does not set aside the effect of the Protection of the Environment Operations Act 1997 in relation to offensive noise or odour.

Notes:

- Clause 69 of the Regulation requires compliance with the BCA. Clause 19 of the
 Development Certification and Fire Safety Regulation prevents the issue of a construction
 certificate unless the Principal Certifier is satisfied that compliance has been achieved.
- Part 3, Division 1 of the Development Certification and Fire Safety Regulation details what
 information must be submitted with any construction certificate. It is the Applicant's
 responsibility to demonstrate compliance through the construction certificate application
 process.
- Applicants must also consider possible noise and odour nuisances that may arise. The
 provisions of the Protection of the Environment Operations Act 1997 have overriding effect
 if offensive noise or odour arises from the use.
- Applicants must pay attention to the location of air intakes and air exhausts relative to sources of potentially contaminated air and neighbouring windows and air intakes respectively, see section 2 and 3 of AS 1668.2.

Condition Reason: To ensure the development is provided with adequate light and ventilation.

D. 10. Acoustic Certification of Mechanical Plant and Equipment

Before the issue of any construction certificate, the construction certificate plans and specifications required under clause 7 of the Development Certification and Fire Safety Regulation, must be accompanied by a certificate from a professional acoustic engineer certifying that the noise level measured at any boundary of the site at any time while the proposed mechanical plant and equipment is operating will not exceed the background noise level. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed background noise level, at any time.

The background noise level is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the LA90, 15 minute level measured by a sound level meter.

Where sound attenuation is required this must be detailed.

Notes:

- Further information including lists of Acoustic Engineers can be obtained from:
 - Australian Acoustical Society professional society of noise-related professional www.acoustics.asn.au
 - Association of Australian Acoustical Consultant professional society of noise related professionals www.aaac.org.au

Condition Reason: To ensure the development does not result in any unreasonable acoustic impacts.

D. 11. Food Premises – Construction Certificate Plans and Specifications

Before the issue of any construction certificate, the person with the benefit of this consent must submit to Council details for the construction and fit out of the food premises. Such details must demonstrate compliance with the Food Act 2003, Food Regulation 2015, and the Food Standards Code as published by Food Standards Australia and New Zealand and Australian Standard AS 4674: Construction and fit out of food premises.

No construction certificate relating to the construction or fitout of food premises must be issued until Council's Environmental Health Officer has advised in writing that the plans and specification are considered satisfactory.

The details for the construction and fit out of food premises, as considered satisfactory by Council's Environmental Health Officer must form part of any construction certificate.

Notes:

 The assessment of food premises fitout plans and specifications is subject to an adopted fee. The construction and fitout of food premises is not listed under clause 73 of the Development Certification and Fire Safety Regulation as a matter that a Principal Certifier may be satisfied as to. Hence, the detailed plans and specifications must be referred to Council and be to Council's satisfaction prior to the issue of any construction certificate for such works.

Condition Reason: To ensure that the food premises fitout plans and specifications are assessed and approved by Council.

D. 12. Noise Control - Hydraulic Noise Control-Sound Insulation Rating of Services

Before the issue of any construction certificate, the requirements of the Building Code of Australia BCA Clause F5.6: *Ducts, Hot and Cold Domestic Water, Stormwater, Soil and Waste Pipes,* which serves or passes through more than one sole occupancy unit must be separated from habitable rooms (other than a kitchen) in any other sole occupancy unit by a weighted sound reduction index + traffic noise spectrum adaptation term of not less than 40 if it is adjacent to a habitable room, and 25 if it is adjacent to a wet area (bathroom, laundry etc.) or kitchen.

Details are to be provided by the applicant clearly indicating how this requirement will be achieved in respect to controlling hydraulic noise emission to adjoining habitable rooms.

Condition Reason: To ensure the development does not result in any unreasonable acoustic impacts.

D. 13. Noise Control - Acoustic Protection of adjoining residential units-Operation of Air Conditioning Plant

Before the issue of any construction certificate, the applicant must ensure that the operation of the proposed Air Condition System and associated plant does not create interior noise intrusion and vibration to occur within any adjoining residential unit.

Condition Reason: To ensure the development does not result in any unreasonable acoustic impacts.

D. 14. Ventilation - Kitchen Exhaust- Smoke & Odour Control

Before the issue of any construction certificate:

- a) As the discharge of air from the kitchen exhaust ventilation system(s) is considered an obnoxious discharge under Section 3.7 of Australian Standard 1668.2-1991, the ductwork serving the proposed kitchen exhaust system(s) shall be arranged vertically with a discharge velocity of not less than 5 m/s and be situated at least 1 m above the ridge of a pitched roof or 3 m above the flat of the building.
- b) All exhaust air and spill air shall be discharged to atmosphere in such a manner as not to cause a danger or nuisance to occupants in the building, occupants of neighbouring buildings or members of the public.
- c) The design, construction and installation of the kitchen exhaust hood(s) shall comply with the requirements of Appendix E, 'Kitchen Exhaust Hoods' of AS 1668.2-1991 and Appendix F, 'Capture of Emissions By Kitchen Exhaust Hoods' of AS 1668.2-1991.
- d) A Smoke & Odour Impact Assessment Report is to be prepared by a suitably qualified engineer detailing the design specification of the proposed kitchen exhaust system, including all smoke and odour inhibiting controls and filtering systems.
- e) The Construction Certificate plans and specifications, required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation, must detail all the kitchen exhaust ventilation system(s), including all smoke and odour controls and filtering systems. Upon completion and prior to occupation of the premises, the kitchen exhaust ventilation system(s) shall be certified by a qualified engineer that the system(s) has been installed in accordance with AS 1668.1 and AS 1668.2 and the design specification as detailed in the Smoke & Odour Impact Assessment Report.

Condition Reason: To ensure the development does not result in any unreasonable exhaust, smoke or odour impacts.

D. 15. Ventilation - Internal Sanitary Rooms

Before the issue of any construction certificate, all internal sanitary rooms and laundry facilities not provided with natural ventilation must be provided with a system of mechanical exhaust ventilation in accordance with *Table B1 Minimum Exhaust Ventilation Flow Rates of AS 1668.2-1991*. Details of any proposed mechanical ventilation system(s) must be submitted with the Construction Certificate plans and specifications to the Certifying Authority demonstrating compliance with AS 1668 Parts 1 & 2.

Condition Reason: To ensure the development is adequately ventilated.

D. 16. Building Upgrade (clause 64 of the Regulation)

Before the issue of any construction certificate, the construction certificate plans and specification required to be submitted to the Principal Certifier, under clause 7 of the Development Certification and Fire Safety Regulation, must ensure the existing building is brought into total or partial conformity with the BCA, by detailing all building upgrade works required by this condition.

The Principal Certifier must be satisfied that such work, to be implemented as part of the development, will upgrade the building to bring it into compliance with the following provisions of the BCA as in force at the date of the construction certificate application:

- a) Volume 1, F6 D6 Ventilation of Rooms
- b) Housing Provisions, HP3 Requirements for smoke alarms,
- c) Housing Provisions, Clause 3.9.1 Stair construction,
- d) <insert upgrade work required by Fire Safety Officer or Building Surveyors report Note: this will typically involve as a minimum ensuring that all habitable dwellings and sole occupancy units have a hard wired smoke detection and alarm system applicable to the buildings classification complying with the BCA>.

Notes:

- The measures contained in the building are inadequate:
 - a) to protect persons using the building, and to facilitate their egress from the building, in the event of fire, and/or
 - b) to restrict the spread of fire from the building to other buildings nearby.
- The Principal Certifier issuing the construction certificate has no power to remove the requirement to upgrade the existing building as required by this condition. Where this conditions specifies compliance with performance requirements of the BCA the Principal Certifier, subject to their level of accreditation, may be satisfied as to such matters. Where this condition specifies compliance with prescriptive (Deemed-to-Satisfy) provisions of the BCA these prescriptive requirements must be satisfied and cannot be varied unless this condition is reviewed Part 8 Division 8.2 or amended under section 4.55 of the Act.
- This condition does not set aside the Principal Certifier's responsibility to ensure compliance with clause 14 of the Development Certification and Fire Safety Regulation in relation to Fire Protection and Structural Adequacy.

Condition Reason: To ensure that, in accordance with clause 64 of the Regulation, that the existing building be upgraded to total or partial conformity with the BCA.

D. 17. Payment of S7.12 Contributions Levy

A payment of a levy authorised by section 7.12 of the Environmental Planning and Assessment Act 1979 must be paid prior to the issue of any Construction Certificate or Subdivision Works Certificate. The Principal Certifier is to be provided with the original receipt for payment under the Woollahra Section 7.12 Development Contributions Plan 2022.

A cost estimate report, no more than 3 months old, demonstrating the proposed cost of carrying out the development must be completed and submitted to Council for determination of the costs of work. This report must incorporate all approved modification applications. The costs and expenses of the proposed cost of development must be established in accordance with clause 208 of the Environmental Planning and Assessment Regulation 2021.

The cost estimate report must be in the form of:

- A cost summary report, prepared by the applicant or a suitably qualified person for a development up to \$749,999; or
- A quantity surveyor's report, for development over \$750,000.

The applicable levy rate is to be calculated using the summary schedule below.

Summary Schedule					
Development Cost	Levy Rate				
 Up to and including \$100,000 	Nil				
 More than \$100,000 and up to and including \$200,000 	0.5% of the cost				
 More than \$200,000 	1% of the cost				

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.

Deferred or periodic payment of section 7.12 levy

Where the Applicant makes a written request supported by reasons for payment of the section 7.12 levy other than as required by clause 2.9, the Council may accept deferred or periodic payment. The decision to accept a deferred or periodic payment is at the sole discretion of the Council, which will consider:

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

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

- the guarantee is by an Australian bank for the amount of the total outstanding contribution.
- the bank unconditionally and irrevocably agrees to pay the guaranteed sum to the Council on written request by Council prior to the issue of an occupation certificate.
- 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 recourse 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, and
- the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

Any deferred or periodic payment of the section 7.12 levy will be adjusted in accordance with clause 2.12 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.

Do you need HELP indexing the levy?

Please contact Council's Customer Service Team on 02 9391 7000. Failure to correctly calculate the adjusted development levy will delay the issue of any certificate issued under section 6.4 of the Act and could void any such certificate (e.g. construction certificate, subdivision certificate, or occupation certificate).

Condition Reason: To ensure any relevant contributions are paid.

E. BEFORE BUILDING WORK COMMENCES

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

Before any building work commences, and under section 4.17(11) of the Act, the following conditions are prescribed in relation to a development consent for development that involves any building work:

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

This condition does not apply:

- a) to the extent to which an exemption is in force under the Home Building Regulation 2014, or
- 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.

Notes

- 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.
- All new guttering is to comply with the provisions of AS3500.

Condition Reason: To ensure that works are carried out in accordance with the Building Code of Australia and any required contract of insurance is in force.

E. 2. Erosion and Sediment Controls – Installation

Before any building work commences, water pollution, erosion and sedimentation controls must be installed and maintained 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" and accompanying factsheets published by the Southern Sydney Regional Organisation of Councils, and
- c) "Managing Urban Stormwater Soils and Construction" 2004 published by the NSW Government (The Blue Book).

Where there is any conflict The Blue Book takes precedence.

- The International Erosion Control Association Australasia (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.
- The "Do it Right On Site, Soil and Water Management for the Construction Industry" publication and the accompanying factsheets can be downloaded from www.woollahra.nsw.gov.au and The Blue Book is available at www.environment.nsw.gov.au
- 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.
- 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.

Condition Reason: To prevent potential water pollution and dust nuisance.

E. 3. Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 of the Act)

Building work must not commence, until:

- 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 Certifier for the building work, and
 - notified the Principal Certifier that the person will carry out the building work as an Owner-builder, if that is the case, and
- c) The Principal Certifier 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 Certifier 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.

- **Building** has the same meaning as in section 1.4 of the Act and includes part of a building and any structure or part of a structure.
- **New building** has the same meaning as in section 6.1 of the Act and includes an altered portion of, or an extension to, an existing building.
- 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 6.6(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.
- Construction Certificate Application, PC Service Agreement and Notice of Commencement forms can be downloaded from Council's website www.woollahra.nsw.gov.au
- 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 6.6(2) of the Act.
- 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 NSW Fair Trading.

Condition Reason: To ensure a construction certificate has been issued, a Principal Certifier is appointed, a Principal Contractor (if applicable) is appointed, and a notice of commencement has been submitted.

F. DURING BUILDING WORK

F. 1. Compliance with BCA and Insurance Requirements under the Home Building Act 1989

While site work is being carried out:

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

This condition does not apply:

- a) to the extent to which an exemption is in force under the Development Certification and Fire Safety Regulations, 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.

For the purposes of section 4.17(11) of the Act, the above condition is prescribed in relation to a development consent for development that involves any building work.

Notes:

• All new guttering is to comply with the provisions of AS 3500.

Condition Reason: To ensure compliance with the BCA and Home building Act 1989.

F. 2. Requirement to Notify about New Evidence

While site work is being carried out, any new information that comes to light, 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 Certifier.

Condition Reason: To ensure Council and the Principal Certifier are made aware of new information.

F. 3. Critical Stage Inspections

While site work is being carried out, critical stage inspections must be called for by the Principal Contractor or Owner-builder as required by the Principal Certifier, any PC service agreement, the Act, the Development Certification and Fire Safety Regulation, and the Regulation.

Work must not proceed beyond each critical stage until the Principal Certifier 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 Development Certification and Fire Safety Regulations, and Regulations for the purposes of section 6.5 of the Act or as required by the Principal Certifier and any PC Service Agreement.

Notes:

- The Principal Certifier may require inspections beyond mandatory critical stage inspections in order that the Principal Certifier be satisfied that work is proceeding in accordance with this consent.
- The Principal Certifier may, in addition to inspections, require the submission of Compliance Certificates, survey reports or evidence of suitability in accordance with Part A2G2 of the BCA in relation to any matter relevant to the development.

Condition Reason: To ensure that building work progresses in accordance with the approved plans, conditions of consent, and requirements of the act.

F. 4. Hours of Work – Amenity of the Neighbourhood

While site work is being carried out:

- 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.
- The following work must not take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday:
 - i. piling,
 - ii. piering,
 - iii. rock or concrete cutting, boring or drilling,
 - iv. rock breaking,
 - v. rock sawing,
 - vi. jack hammering, or
 - vii. machine excavation.
- e) No loading or unloading of material or equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.

- f) No operation of any equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.
- g) No rock excavation being cutting, boring, drilling, breaking, sawing, jack hammering or bulk excavation of rock, must occur without a 15 minute interval break within every hour.

- 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.
- Each and every breach of this condition by any person may be subject to a separate penalty infringement notice or prosecution.
- The delivery and removal of plant, equipment and machinery associated with wide loads subject to Transport for NSW and NSW Police restrictions on their movement outside the approved hours of work will be considered on a case by case basis.
- 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 2017.
- NSW EPA Noise Guide is available at www.epa.nsw.gov.au/noise/nglg.htm

Condition Reason: To mitigate the impact of work upon the amenity of the neighbourhood.

F. 5. Public Footpaths – Safety, Access and Maintenance

While site work is being carried out, any person acting with the benefit of this consent must:

- a) Not erect or maintain any gate or fence that swings out, or encroaches upon the road or the footway.
- b) Not use the road or footway for the storage of any article, material, matter, waste or thing.
- c) Not use the road or footway for any work.
- d) Keep the road and footway in good repair free of any trip hazard or obstruction.
- e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be immediately made safe and then repaired, to the satisfaction of Council.
- f) Not stand any plant and equipment upon the road or footway.
- g) If it is proposed to locate any site fencing, hoardings, skip bins or other articles upon any part of the footpath, nature strip or any public place, or operate a crane, hoist or concrete pump on or over Council land, an application must be submitted to and approved by Council beforehand.
- h) Provide a clear safe pedestrian route a minimum of 1.5m wide.
- i) Protect heritage listed street name inlays located in the footpath, kerb and gutter, and any other structure, to ensure they are not removed or damaged during development.

This condition does not apply to the extent that a permit or approval exists under the section 148B of the Road Transport Act 2013, section 138 of the Roads Act 1993 or section 68 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.

- Section 148B of the Road Transport Act 2013 allows the NSW Police to close any road or road related area to traffic during any temporary obstruction or danger to traffic or for any temporary purpose.
- 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.
- 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.

Condition Reason: To ensure safe access is maintained to footpaths and roads during building works.

F. 6. Maintenance of Environmental Controls

While site work is being carried out, the following monitoring, measures and controls must be maintained:

- a) erosion and sediment controls,
- b) dust controls.
- c) dewatering discharges,
- d) noise controls,
- e) vibration monitoring and controls, and
- f) ablutions.

Condition Reason: To ensure that environmental controls are maintained during building works to protect the public and surrounding environment.

F. 7. Support of Adjoining Land and Buildings

While site work is being carried out, 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.

- 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:
 - the consent of the owners of such adjoining or supported land to trespass or encroach, or
 - an access order under the Access to Neighbouring Land Act 2000, or
 - an easement under section 88K of the Conveyancing Act 1919, or
 - an easement under section 40 of the Land and Environment Court Act 1979 as appropriate.
- 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).
- Clause 17 of the Roads Regulation 2018 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.
- 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.

Condition Reason: To ensure that the support of adjoining land is not removed.

F. 8. Erosion and Sediment Controls – Maintenance

While site work is being carried out, water pollution, erosion, and sedimentation controls must be maintained 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" and the accompanying factsheets published by the Southern Sydney Regional Organisation of Councils, and
- c) "Managing Urban Stormwater Soils and Construction" 2004 published by the NSW Government (The Blue Book).

Where there is any conflict The Blue Book takes precedence.

Notes:

- 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.
- 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.

Condition Reason: To prevent potential water pollution and dust nuisance.

F. 9. Disposal of Site Water During Construction

While site work is being carried out:

- a) Prior to pumping any water into the road or public stormwater system, approval must be obtained from Council under section 138(1)(d) of the Roads Act 1993.
- b) Water pollution, as defined by the Protection of the Environment Operations Act 1997, must not occur as the result of the discharge to the road, public stormwater system or other place of 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.

Condition Reason: To ensure that adjoining and neighbouring land is not adversely affected by unreasonable overland flows of stormwater and that site water does not cause erosion and water pollution.

F. 10. Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum

While site work is being carried out, a registered surveyor must carry out check surveys and provide survey certificates confirming the location of the building(s), ancillary works, flood protection works and the stormwater drainage system relative to the boundaries of the site and that the height of buildings, ancillary works, flood protection works and the stormwater drainage system relative to Australian Height Datum complies with this consent at the following critical stages.

Work must not proceed beyond each of the following critical stages until compliance has been demonstrated to the Principal Certifier's satisfaction:

- a) Upon the completion of foundation walls prior to the laying of any floor or the pouring of any floor slab and generally at damp proof course level.
- b) Upon the completion of formwork for floor slabs prior to the laying of any floor or the pouring of any concrete and generally at each storey.
- c) Upon the completion of formwork or framework for the roof(s) prior to the laying of any roofing or the pouring of any concrete roof.
- d) Upon the completion of formwork and steel fixing prior to pouring of any concrete for any ancillary structure, flood protection work, swimming pool or spa pool or the like.
- e) Upon the completion of formwork and steel fixing prior to pouring of any concrete for driveways showing transitions and crest thresholds confirming that driveway levels match Council approved driveway crossing levels and minimum flood levels.
- f) Stormwater drainage Systems are in place prior to back filling over pipes confirming location, height and capacity of works.
- g) Flood protection measures are in place confirming location, height and capacity.

Condition Reason: To ensure that development occurs in the location and at the height approved under this consent, which is critical to ensure that buildings are constructed to minimum heights for flood protection and maximum heights to protect views and the amenity of neighbours.

F. 11. Placement and Use of Skip Bins

While site work is being carried out, 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 68 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.

Notes:

 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.

Condition Reason: To ensure waste storage containers are appropriately located.

F. 12. Prohibition of Burning

While site work is being carried out, there must be no burning of any waste or other materials. The burning of copper chrome arsenate (CCA) or pentachlorophenol (PCP) treated timber is prohibited in all parts of NSW. All burning is prohibited in the Woollahra local government area.

Notes:

 Under the Protection of the Environment Operations (Clean Air) Regulation 2021 all burning (including burning of vegetation and domestic waste) is prohibited except with approval. No approval is granted under this consent for any burning.

Condition Reason: To ensure no burning of waste occurs.

F. 13. Dust Mitigation

While site work is being carried out, dust mitigation must be implemented in accordance with "Dust Control - Do it right on site" and the accompanying facts sheets 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.

Notes:

- "Dust Control Do it right on site" and the accompanying factsheets can be downloaded from Council's website www.woollahra.nsw.gov.au
- Special precautions must be taken when removing asbestos or lead materials from development sites. Additional information can be obtained from www.safework.nsw.gov.au and www.epa.nsw.gov.au. Other specific conditions and advice may apply.
- 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.

Condition Reason: To mitigate the impact of dust upon the amenity of the neighbourhood and prevent water pollution.

F. 14. Site Waste Minimisation and Management – Demolition

While site work is being carried out, in order to maximise resource recovery and minimise residual waste from demolition activities:

- a) the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work,
- b) an area is to be allocated for the storage of materials for use, recycling and disposal (giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation and access and handling requirements),
- c) separate collection bins and/or areas for the storage of residual waste are to be provided.
- d) the purpose and content of the bins and/or storage areas are to be clearly 'signposted',
- e) measures to prevent damage by the elements, odour, health risks and windborne litter are to be implemented, and
- f) site disturbance must be minimised, and unnecessary excavation limited.

When implementing the SWMMP the Applicant must ensure:

- a) footpaths, public reserves and street gutters are not used as places to store demolition waste or materials of any kind without Council approval,
- b) any material moved offsite is transported in accordance with the requirements of the Protection of the Environment Operations Act 1997,
- c) waste is only transported to a place that can lawfully be used as a waste facility,
- d) generation, storage, treatment and disposal of hazardous waste and special waste (including asbestos) is conducted in accordance with relevant waste legislation administered by the NSW Environment Protection Authority, and relevant occupational health and safety legislation administered by SafeWork NSW, and
- e) evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained.

Notes:

 Materials that have an existing reuse or recycling market must not be disposed of in a land fill. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.

Condition Reason: To maximise resource recovery and minimise residual waste from demolition activities.

F. 15. Site Waste Minimisation and Management – Construction

While site work is being carried out, in order to maximise resource recovery and minimise residual waste from construction activities:

- a) the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work,
- b) deliveries of materials must be arranged so that materials are delivered 'as needed' to prevent the degradation of materials through weathering and moisture damage,
- c) consideration must be given to returning excess materials to the supplier or manufacturer,

- d) an area must be allocated for the storage of materials for use, recycling and disposal (considering slope, drainage, location of waterways, stormwater outlets and vegetation),
- e) the purpose and content of the storage areas must be clearly 'signposted',
- f) contractors must be arranged for the transport, processing and disposal of waste and recycling and all contractors must be aware of the legal requirements for disposing of waste,
- g) separate collection bins or areas for the storage of residual waste must be promoted,
- h) measures to prevent damage by the elements, odour and health risks, and windborne litter must be implemented,
- i) site disturbance must be minimised and unnecessary excavation limited,
- j) all waste must be transported to a place that can lawfully be used as a waste facility, and
- k) records demonstrating lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as Council, the NSW EPA or SafeWork NSW.

Condition Reason: To maximise resource recovery and minimise residual waste from construction activities.

F. 16. Shoring and Adequacy of Adjoining Property

While site work is being carried out, 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.

For the purposes of section 4.17(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.

Notes:

• 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.

Condition Reason: To protect and support the adjoining premises from possible damage from the excavation.

F. 17. Asbestos Removal

While site work is being carried out, all asbestos removal work must be carried out safely according to NSW work health and safety legislation.

Where hazardous material, including bonded or friable asbestos has been identified in accordance with the conditions in Section B above, and such material must be demolished, disturbed and subsequently removed, all such works must comply with the following criteria:

- a) Be undertaken by contractors who hold a current SafeWork NSW "demolition licence" and a current SafeWork NSW "Class A licence" for friable asbestos removal.
- b) Be carried out in accordance with the relevant SafeWork NSW codes of practice.

- c) No asbestos products may be reused on the site.
- d) No asbestos laden skip or bins must be left in any public place.

- Before starting work, a work site-specific permit approving each asbestos project must be obtained from SafeWork NSW. A permit will not be granted without a current SafeWork licence.
- All removal, repair or disturbance of or to asbestos material must comply with:
 - Work Health and Safety Act 2011,
 - Work Health and Safety Regulation 2017,
 - SafeWork NSW "Code of Practice: How to Safely Remove Asbestos" (2016), and
 - SafeWork NSW "Code of Practice: How to Manage and Control Asbestos in the Workplace" (2016).
- For more information go to the SafeWork NSW website on asbestos www.safework.nsw.gov.au/health-and-safety/safety-topics-a-z/asbestos, and www.safework.nsw.gov.au/law-and-policy/legislation-and-codes/codes-ofpractice or call 131 050

Condition Reason: To ensure the safe removal of asbestos and protect the health and safety of persons working on the site and the public.

F. 18. Classification of Hazardous Waste

While site work is being carried out, and prior to the exportation of hazardous waste (including hazardous fill or soil) from the site, the waste materials must be classified in accordance with the provision of the Protection of the Environment Operations Act 1997 and the NSW EPA Waste Classification Guidelines, Part1: Classifying Waste, 2014.

Condition Reason: To ensure that where hazardous waste will be removed from a site an asbestos licensed contractor can definitively determine where the waste may be legally taken for disposal.

F. 19. Disposal of Asbestos and Hazardous Waste

While site work is being carried out, asbestos and hazardous waste, once classified in accordance with the hazardous waste classification condition must only be transported to waste facilities licensed to accept asbestos and appropriate classifications of hazardous waste.

Condition Reason: To ensure that asbestos and other hazardous waste is disposed of lawfully under the Protection of the Environment Operations Act 1997 and relevant NSW EPA requirements.

F. 20. Asbestos Removal Signage

While site work is being carried out and when asbestos is being removed, standard commercially manufactured signs containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm are to be erected in prominent visible positions on the site.

Condition Reason: To ensure awareness of any hazard to the health and safety of persons working on the site and public.

F. 21. Notification of Asbestos Removal

While site work is being carried out, in addition to the requirements for licensed asbestos removalists to give written notice to SafeWork NSW, all adjoining properties and those opposite the development site must be notified in writing of the dates and times when asbestos removal is to be conducted.

The notification is to identify the licensed asbestos removal contractor and include a contact person for the site together with telephone and facsimile numbers and email addresses.

Condition Reason: To ensure that local residents are informed and have adequate contact details for incidents of asbestos removal.

F. 22. Food Premises – Construction and Fitout

While site work is being carried out, all construction and fitout of the food premises must comply with the details for the food premises submitted to and considered satisfactory by Council's Environmental Health Officer but no less compliant than with the Food Act 2003, Food Regulation 2015, the Food Standards Code as published by Food Standards Australia and New Zealand and AS 4674: Construction and fit out of food premises.

Condition Reason: To protect public health and ensure that food premises are easily maintained in a clean condition fit for food preparation and consumption.

F. 23. Compliance with Construction Management Plan

While site work is being carried out, all development activities and traffic movements must be carried out in accordance with the approved Construction Management Plan (CMP). All controls in the CMP must be maintained at all times. A copy of the CMP must be kept on-site at all times and made available to the Principal Certifier on request.

Notes:

• Irrespective of the provisions of the Construction Management Plan the provisions of traffic and parking legislation prevails.

Condition Reason: To ensure compliance with the Construction Management Plan.

G. BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

G. 1. Occupation Certificate (section 6.9 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 6.10 of the Act) unless an occupation certificate has been issued in relation to the building or part.

Notes:

· New building includes an altered portion of, or an extension to, an existing building.

Condition Reason: To ensure the building is suitable to occupy.

G. 2. Commissioning and Certification of Systems and Works

Before the issue of any occupation certificate, works-as-executed (WAE) plans prepared by a registered surveyor, compliance certificates, and evidence of suitability in accordance with Part A5G1 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 must be submitted to the satisfaction of the Principal Certifier.

Works-as-executed plans, compliance certificates, and evidence of suitability in accordance with Part A5G1 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 Certifier may require.

Notes:

- The PC 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).
- The PC must submit to Council, with any occupation certificate, copies of WAE plans, compliance certificates and evidence of suitability in accordance with Part A5G1 of the BCA upon which the PC has relied in issuing any occupation certificate.

Condition Reason: To ensure that systems and works as completed meet development standards as defined by the Act, comply with the BCA, and this consent, and to ensure a public record of works as executed is maintained.

G. 3. Removal of Ancillary Works and Structures

Before the issue of any occupation certificate for the whole of the building, The following articles must be removed 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.

Condition Reason: To ensure that all ancillary matter is removed prior to occupation.

G. 4. Food Premises - Inspection and Registration

Before the issue of any occupation certificate or occupation or use of any food premises:

- a) an inspection of the fit out of the food premises must be arranged with Council's Environmental Health Officer.
- b) a satisfactory final inspection must have been undertaken by Council's Environmental Health Officer, and
- c) the food premises must be registered (notification of conduct) under section 100 of the Food Act 2003.

Notes:

- To notify conduct of a food business, Councils approved form can be accessed at: https://www.woollahra.nsw.gov.au
- Inspections are subject to payment of the adopted inspection fee.
- Section 100 of the Food Act 2003 requires: "100 Notification of conduct of food businesses - The proprietor of a food business must not conduct the food business unless the proprietor has given written notice, in the approved form, of the information specified in the Food Safety Standards that is to be notified to the appropriate enforcement agency before the business is conducted. Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation."
- Principal Certifiers are unable to issue compliance certificates in relation to compliance
 with the Food Act 2003, Food Regulation 2015; the Food Standards Code and the
 Australian Standard AS 4674: Construction and fit out of food premises since these are
 not matters which an Principal Certifier can be satisfied in relation to under clause 73 of
 the Development Certification and Fire Safety Regulation.
- This condition can only be satisfied following an inspection and sign off from Council's Environmental Health Officers.

Condition Reason: To ensure food premises accord with food safety and public health requirements.

G. 5. Maintenance of the Kitchen Exhaust

Before the issue of any occupation certificate, the proprietor(s) of the subject site shall enter into a contract agreement for the regular maintenance and cleaning of the odour control units and filtering systems. A copy of the contract agreement shall be made available to Council's Health Services Section prior to the occupation of the building.

Condition Reason: To ensure the kitchen exhaust is maintained.

G. 6. Fire Safety Certificates

Before the issue of any occupation certificate to authorise a person:

- a) to commence occupation or use of a new building, or
- b) to commence a change of building use for an existing building, the Principal Certifier must be satisfied that a final fire safety certificate has been issued for the building.

Notes:

In this condition:

interim fire safety certificate has the same meaning as it has in Part 11 of the Development Certification and Fire Safety Regulation. final fire safety certificate has the same meaning as it has in Part 11 of the Development Certification and Fire Safety Regulation.

new building has the same meaning as it has in section 6.1 of the Act.

Condition Reason: To ensure that a final fire safety certificate is issued prior to occupation.

H. OCCUPATION AND ONGOING USE

H. 1. Trading Hours

During the occupation and ongoing use, trading hours are limited to:

- Monday to Friday: 5pm midnight
- · Saturday and Sunday: 12pm midnight

Notes:

- This condition does not apply to deliveries to, or dispatches from, the site of wholesale goods or internal activities that occur under the approved hours of use.
- General use and deliveries or dispatches may be restricted by hours of use conditions.
- This condition does not restrict the operation of noise pollution laws.
- This condition does not apply to activities such as cleaning which takes place wholly
 within the building and which are not audible within any adjoining residential dwelling. If
 internal activities are audible within any adjoining residential dwelling such that they
 cause a nuisance to the occupiers of such dwelling than such internal activities must not
 occur outside these hours of use.

Condition Reason: To mitigate amenity impacts upon the neighbourhood by commercial or retail trading including, but not limited to, external impacts associated with clients attending the site for business or otherwise.

Condition Reason: To mitigate amenity impacts upon the neighbourhood.

H. 2. Maximum Patron Capacity

During the occupation and ongoing use, the total number of patrons on the premises at any time **must not exceed 46 patrons**.

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

Condition Reason: To prevent overcrowding inside the venue and to minimise impacts on local amenity.

Condition Reason: To mitigate amenity impacts upon the neighbourhood

H. 3. Signage to be Displayed – Licensed Premises

During the occupation and ongoing use, signage (in lettering not less than 15mm in height on a contrasting background) is to be erected in a prominent position near the principal entry to the premises in accordance with clause 73 of the Regulation.

The signage must state the following and may change from time to time due to reviewable conditions in accordance with the conditions of this consent:

"Approved hours of operation – Indoor Area Monday to Friday: 5pm – midnight

Saturday and Sunday: 12pm - midnight

Approved patron capacity 46 patrons

Upon leaving please respect local residents by minimising noise."

Condition Reason: To clearly identify the hours and patron capacity of the licensed premises.

H. 4. Neighbourhood Amenity – Licensed Premises

During the occupation and ongoing use, the Management of the premises:

- a) Must ensure persons entering and leaving the premises do not crowd or loiter in the vicinity of the premises in such manner that pedestrian movement is obstructed or hindered.
- b) Must ensure that the manner in which the business of the premises is conducted and/or the behaviour of persons entering and leaving the premises does not cause undue disturbance to the amenity of the neighbourhood. In this regard, the Management must be responsible for the control of noise and litter generated by persons and/or premises operations. If so directed by Council or by NSW Police, the Management is to employ private security staff to ensure that this condition is complied with.
- c) Must record in a Register full details of any disturbance complaint/s made by a person to Management or staff in respect to the manner in which the business of the premises is conducted and/or the behaviour of persons entering or leaving the premises. Such recording will include time, date, nature of the complaint/s and any complainant details if provided.
- d) Must respond to any disturbance complaint/s in a timely and effective manner. All actions undertaken by Management / staff to resolve such compliant/s must be recorded in the Register.

Notes:

• The lead agency for the enforcement of this condition is NSW Police.

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

H. 5. Litter Patrols

During the occupation and ongoing use, litter patrols are to be undertaken to collect and dispose of all litter and waste in the public areas adjacent to the licensed premises. Such patrols will take place intermittently during the hours of operation with the final patrol conducted at the cessation of trade.

A litter patrol Register must be maintained and kept on the premises at all times detailing date, time of patrol, staff member responsible, and Manager's signature.

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

H. 6. Copies of Consents, Registers and Management Plans – Licensed Premises

During the occupation and ongoing use, a full copy of all current development consents (including approved plans) for the operation of the premises, any Registers required and any required Plan of Management must be kept on the premises and made available for inspection immediately upon request by Council, NSW Police and/or Liquor and Gaming NSW authorised officers.

Condition Reason: To mitigate amenity impacts upon the neighbourhood.

H. 7. Sale/Consumption of Liquor

During the occupation and ongoing use:

Licensed Restaurant (On-Premises License)

- a) No liquor may be sold, supplied or consumed on the premises except with the approval and authorisation from Liquor and Gaming NSW.
- b) The primary use of the premises must be that of a restaurant with the provision of genuine meals, prepared upon the premises, to patrons seated at comfortable dining positions. This will include a seat and access to table / bench space generally in accordance with the approved plans
- c) Liquor may only be sold and/or supplied to patrons on the premises with or ancillary to a genuine meal.
- d) Patrons must be seated whilst consuming liquor.
- e) The sale and/or supply of liquor must cease 15 minutes prior to the cessation of the respective hours of operation for the specified indoor and outdoor seating areas.
- f) No patron must be permitted to take glasses or open containers of liquor off the premises.
- g) Management is responsible for ensuring the number of patrons in the premises does not exceed the approved capacity specified in this consent.

Condition Reason: To mitigate amenity impacts upon the neighbourhood.

H. 8. Operation in Accordance with Plan of Management (POM)

During the occupation and ongoing use, the operation and management of the premises must be in accordance with the Plan of Management (POM) prepared by BMA Urban dated August 2023 (Submitted to Council on 11/03/2024).

The POM must be filed with the Licensing Police of the Eastern Suburbs Police Area Command prior to the commencement of operations.

The POM cannot be altered without the written consent of Council.

Condition Reason: To mitigate amenity impacts upon the neighbourhood.

H. 9. Garbage Area and Containers

During the occupation and ongoing use, the garbage area must be maintained at all times to ensure that a breeding ground is not created for pests and must be capable of being easily and effectively cleaned.

All garbage containers must have tight fitting lids and be large enough or in sufficient numbers to contain all the waste produced by the business while awaiting the next removal from the premises.

Condition Reason: To mitigate amenity impacts upon the neighbourhood.

H. 10. Glass Sorting and Collection

During the occupation and ongoing use, glass must not be emptied or transferred from one receptacle to another anywhere in a public place. All glass must be emptied/transferred within the premises and removed in containers.

No bottle or glass sorting, recycling or collection shall take place between 8.00pm and 8.00am Sunday to Friday and between 9.00pm Saturday and 10am Sundays and Public Holidays.

Condition Reason: To mitigate amenity impacts upon the neighbourhood.

H. 11. Surveillance Cameras (CCTV)

During the occupation and ongoing use:

Licensed Premises

The Management must maintain a closed-circuit television (CCTV) system on the premises.

The CCTV system must comply with the following requirements:

- a) It must operate continuously from opening time until one hour after closing.
- b) It must record in digital format at a minimum of six frames per second.
- c) Any recorded image must specify the time and date of the image.
- d) The system's cameras must be located within the property and cover:
 - all entry and exit points of the premises,
 - · the footpath immediately adjacent to the premises, and
 - all publicly accessible areas (other than toilets) on the premises,
 - from floor level to a minimum height of two metres.
- e) CCTV recordings must be retained for at least 30 days.
- f) Management must ensure the system is accessible by at least one member of staff at all times it is in operations, and
- g) Provide any recordings made by the system to Council or NSW Police within 24 hours of any request by an authorised officer to provide such recordings.

Notes:

· The lead agency for enforcement is NSW Police.

Condition Reason: To reduce and prevent crime and ensure community safety.

H. 12. NSW Police Requirements (Licensed Premises)

During the occupation and ongoing use:

Incidents involving acts of violence

Immediately after the person in charge of the licensed premises becomes aware of an incident involving an act of violence causing an injury to a person on the premises, the person must:

- a) take all practical steps to preserve and keep intact the area where the act of violence occurred,
- b) retain all material and implements associated with the act of violence in accordance with the Crime Scene Preservation Guidelines issued by the NSW Police, and
- c) make direct and personal contact with the Eastern Suburbs Police Area Command and advise the Commander or delegate of the incident, and comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.

Safety and Security Measures

The following safety and security measures must be complied with:

- a) Security guards (added by Police as relevant).
- b) The entrance is to remain illuminated during all hours of trade past sunset until close.
- c) The licensed premises are to be supervised during all hours of trade.
- d) An incident register is to be utilised and maintained on a daily basis solely for the purpose of the ground floor restaurant during all hours of trade.

Designated Taxi Phone Service

A designated taxi phone line or similar service is to be located at the bar service area and maintained by management during all hours of trade and is to be implemented from the date of commencement of the restaurant use.

No Use of Strobes, Lasers or Flicker Lights

No strobes, lasers or flicking lights are to be employed to the restaurant area.

Other Conditions

(added by NSW Police as relevant)

Notes:

• The lead agency for enforcement is NSW Police.

Condition Reason: To reduce and prevent crime and ensure community safety.

H. 13. Waste Collection – Commercial

During the occupation and ongoing use, general waste collection is to be undertaken ONLY between the hours of:

- 7.00am to 9.00pm Monday to Friday, and
- 8.00am to 8.00pm Saturday, Sunday and Public Holidays

Condition Reason: To protect the amenity of neighbouring residents.

H. 14. Waste Management – Commercial

During the occupation and ongoing use, compliance must be maintained with the site waste minimisation and management plan (SWMMP) and with Woollahra DCP 2015, Chapter E5–Waste Management.

All waste must be presented for collection in a receptacle. Waste receptacles must be presented no earlier than the close of business on the day before collection. Waste and recycling bins/crates must be removed from the road or footpath within 1 hour of collection or otherwise in accordance with the approved SWMMP.

Receptacles are not to be stored in any public place at any time. Waste and recycling receptacles must be stored at all times within the boundaries of the site.

This condition does not apply to the extent that Activity Approval exists under the Local Government Act 1993 or the Roads Act 1993 and subject that all conditions of such approval(s) are complied with.

Notes:

• No waste will be collected by Council that is not presented properly. The waste must be presented with lid closed to reduce littering.

Condition Reason: To ensure that the provisions of the approved SWMMP and Woollahra DCP are complied with during the ongoing operations of the development.

H. 15. Food Premises - Maintenance of Food Premises

During the occupation and ongoing use, the food premises must be maintained in accordance with the Food Act 2003, Food Regulation 2015; the Food Standards Code as published by Food Standards Australia and New Zealand and Australian Standard AS 4674: Construction and fit out of food premises.

Condition Reason: To protect public safety.

H. 16. Outdoor Lighting – Commercial

During the occupation and ongoing use, outdoor lighting must comply with AS/NZS 4282: Control of the obtrusive effects of outdoor lighting. The maximum luminous intensity from each luminare and threshold limits must not exceed the level 1 control relevant under tables in AS/NZS 4282.

Notes

Council may consider, subject to an appropriate Section 4.55 Application, relaxation of
this condition where it can be demonstrated, by expert report, that the level of lighting in
the existing area already exceeds the above criteria, where physical shielding is present
or physical shielding is reasonably possible.

Condition Reason: To protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting in public places.

H. 17. Noise from Licensed Premises

During the occupation and ongoing use, the LA10 noise level emitted from the licensed premises must not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8k Hz inclusive) by more than 5dB(A) between 07:00 am and 12:00 midnight at the boundary of any affected residence.

The LA10 noise level emitted from the licensed premises must not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8k Hz inclusive) between 12:00 midnight and 07:00am at the boundary of any affected residence.

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

- dB(A) is a value used for 'A-weighted' sound pressure levels 'A' frequency weighting is an adjustment made to approximate the response of the human ear.
- licensed premises means premises licensed under the Liquor Act 2007.
- For the purposes of this condition, the LA10 is the A-weighted sound pressure level that is exceeded for 10% of the time over which a given sound is measured.
- The background noise level is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the LA90 level measured by a sound level meter over the applicable period.
- This condition reflects the minimum standard condition imposed by the former Casino Liquor and Gaming Control Authority. Liquor & Gaming NSW or the Independent Liquor & Gaming Authority may specify other standards in respect of the above condition under the Liquor Act 2007, and associated Regulations. Section 79 of the Liquor Act 2007 provides an informal mechanism for complaints to be made (by residents, Police, local consent authorities and others) where the amenity of local neighbourhoods is unduly disturbed by the conduct of licensed premises including registered clubs (or their patrons). The Secretary of the Department of Industry is responsible for resolving such complaints and may impose temporary or permanent conditions on any licence. For more information go to Liquor and Gaming NSW website www.liquorandgaming.nsw.gov.au
- Interior noise levels of licensed premises which exceed safe hearing levels are not supported or condoned by Council.

Condition Reason: To protect the amenity of the neighbourhood.

H. 18. Noise from Mechanical Plant and Equipment

During the occupation and ongoing use, the noise level measured at any boundary of the site at any time while the mechanical plant and equipment is operating must not exceed the background noise level. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed background noise level at any time.

The background noise level is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the LA90, 15 minute level measured by a sound level meter.

Notes:

 Words in this condition have the same meaning as in the Noise Policy for Industry (2017) www.epa.nsw.gov.au/your-environment/noise/industrial-noise/noise-policy-for-industry-(2017) and Noise Guide for Local Government (2013) www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government

Condition Reason: To protect the amenity of the neighbourhood.

H. 19. Noise Control

During the occupation and ongoing use, the use of the premises must not give rise to the transmission of offensive noise to any place of different occupancy.

Offensive noise is defined in the Protection of the Environment Operations Act 1997.

- Council will generally enforce this condition in accordance with the Noise Guide for Local Government (www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noiseguide-local-government) and the NSW Industrial Noise Policy (www.epa.nsw.gov.au/your-environment/noise/industrial-noise) published by the NSW Environment Protection Authority. Other State Government authorities also regulate the Protection of the Environment Operations Act 1997.
- · Useful links:
 - Community Justice Centres—free mediation service provided by the NSW Government www.cjc.nsw.gov.au.
 - NSW Environment Protection Authority— see "noise" section www.environment.nsw.gov.au/noise.
 - NSW Government legislation- access to all NSW legislation, including the Protection of the Environment Operations Act 1997 and the Protection of the Environment Noise Control Regulation 2017 is available at www.legislation.nsw.gov.au.
 - Australian Acoustical Society—professional society of noise related professionals www.acoustics.asn.au.
 - Association of Australian Acoustical Consultants—professional society of noise related professionals www.aaac.org.au.
 - Liquor and Gaming NSW—www.liquorandgaming.nsw.gov.au.

Condition Reason: To protect the amenity of the neighbourhood.

H. 20. Maintenance of Sound Attenuation

During the occupation and ongoing use, sound attenuation must be maintained in accordance with the acoustic report.

Condition Reason: To protect the amenity of the neighbourhood.

H. 21. Storage and Handling of Flammable and Combustible Liquids

During the occupation and ongoing use, the storage and handling of flammable and combustible liquids must be in accordance with AS1940: The storage and handling of flammable and combustible liquids.

Condition Reason: To protect public safety.

H. 22. Maintenance of the Kitchen Exhaust log

During the occupation and ongoing use, a logbook detailing the schedule maintenance and cleaning of the odour control units and filtering systems shall be kept on the premises at all times and be made available for viewing by Council's Environmental Health Officer's as required.

Condition Reason: To protect the amenity of the neighbourhood.

H 23. Operation in Accordance with Operational Traffic Management Plan (OTMP)

During the occupation and ongoing use:

- a) The delivery and waste collection operations shall be in accordance with the operational traffic management plan submitted in the Amended Operational Plan of Management, prepared by BMA Urban dated August 2023 (Submitted to Council on 11/03/2024);
- b) The delivery and waste collection vehicles attending the site must not impede safe access to the neighboring properties at all times.

Condition Reason: To maximise road safety and performance. Η. Annual Fire Safety Statements (Class 1b to 9c buildings inclusive) 24. During the occupation and ongoing use, each year, an annual fire safety statement must be provided to Council and the Commissioner of Fire and Rescue NSW. The annual fire safety statement must be prominently displayed in the building. essential fire safety measure has the same meaning as in Schedule 2 of the Development Certification and Fire Safety Regulation. annual fire safety statement has the same meaning as in clause 88 of the Development Certification and Fire Safety Regulation. Visit Council's website for additional information in relation to fire safety www.woollahra.nsw.gov.au Condition Reason: To ensure public safety. H. 25. Access via the Rear Passageway The rear access via the passageway shall be limited to use by staff as an emergency exit when required and for the purposes of waste management as specified in this consent. There shall be no access or egress for restaurant customers except when required as an emergency exit. At all other times the access shall be for emergency purposes only. Condition Reason: This is to mitigate amenity impacts upon the neighbourhood

SUBDIVISION WORK

I. BEFORE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

Nil.

J. BEFORE SUBDIVISION WORK COMMENCES

Nil.

K. BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

Nil.

LAND SUBDIVISION

L. BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

Nil.

STRATA SUBDIVISION

M. BEFORE ISSUE OF A STRATA CERTIFICATE

Nil.

Attachments

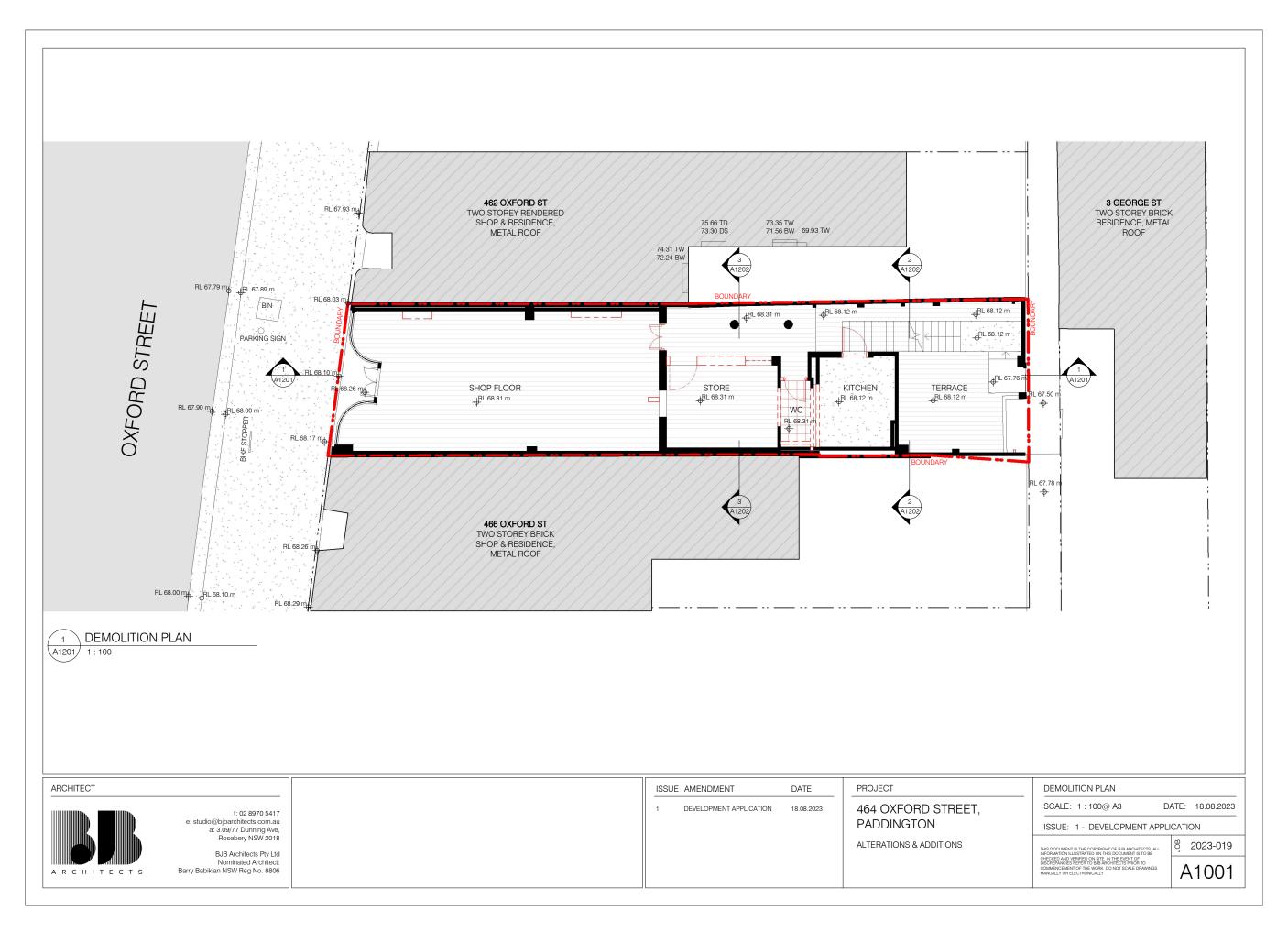
- 1. Architectural Plans 😃 🖫
- 2. Amended Operational Plan of Management J.
- 3. Clause 4.6 Written Request by the Applicant Floor Space Raio (FSR) J.
- 4. Traffic Referral Response(s) 🗓 🖺
- 5. Drainage Referral Response J
- 6. Fire Referral Response 🗓 🖺
- 7. Health Referral Response 🗓 🖫

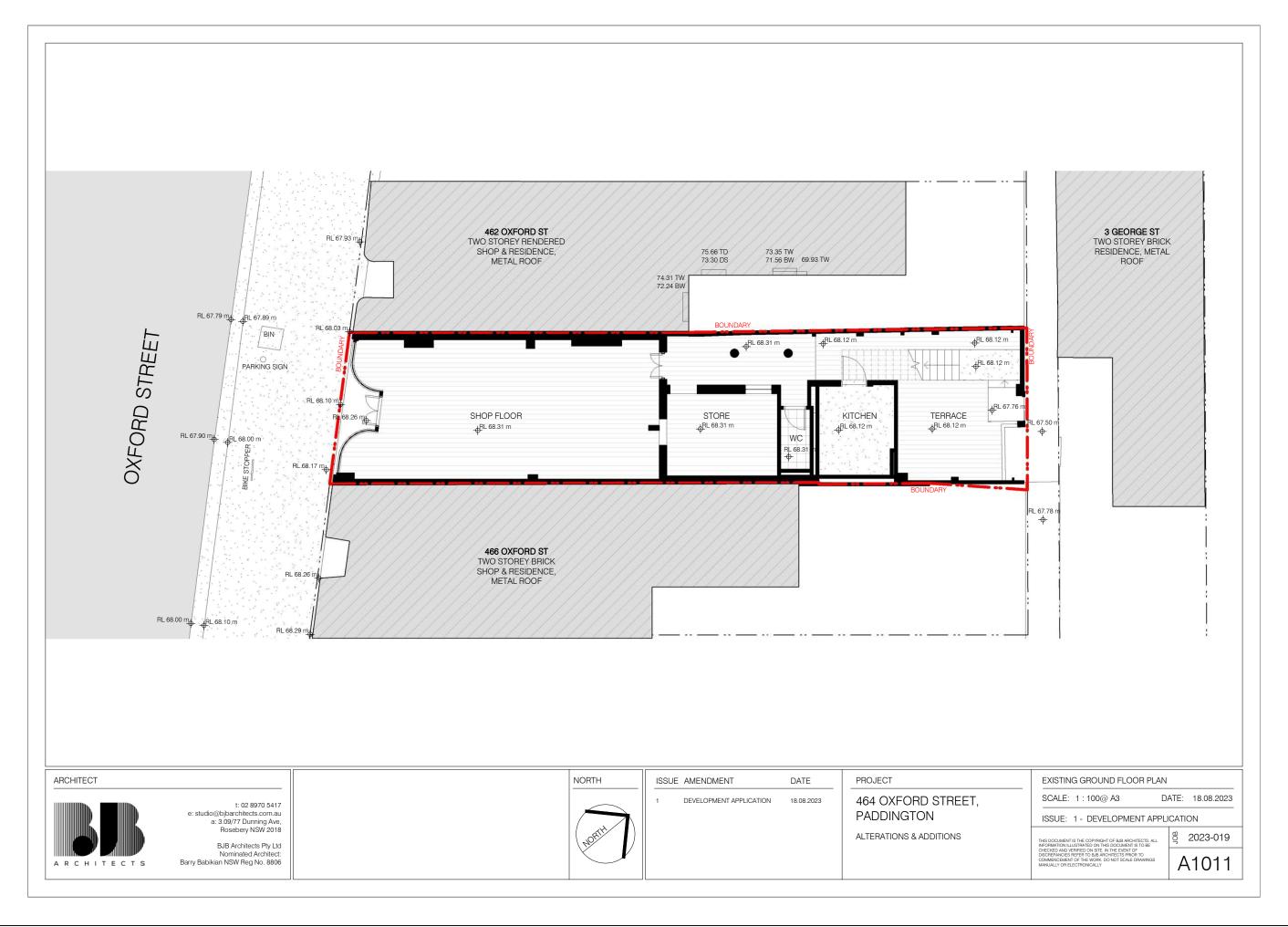
464 OXFORD STREET, PADDINGTON

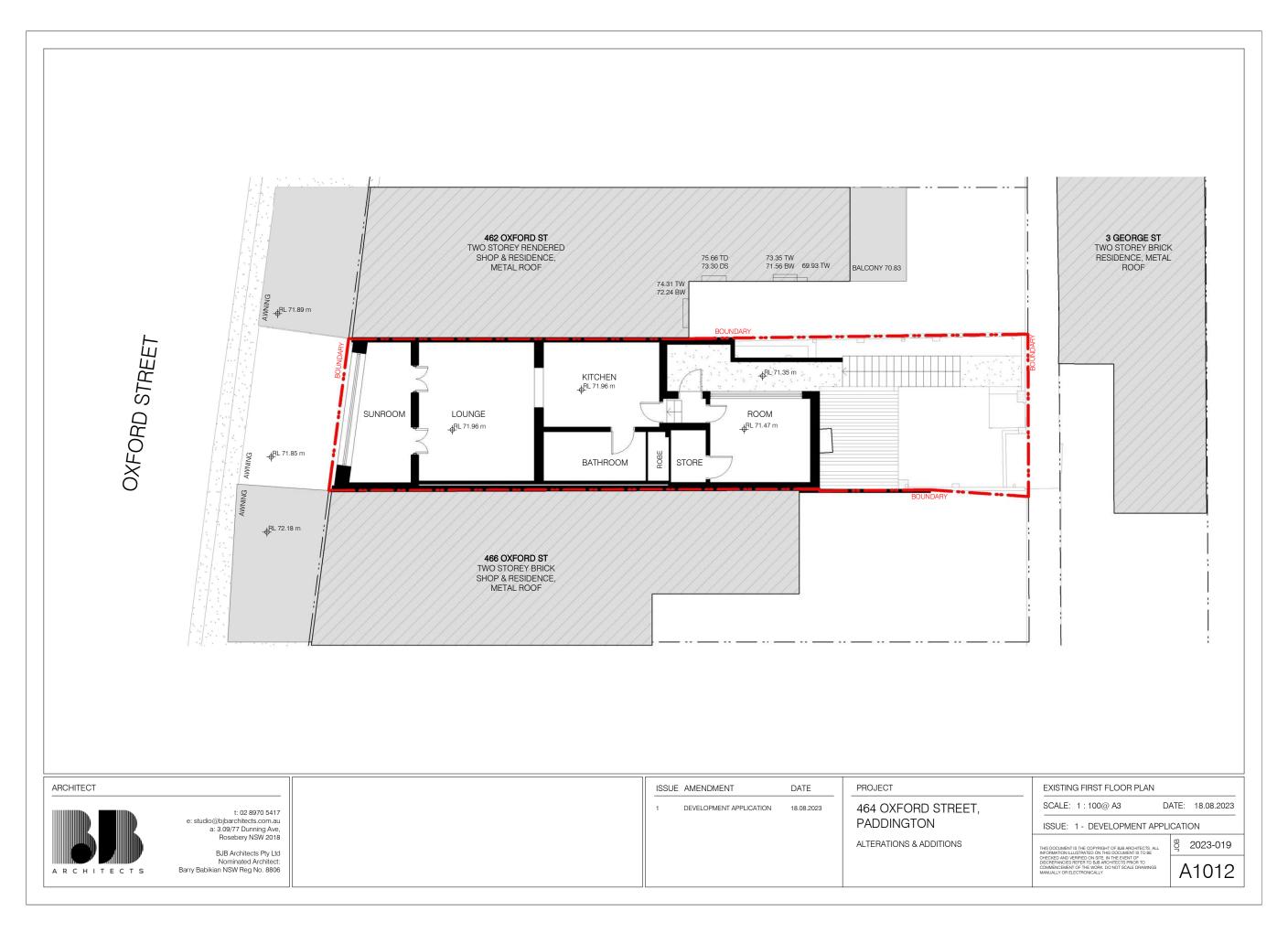
ALTERATIONS & ADDITIONS

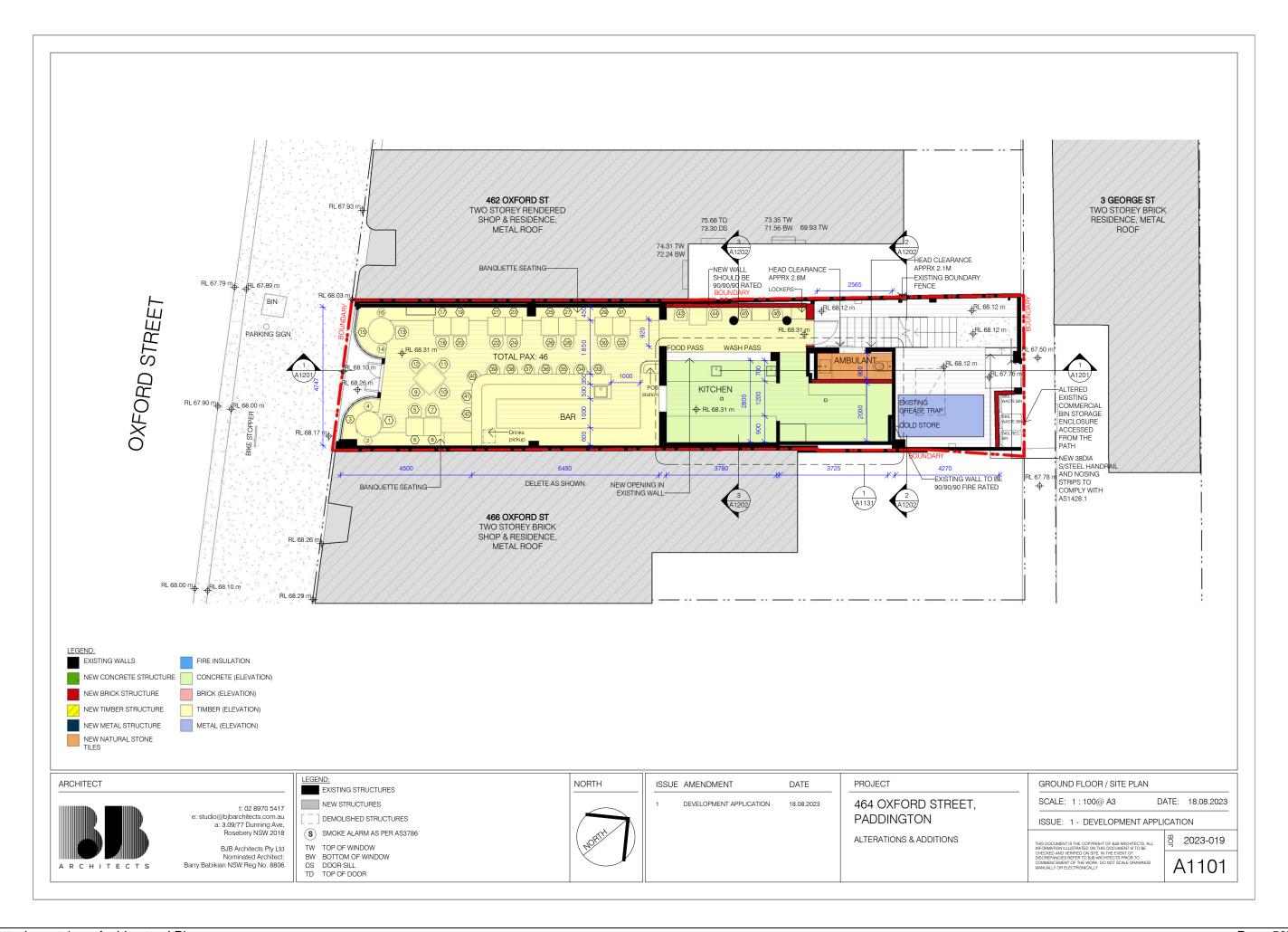
DRAWING REGISTER

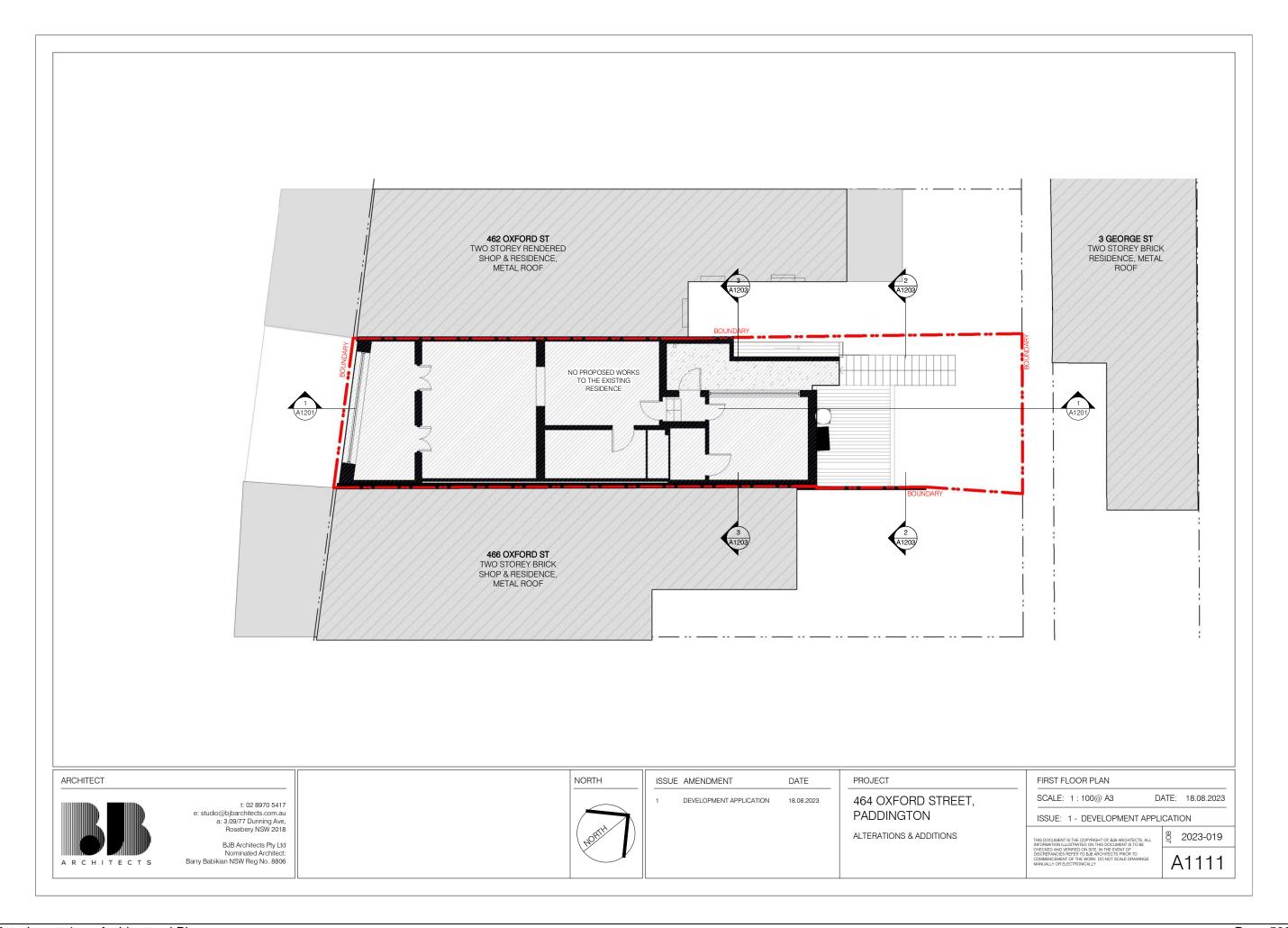
Drawing No.	Sheet No.	Revision	Date	Title
2023-019	A1000	1	18.08.2023	COVER SHEET
2023-019	A1001	1	18.08.2023	DEMOLITION PLAN
2023-019	A1011	1	18.08.2023	EXISTING GROUND FLOOR PLAN
2023-019	A1012	1	18.08.2023	EXISTING FIRST FLOOR PLAN
2023-019	A1101	1	18.08.2023	GROUND FLOOR / SITE PLAN
2023-019	A1111	1	18.08.2023	FIRST FLOOR PLAN
2023-019	A1121	1	18.08.2023	ROOF PLAN
2023-019	A1131	1	18.08.2023	KITCHEN BENCH PLAN
2023-019	A1201	1	18.08.2023	SECTIONS
2023-019	A1202	1	18.08.2023	SECTIONS
2023-019	A1203	1	18.08.2023	DETAIL SECTIONS
2023-019	A1301	1	18.08.2023	ELEVATIONS
2023-019	A1302	1	18.08.2023	ELEVATIONS

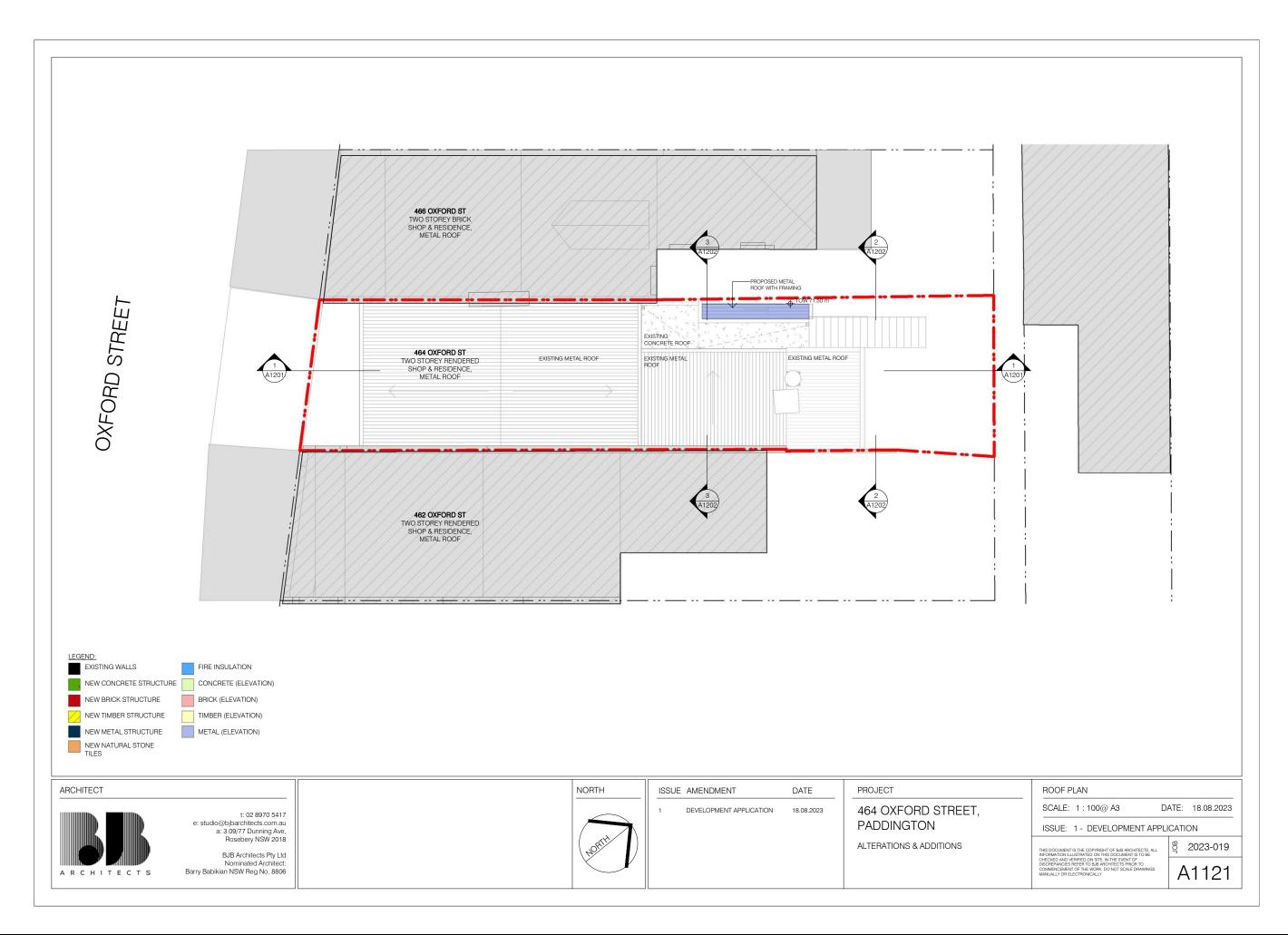


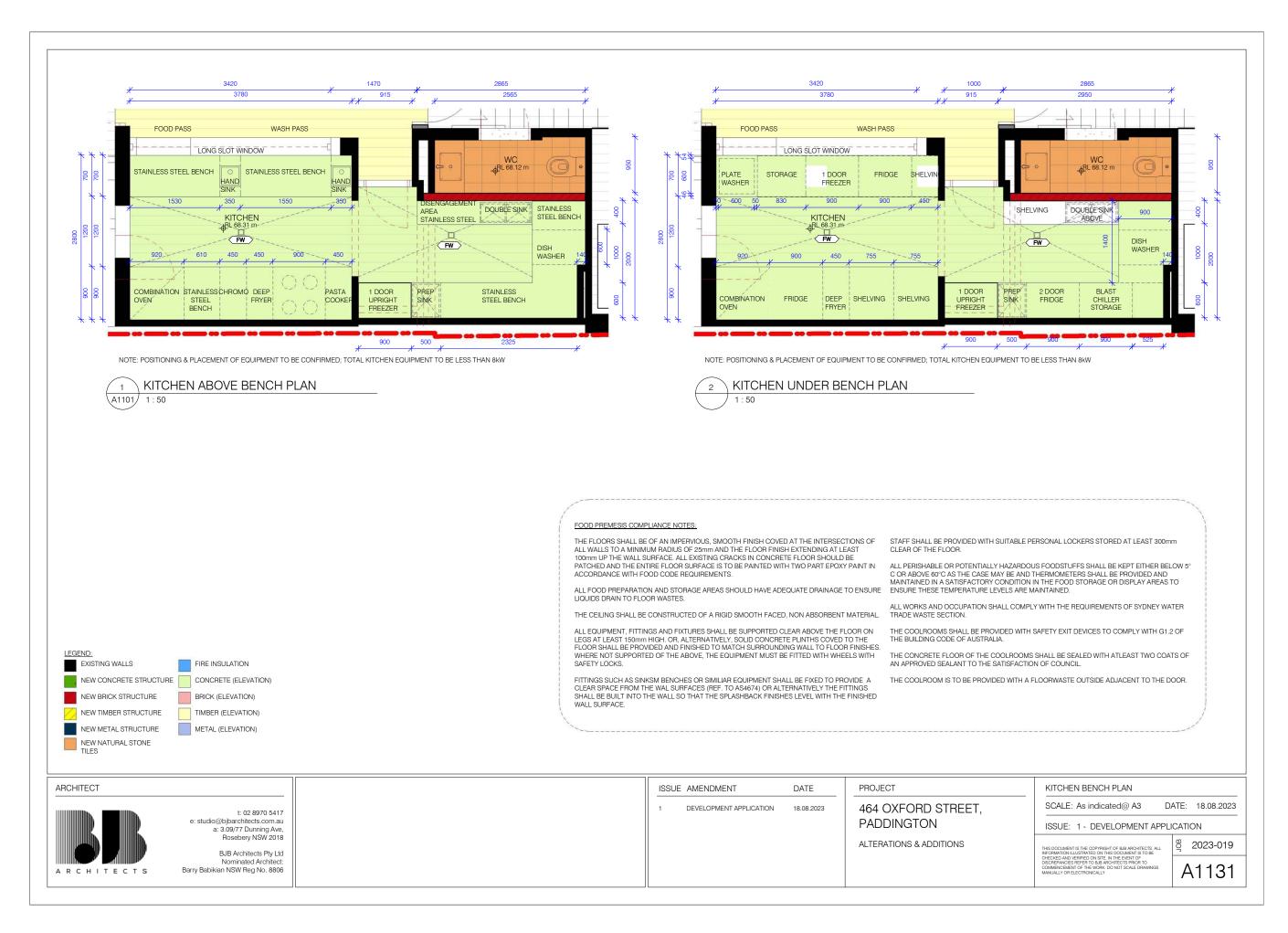


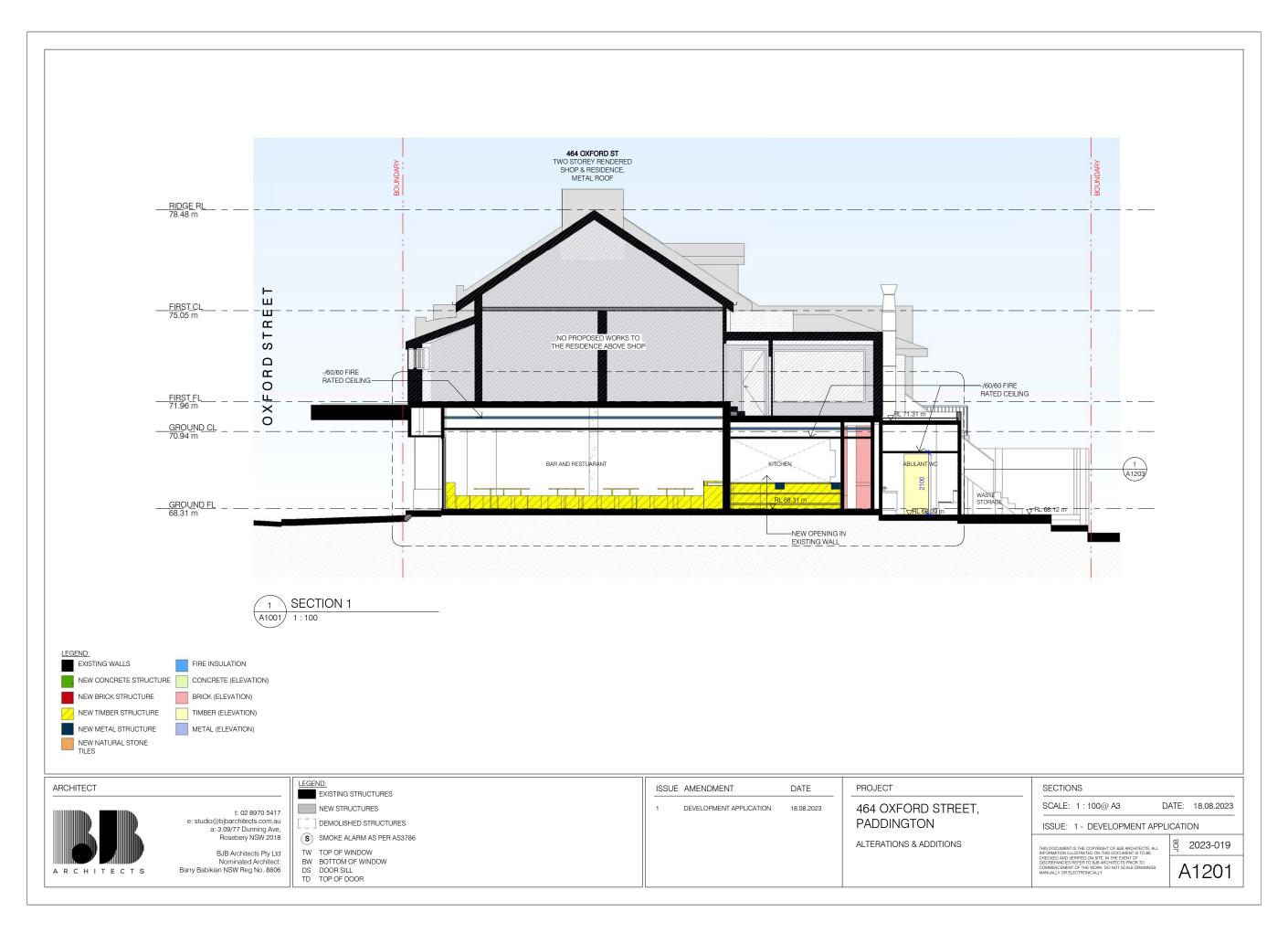


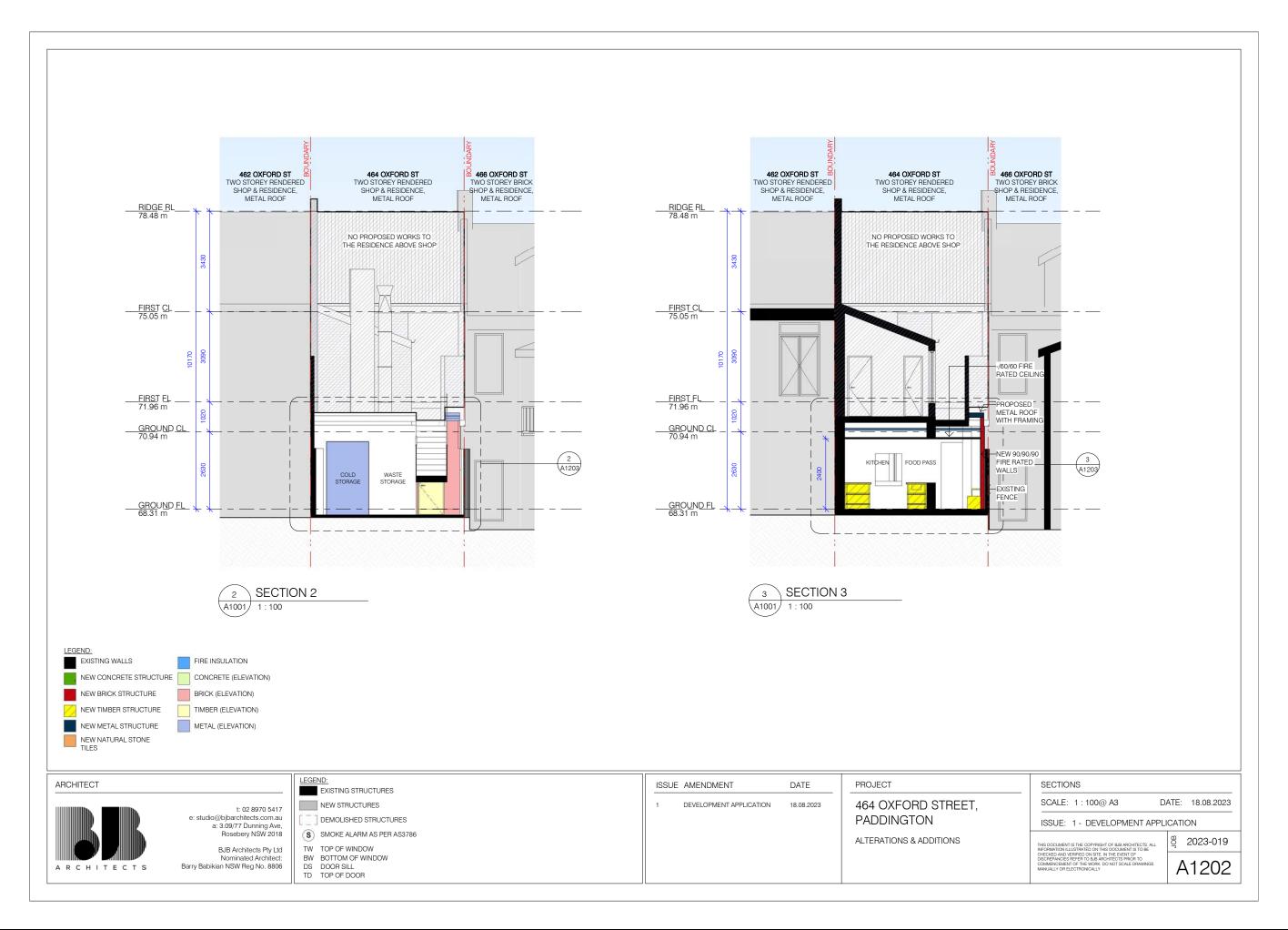


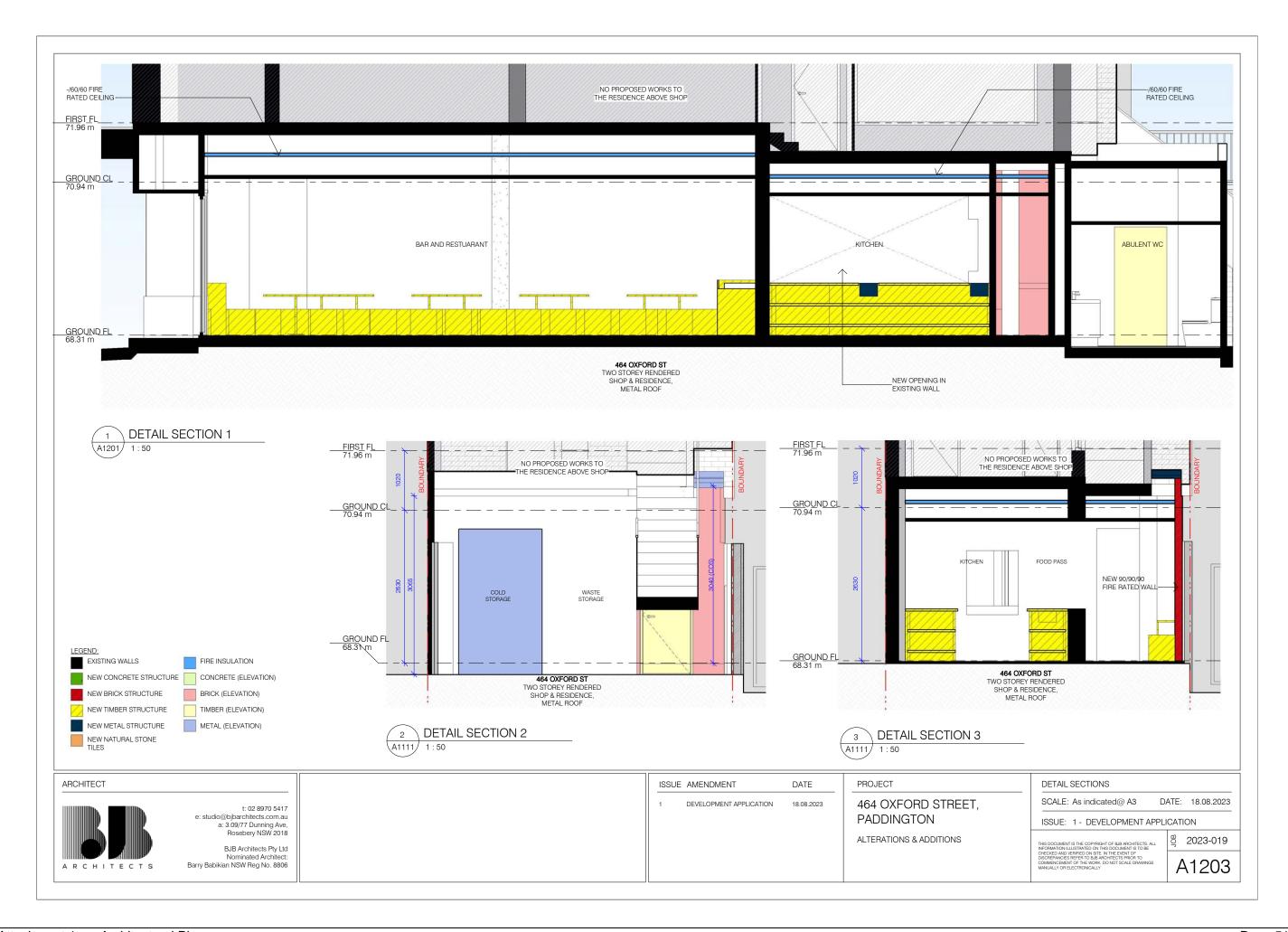


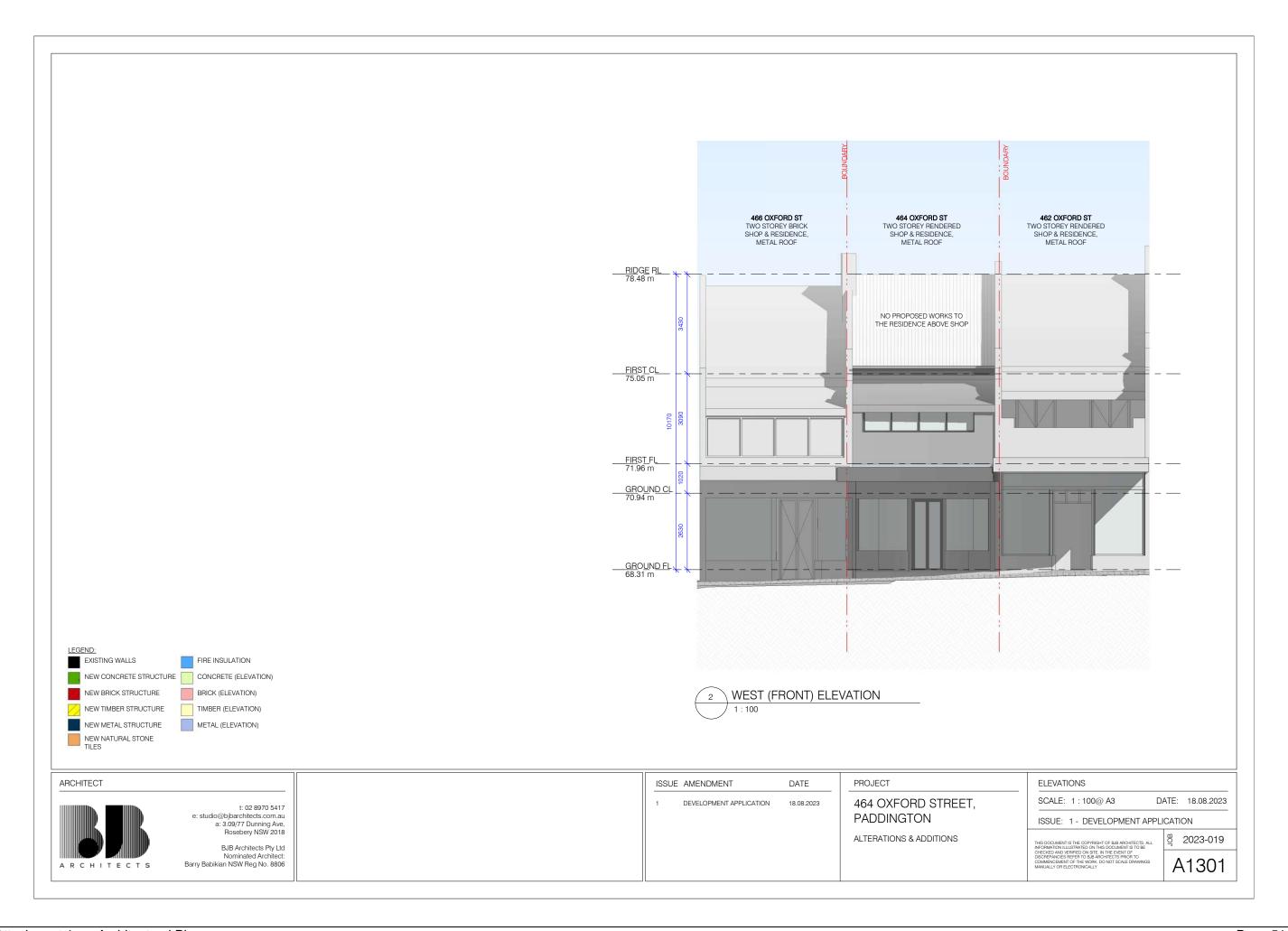


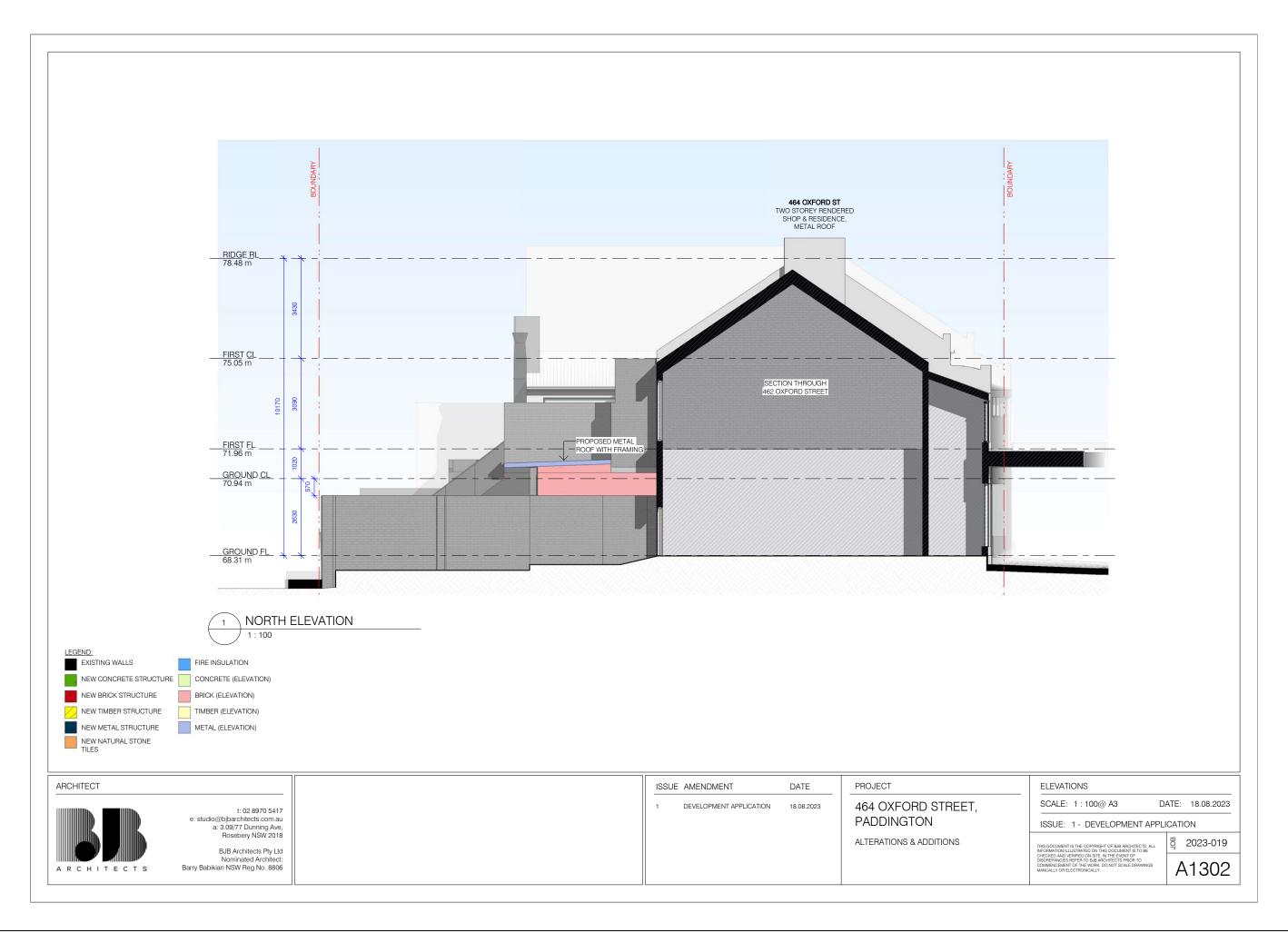


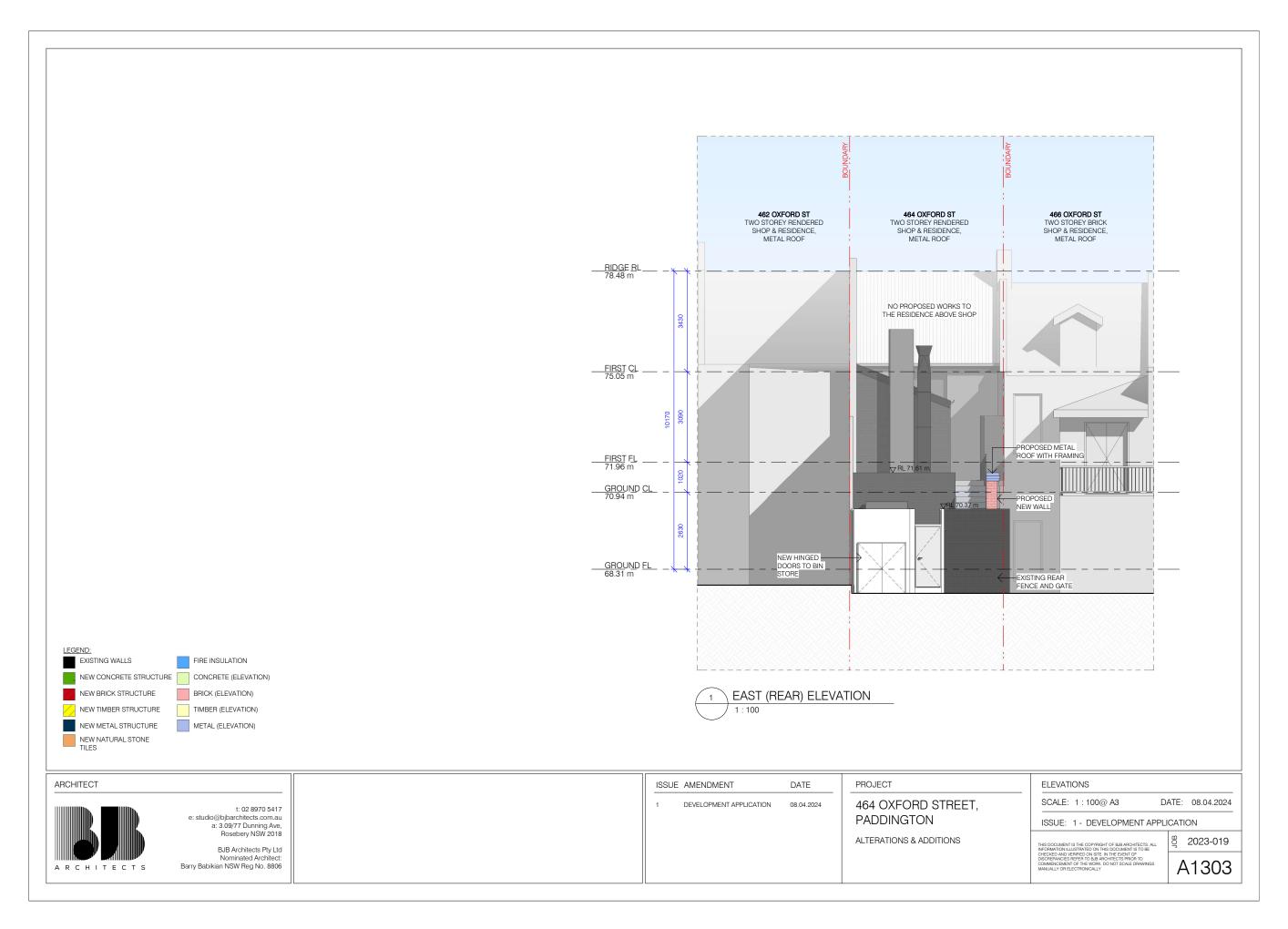


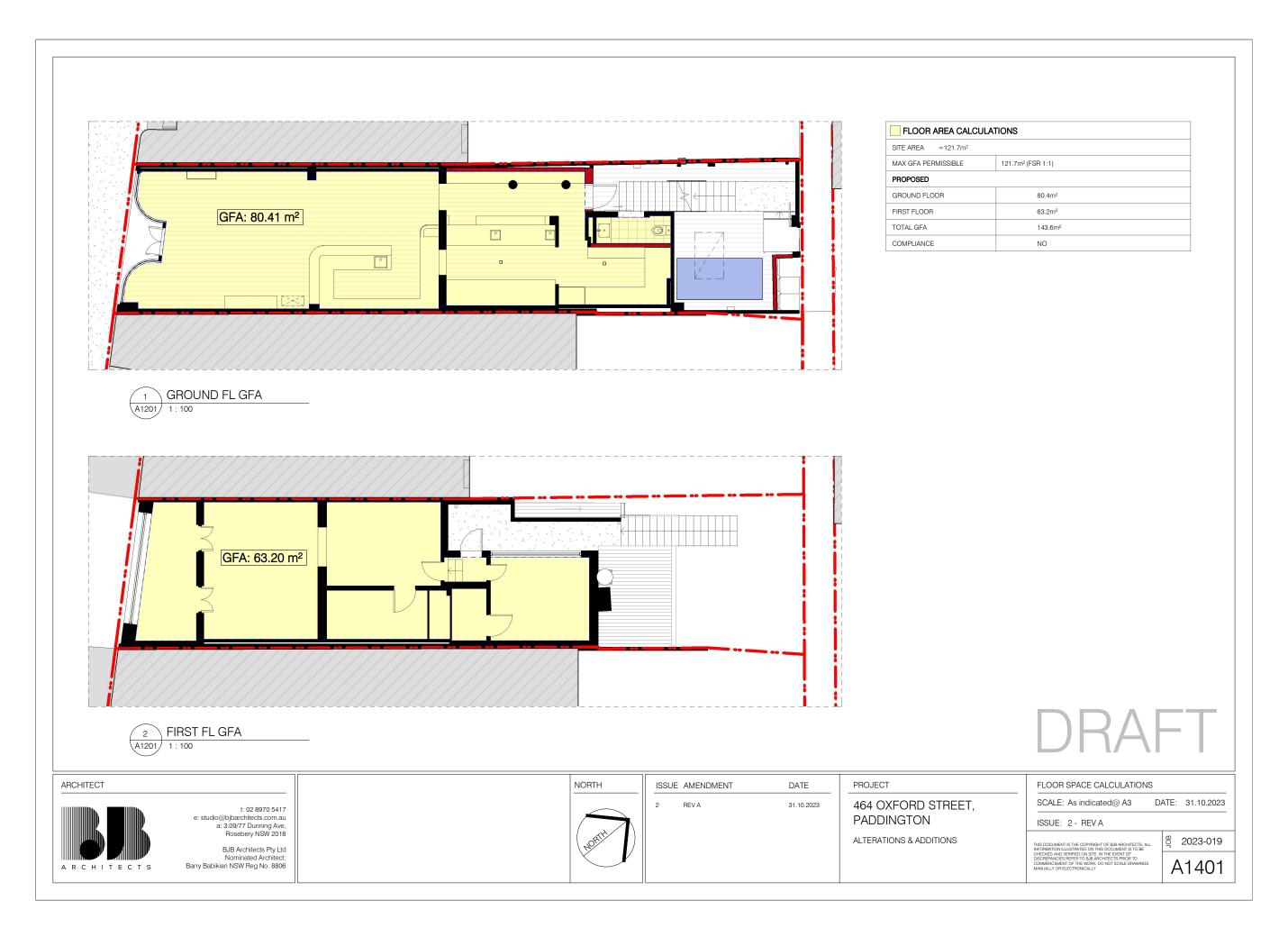












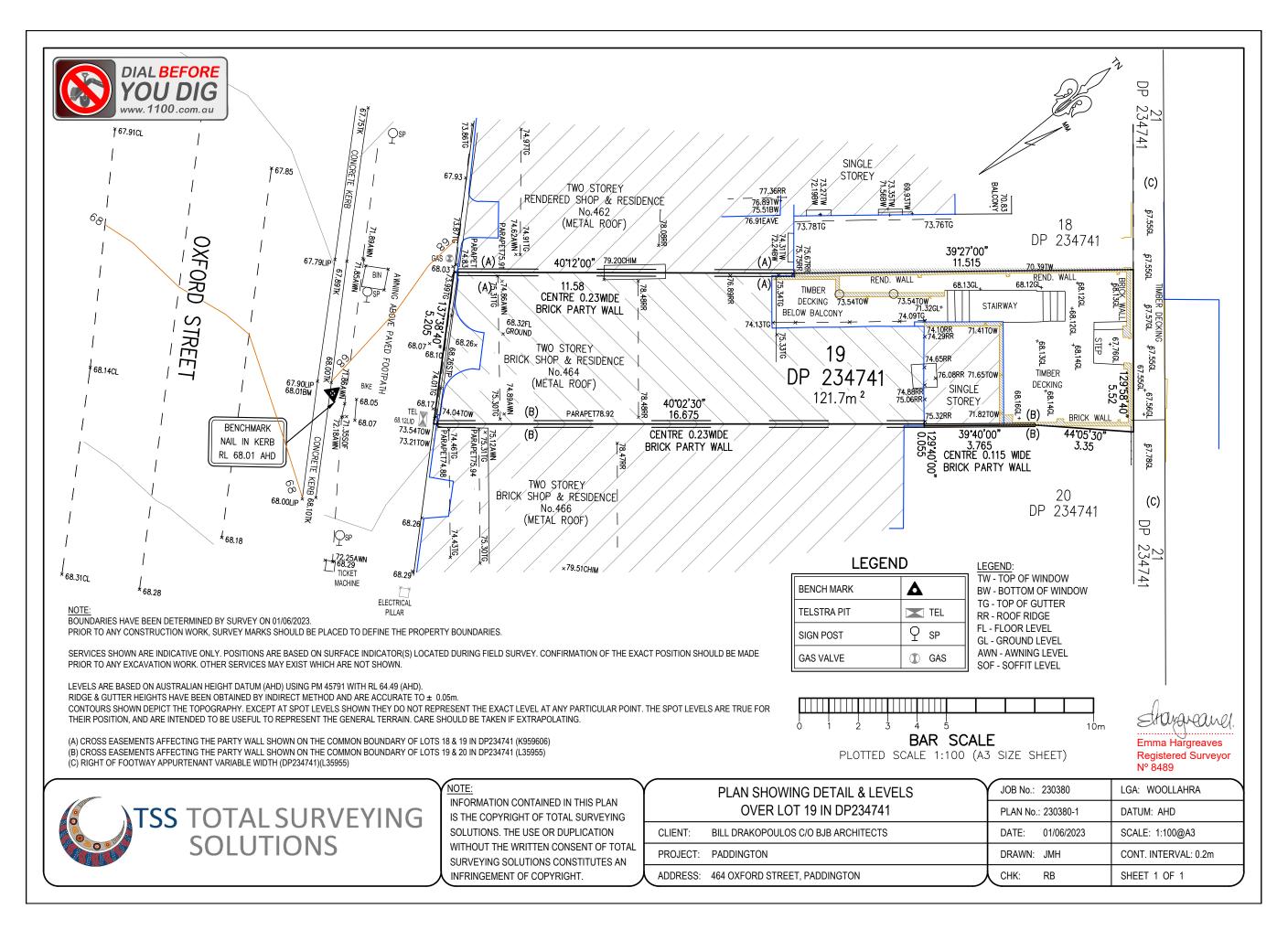






TABLE OF CONTENTS

1. 0	VERVIEW	4
1.1	Purpose and Primary Use	2
1.2	Scope	2
1.3	Amendments to this Plan	5
1.4	Use of the Plan	5
1.5	Compliance with Existing Conditions	5
2. O	PERATIONAL ENVIRONMENT	6
2.1	Organisational Overview	6
2.2	Hours of Operation	6
2.3	Maximum Occupancy	6
2.6	Registration	7
2.7	Deliveries	7
2.8	Maintenance Management	7
2.9	Occupational Health and Safety	7
3. A	MENITY OF NEIGHBOURHOOD	8
3.1	Noise, Vibration and Odour	8
3.2	Signage	8
3.3	Behaviour of Patrons	9
3.4	Ingress and Egress	9
3.5	Queue Management	10
3.6	Managing Patron Numbers	10
3.7	Security	10
3.8	Transportation	10
3.9	Emissions	10
3.10	Complaint Handling	11
4. R	ESPONSIBLE SERVICE OF ALCOHOL	12
4.1	Harm Minimisation	12
4.2	Removal of Liquor from the Premises	12
4.3	RSA Monitoring	12
4.4	Licensee's Incident Register	13
4.5	ID Policy	13
4.6	CCTV Surveillance	13
4.7	Patron Ejection	14
4.8	Security Incident Register	15
4.9	Police Notification of Violent Incidents and Crime Scheme Preservation	15



4.10	Illegal Substances	15
5. E	EMERGENCY MANAGEMENT	16
5.1	Emergency and Evacuation Procedures	16
5.2	Staff Training	16
6. F	FACILITY MANAGEMENT SERVICES	17
6.1	Cleaning and Maintenance	17
6.2	Glass Removal	17
6.3	Waste and Recycling Storage and Disposal	17



1. OVERVIEW

1.1 Purpose and Primary Use

This plan of management applies to the operations of the licensed restaurant ("Federicas") located at 464 Oxford Street, Paddington. The primary use of the premises is for the sale of food and beverage which includes 'liquor' and therefore, will operate under the relevant servicing licence. The Premises will operate under an On-Premises liquor licence with liquor only being sold to patrons on the premises with or ancillary to a meal.

The purpose of this Plan of Management (the Plan) is to establish performance criteria for various aspects of the operations of the food and beverage licensed Premises ("Federicas").

The primary objective of the Plan is to establish standards and measures to achieve a safe environment for staff and patrons, thereby minimising the potential for alcohol related assaults, anti-social behaviour and adverse impact upon the amenity of the local area.

All staff involved in the sale and supply of alcohol shall be made familiar with this PoM, with a copy of the said plan always made available on site, within the Restaurant Compliance Folder and will immediately be produced for inspection upon request by a member of the NSW Police Force or Special Inspector from Liquor and Gaming NSW [LGNSW] and Council Rangers attached to the LGA.

The provisions of this PoM will be adhered to and complied with during the execution of the duties of all staff employed by the restaurant venue.

Management will clearly articulate to and consistently remind all staff that disregarding the provisions of this PoM and relevant legislation may lead to disciplinary action and instant dismissal, as well as regulatory action.

Reference to the Licensee shall be deemed to imply reference to the Approved Manager within this PoM.

The Plan meets requirements of the following key legislation:

- Environmental Planning and Assessment Act 1979
- Liquor Act 2007 (NSW)

1.2 Scope

The Plan incorporates relevant key legislative obligations and addresses (as a minimum) the following issues:

- (a) Compliance with development consent conditions;
- (b) Amenity of the neighbourhood;
- (c) Control of patrons on arriving at the premises, within the premises and upon leaving the premises;
- (d) Responsible service of alcohol;
- (e) Managing patron numbers;
- (f) Complaint handling and community consultation; and



(g) The management of persons excluded from the premises.

1.3 Amendments to this Plan

Amendments to the Plan may be made from time to time to improve the management of the Premises and maintain compliance with legislative changes. The consent authority will be consulted with regards to any plan changes should they arise and prior to formalisation. This Plan of Management (POM) will be reviewed, as a minimum, on an annual basis.

Any amendments to the Plan effected by Management will be notified to the following parties:

- NSW Police Local Area Commander and;
- Woollahra Council.

1.4 Use of the Plan

The Premises will be operated in compliance with this Plan. A copy of the Plan will be made accessible to key management personnel and staff. All staff will be briefed on relevant sections of the Plan as required generally during their induction to the company or through routine team briefings. It is the Licensee's responsibility to ensure all operational strategies identified within the Plan are complied with.

A copy of the Plan of Management will be kept on site and provided to any authorised Council or Police Officer upon request.

1.5 Compliance with Existing Conditions

"Federicas" Restaurant will be operated in accordance with the Plan including the conditions of consent imposed within the Development Consent and the Liquor Licence, as amended from time to time.



2. OPERATIONAL ENVIRONMENT

2.1 Organisational Overview

The premises will be operated by "Federicas" which forms part of the Sydney Restaurant Group Pty Ltd trading group.

"Federicas" Restaurant management understands that the key to success is the continued commitment to:

- Maintaining the highest standards of operational management, responsible alcohol service, patron welfare and the comfort of our neighbours.
- Creating an environment which is safe and enjoyable for both patrons and staff.
- Providing an enjoyable experience serving customers in a friendly, professional and responsible manner.
- · Consultation with the Police and the local community as and when required.

2.2 Hours of Operation

The hours of operation of the use of the premises is restricted to:

- · Monday to Friday 5:00pm Midnight
- · Saturday-Sunday 12:00pm Midnight

Delivery/ies of goods will be carried out outside of these times; however, will remain within the base set hours as described in the table below noting the "low risk" nature of the use, as identified below.

Trading Hours - Development within the site*							
	Internal (fully enclosed)		External (not fully enclosed)				
Risk rating	Base	Extended	Base	Extended			
High	8am - 10pm	8am - midnight	7am - 10pm	7am - 11pm Fri and Sat only			
Low	8am - midnight	8am - 2am	7am - 10pm	7am - 11pm Fri and Sat only			
*Refer to the Woollahra Footway Dining Policy and Guidelines for the trading hours applicable							

^{*}Refer to the Woollahra Footway Dining Policy and Guidelines for the trading hours applicable to the use of footways for restaurant purposes.

2.3 Maximum Occupancy

The capacity of the premises is up to a maximum of forty-six (46) patrons.

2.5 Close of Trade

The Premises is licensed to trade across standard trading hours in accordance with On - premises legislation, its Liquor Licence and Development Approval conditions. The Licensee may however elect to open the Premises later or close the Premises early dependent on the day of the week or patronage. "Federicas" Restaurant will take last orders (food) 30 minutes prior to closing time and will cease serving or selling alcohol 15 minutes before closing time.



At the closing of trade, staff members will facilitate the orderly egress and dispersal of patrons from the premises and the immediate vicinity.

Staff members will monitor patron behaviour in, and in the vicinity of the premises until all patrons have left, taking all practical and lawful steps to ensure the quiet and orderly departure of patrons.

2.6 Registration

The use of the premises is to be carried out in accord of the Woollahra Council registration requirements.

2.7 Deliveries

Deliveries will be carried out in accordance with the details set out in Part 2.2 of the POM.

2.8 Maintenance Management

"Sydney Restaurant Group" has the following contracts in place, which will service "Federicas" once in operation.:

Sanitary Cleaning – Flick Anticimex
Pest Control - Flick Anticimex
Electrical/Plumbing – Sarkis Electrical/Hydracon Plumbing
Grease Trap Maintenance – Able Liquid Waste
Air-Conditioning Maintenance – GPac Air Conditioning

2.9 Occupational Health and Safety

The restaurant will be operated in accordance with the relevant Occupational, Health and Safety (OH&S) requirements.



3. AMENITY OF NEIGHBOURHOOD

The Licensee and venue staff will consider the amenity of the neighbourhood, taking reasonable measures, including liaison with neighbours and police, to ensure that the Premises' operations do not adversely impact the surrounding environment.

Key aspects include:

3.1 Noise, Vibration and Odour

Sound emissions, odour emissions and noise management practices will comply with Woollahra Council requirements, relevant Liquor Licence conditions, Australian Standards, Protection of the Environment Operations Act 1997, EPA Industrial Noise Guidelines.

Potentially identifiable likely noise and vibration sources from the venue may include:

- Background amplified music from speakers installed within the venue;
- Mechanical air conditioning and extraction; and
- Patrons entering and leaving the Premises.

The Premises will operate in accordance with the findings, recommendations and limitations as detailed within the acoustic report prepared by Pulse White Noise Acoustics Pty Ltd and any recommendations contained there-in.

No external amplification of noise to the street frontages of the Premises will occur (including no installation of external speakers). Amplification of noise in any area will only occur in accordance with the approved noise conditions detailed within the Development Approval.

The use of the premises shall not give rise to air impurities in contravention of the Protection of the Environment Operations Act, 1997.

3.2 Signage

In order to keep patrons well informed, appropriate signage will be prominently displayed in the premises in accordance with the development consent conditions and Liquor Act 2007 (NSW).

The following signage may be erected at the entrances to or within the premises where appropriate;

- (a) The name of the licensed premises and of the Licensee
- (b) The type of licence for the Premises
- (c) A warning that CCTV video surveillance cameras are in use;
- (d) Sale or supply of liquor to persons under 18 years of age prohibited notice;
- (e) Signage (in lettering not less than 150mm in height on a contrasting background) is to be erected in a prominent position inside of, and adjacent to the principal entry to the premises. The signage shall state:
 - Approved hours of operation
 - · Approved patron capacity



- (f) Signage (in lettering not less than 150mm in height on a contrasting background) is to be erected in a prominent position inside of, and adjacent to the principal entry to the premises. The signage shall state:
 - · Upon leaving please respect local residents by minimising noise
- (g) A sign placed in an area prominent to patrons along the path of travel to the bathroom/s (Respect our Neighbours) with advice regarding the minimisation of noise.

3.3 Behaviour of Patrons

Management and staff will take reasonable steps to control the behaviour of "Federicas" patrons whilst on the premises and as they arrive and depart. To ensure this, management will, during peak trading periods:

- (a) Ensure that patron behaviour is monitored by "Federicas" staff members upon approach to the premises and those persons observed behaving in an anti-social manner or causing excessive noise are refused entry to the premises.
- (b) Not permit patrons at any time to smoke directly outside the premise.
- (c) "Federicas" staff will undertake regular surveillance within the premise and the external perimeter of the premise to monitor patron behaviour and loitering;
- (d) "Federicas" staff members to ensure that patrons leaving the premises do so promptly and as quietly as is reasonably possible;
- (e) Any person who is loitering in the immediate vicinity of "Federicas" will be requested to move on by "Federicas" staff, if they do not intend to enter the premises.

3.4 Ingress and Egress

- (a) "Federicas" staff will ensure that the behaviour of patrons who are entering or departing the premises does not detrimentally affect the amenity of the neighbourhood; i.e. noise will be controlled and there is no littering or loitering by patrons of the premises.
- (b) Management and staff will monitor issues concerning the egress of patrons including the availability of convenient public transport.



3.5 Queue Management

If required, an effective queuing system will be implemented at the Premises' entrance to ensure orderly entry and exit and so that pedestrian traffic is not impeded. At all times when there are patrons in a queue to enter the Premises, a public thoroughfare will be maintained, and the queue will be clearly defined.

The queue will be monitored for patrons displaying unacceptable signs of intoxication; and indecent, violent or quarrelsome behaviour, with a view to intercepting and removing such patrons at the earliest opportunity if deemed necessary. Additionally, staff will be vigilant in managing noise created by patrons queuing to enter the Premises.

The queue will be regularly patrolled by premises staff, and the number of patrons queuing for entry will be limited in attempts to reduce waiting times.

3.6 Managing Patron Numbers

Given the limited number of patrons permitted within the Premises at any one time, the Licensee (or delegate) will control patron numbers to ensure they do not exceed the Premises' capacity. To support this, Premises' capacity will be monitored by way of headcounts directed by Management staff during peak trading periods.

3.7 Security

As the Premises is a food and beverage venue and will operate under a Liquor On-Premises Licence, it is not envisaged that any dedicated security guards will be required.

All Premises' management and service staff are trained and accredited in the responsible service of alcohol and are trained in the security operational protocols for the Premises.

3.8 Transportation

When requested and or practical, the Licensee and or staff will provide patrons with directions to local taxi ranks and other forms of public transport when leaving the Premises.

3.9 Emissions

The Premises and its operations will be conducted in such a manner as to not interfere with or materially affect the amenity of the neighbourhood through the emissions of gases, vapours, dusts or other impurities which create a nuisance, are injurious or prejudicial to health.

The Licensee or manager on duty will actively monitor these elements so as to ensure they do not adversely impact the Premises' neighbours or local constituent. Any complaints received in relation to the Premises' emissions will be managed in accordance with the Premises' Complaints Handling protocols (detailed below). Additionally, wherever applicable, Council and or Police may be consulted/advised to ensure a collaborative, solution-focussed approach is adopted to resolving any issues.



3.10 Complaint Handling

The Licensee (or delegate) will respond to complaints, whether from patrons, the public, police or council in a timely and appropriate manner.

The Premises will keep and maintain a record of any complaints made with respect to its operations within a Complaint Register. Upon receipt of a complaint, the Licensee will respond in a courteous and efficient manner. Wherever possible, the appropriate remedial action will be implemented as a priority and the Licensee or Manager in charge will contact the complainant within 48 hours to confirm details of action taken.

The Complaint Register will include:

- Name, contact and address details of person(s) making the complaint;
- Date and time of complaint;
- Nature of the complaint;
- Name of staff on duty;
- Action taken by the Premises to resolve the complaint;
- · Follow-up; and
- Outcome.



4. RESPONSIBLE SERVICE OF ALCOHOL

The Licensee will promote responsible service of alcohol by Premises managers, staff and contractors including:

- a) Not permitting service of alcohol to minors or any person who is intoxicated;
- b) Closely checking ID presented by young people;
- Refusing entry to the premises of any person who is intoxicated, indecent, violent or quarrelsome;
- Ejecting any person who causes a disturbance including being indecent, violent or quarrelsome while on the premises;
- e) Barring from entry (for a pre-determined period) any person who is extremely or repeatedly objectionable;
- f) The sale of liquor must cease 15 minutes prior to the cessation of the respective hours of operation:
- g) No patron shall be permitted to take glasses of open containers of liquor off the premises; and
- h) Patrons shall be seated while consuming liquor.

4.1 Harm Minimisation

The Licensee and staff will take reasonable steps to minimise harm through the promotion of responsible service of alcohol initiatives including:

- All staff members who are required to have an RSA Competency card as part of their normal duties will possess one;
- b) Not selling undesirable liquor products or engaging in irresponsible liquor promotions;
- Making available (and promoting) food and free drinking water within the Premises at bars where liquor is served or near the point of service;
- Making available alternatives to full strength alcohol, such as low alcohol beer, soft drinks and other non-alcoholic beverages within the Premises; and
- e) Ceasing to serve or sell alcohol fifteen (15) minutes prior to closing time.

4.2 Removal of Liquor from the Premises

The Licensee and Premises staff will prevent patrons leaving the Premises with liquor in opened containers or glasses.

4.3 RSA Monitoring

All staff who are required to have an RSA Competency card as part of their normal duties will, in addition to performing their primary function, act in a secondary capacity by performing RSA supervisory duties within the Premises by assisting to monitor patron intoxication levels.



4.4 Licensee's Incident Register

The Licensee will maintain an Incident Register, in the form approved by the Authority. The Licensee will record relevant information within this register, including details of any incident:

(a) involving violence or anti-social behaviour occurring on the licensed premises; (b) of which the Licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the licensed premises and that involves a person who has recently left, or been refused admission to, the Premises.

4.5 ID Policy

As a general rule, identification will be requested from all persons who could potentially be under the age of 18 years upon the request or of an alcoholic beverage, in accordance with relevant legislation. The only acceptable proof of identification will be:

- A driver's or rider's licence or permit (issued by an Australian State or Territory or any foreign country);
- b) Australian passport or a foreign passport issued by another country;
- c) NSW photo card (issued by Roads and Maritime Services NSW);
- d) Proof of age card issued by a public authority of the Commonwealth or of another State or Territory for the purpose of attesting to a person's identity and age; and Keypass (over-18) identity card issued by Australia Post.

4.6 CCTV Surveillance

The Premises is equipped with a digital video surveillance system which is maintained in good operational order. The correct time and date is automatically recorded on all surveillance footage whilst recording.

The methods of CCTV recording, and retention and provision of CCTV footage will be in accordance with the Premises' liquor licence, as may be amended from time to time.

The following areas will be covered by the Premises' CCTV surveillance system:

- (a) principal entrance and exit and the immediate footpath areas surrounding these access points; and
- (b) areas within the Premises occupied by the public (excluding toilets).

The surveillance system operates during trading hours and is checked daily to ensure it is functioning correctly. A routine maintenance program is also employed to ensure appropriate functionality is maintained and the equipment is serviced.

Recorded surveillance footage is retained for a period of thirty (30) days and will be made available for viewing whenever the Premises is trading, and any copies will be supplied to Police or any other authorised Inspector upon request within a reasonable time.



Specifically:

- 1. The licensee must maintain a closed-circuit television (CCTV) system internally and externally to the Premises in accordance with the following requirements:
 - a) the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of premises that is not required to cease trading, continuously at all times);
 - b) recordings must be in digital format and at a minimum of six frames per second;
 - c) any recorded image must specify the time and date of the recorded image;
 - d) the system's cameras must cover the following areas:
 - (i) the entry and exit points on the premises,
 - (ii) the footpath immediately adjacent to the premises, and
 - (iii) all publicly accessible areas (other than toilets) on the premises.

The licensee must also:

- a) keep all recordings made by the CCTV system for at least 30 days;
- b) ensure that at least one member of staff is on the premises at all times the system is operating;
- who is able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and
- d) provide any recordings made by the system to a police officer or Liquor and Gaming NSW Inspector within 24 hours of any request by a police officer or Liquor and Gaming NSW inspector to provide such recordings.

4.7 Patron Ejection

Wherever practical, the Licensee and staff will adopt the following procedure when involved in the removal of a person from the Premises who is intoxicated, disorderly, violent or quarrelsome:

- (a) Interception and verbal communication with the patron will occur to explain the reason for the person being requested to leave the Premises including, where appropriate, provide an explanation of any applicable breach of conditions of the Liquor Licence or Liquor Act;
- (b) In the event that a fight occurs, staff's physical involvement will be limited to the necessary restraint required to escort the individuals involved from the Premises as quickly and safely as possible so that other patrons are not unduly disturbed. Patron(s) who are asked to leave for starting a disturbance are no longer considered welcome and may be banned from the Premises for a nominated period;
- (c) Premises staff will not unlawfully strike or kick a customer; and
- (d) Wherever possible, patrons will be ejected via the safest and most direct route. In choosing an appropriate ejection route, factors such as CCTV coverage, patron safety, staff and other persons within the Premises will be taken into consideration.



4.8 Security Incident Register

Staff will ensure that it will complete incident reports whenever they:

- (a) make forcible physical contact with, or physically restrains a person; or
- (b) ejects a person from, or directs a person to leave, the Premises.

Staff will complete incident reports within a reasonable time after an altercation or disturbance occurring at the Premises or in the immediate vicinity, in accordance with all legislative requirements, guidelines and Liquor Licence / DA conditions.

4.9 Police Notification of Violent Incidents and Crime Scheme Preservation

Immediately after the Licensee or a staff member becomes aware of an incident on the Premises involving an act of violence that has caused a serious and visible injury to a person, the Licensee (or delegate) will ensure:

- (a) all reasonable steps are taken to preserve and keep intact the area where the incident occurred and that any implement or other thing associated with the act of violence is retained in accordance with guidelines issued by the NSW Police Force relating to the preservation of crime scenes;
- (b) the Local Area Commander of the local police area is advised of the incident;
- (c) any directions given by the Commander to the Licensee or a staff member to preserve or keep intact the area where the incident occurred are complied with; and
- (d) offer and supply first aid as necessary.

4.10 Illegal Substances

The Premises policy is that the carrying, use or dealing in any form of illegal substances by any patron or staff member will not be tolerated. Any patron identified selling, purchasing or in possession of an illegal substance will be ejected from the Premises and may be handed over to Police for further investigation. Any employee proven to be selling, purchasing, using or in possession of an illegal substance on the Premises will be dismissed.



5. EMERGENCY MANAGEMENT

5.1 Emergency and Evacuation Procedures

The Premises maintains effective emergency and evacuation procedures that are compliant with relevant Australian Standards. Relevant staff are appropriately trained to facilitate these emergency procedures should they be required. In addition, the following fire safety measures are followed:

- (a) The licensee ensures all essential services installed at the Premises are certified annually and that they remain in good working order;
- (b) In the event of essential service malfunctioning, the licensee will ensure the fault is rectified in a reasonable timeframe;
- (c) Fire extinguishers are located at various points within the Premise which are highly prominent and easily accessible. Key staff are trained in the usage of fire extinguishers;
- (d) An annual fire safety statement is obtained;
- (e) Emergency exit signage is clearly visible and easily identifiable to all patrons and staff;
- (f) Management ensure that all fire escapes and stairways are kept clear of persons(s) and/ or objects at all times;
- (g) Staff and management conduct routine white level inspections of the Premises; and
- (h) In the event of an emergency staff are instructed to dial 000.

5.2 Staff Training

"Federicas" emergency and evacuation trainings will be run by Sydney Restaurant Group's head of operations (Andrew Carson). Two sessions per year are conducted, per venue/precinct. Sessions are compulsory for all management and senior chefs to attend. The sessions are as follows:

Session One:

- Warden Training (ERT-200)
 4 sessions over two years run at 6 monthly intervals meeting the requirements of AS3745.
 Each session will take into account the previous session.
- First Attack Fire (ERT-FA)
 Fire Extinguisher training including Hose Reels and Blankets. This session is to be conducted annually.

Session Two:

- Practical Evacuation (ERT-PRAC)
 This is a practical simulation of an evacuation
- Emergency Control Systems (ERT-ECS) (Fire Panel and EWIS Training)
 This covers the use of the EWIS and Fire Panels.



6. FACILITY MANAGEMENT SERVICES

6.1 Cleaning and Maintenance

The Premises will be kept in a clean and tidy condition and regularly maintained both internally and externally including in addition to Woollahra Council's daily street sweeping and cleansing operations, the surrounds of the building will be kept clean and free from litter.

6.2 Glass Removal

Glass will not be emptied or transferred from one receptacle to another anywhere in a public place (external to the Premises). Whenever required glass will be emptied / transferred within the Premises and removed in containers.

6.3 Waste and Recycling Storage and Disposal

Removal of waste from the Premises will occur via the transfer routes identified as part of the approved site management plan prepared by BJB Architects reproduced in (**Appendix A**).

Despite the above, the removal of recycled bottles and glasses will cease at 8pm. A private contractor waste service will be utilised for the collection of general waste and recycling every two (2) days. Waste bins will be transferred from the waste holding area along the rear by way of the existing pedestrian path to George Street at the time of contemplated pick-up. No waste bins will be left unattended along the public domain at any time outside of the nominated pick-up. Once the waste is collected, the bins will be immediately transferred back to the holding area.

Waste will only be collected between the hours of 12:00pm and 10:00pm.

Waste bin transport is the sole responsibility of the Licensee or nominated staff or service member.

6.3.1 Waste Storage Area

A waste storage area is nominated at ground level along the rear of the site. The bin storage area is capable of accommodating the required 1x240L recycling bin for paper and cardboard, 1x240L waste bin and 1 x 360L waste bin.

Both the bins and the area will be maintained at a high hygienic standard, cleaned on a weekly basis. Appropriate levels of lighting are to be provided in and around the area designed so as to enable safe movement/s; however, orientated so as to mitigate any adverse level of light spill into surrounding properties. Clear signage identifying bin types, space for reusable items such as crates and pallets and problem waste is to be provided within the storage area in a location where it remains readily identifiable.

Each nominated bin will be clearly marked so as to facilitate orderly and correct disposal. Bins are nominated within the storage area allocated as follows:

- a) Paper and Carboard Recycling; and
- b) General waste

A valid trade waste agreement will be entered into.



6.3.2 Signage

Clear and readily interpretable signage is to be provided within the bin storage area which identifies the use of each bin and the relevant waste disposal method/s.

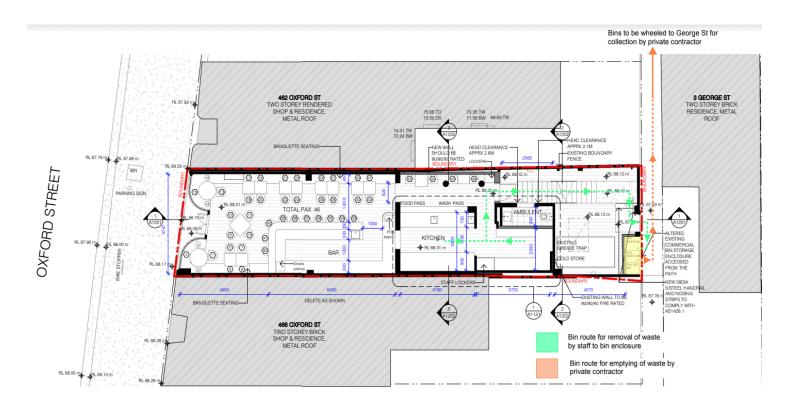
6.3.4 General waste provisions

- a) A copy of this plan of management will be provided to the building management committee;
- b) Outside of collection times, bins are not to be stored across the public domain;
- c) Pallets, kegs etc are at no time to be placed across the public domain;
- d) Waste strategy will be documented within the existing SWRMP and will be revised on an annual basis for the purpose of ensuring updated waste reduction strategies and technologies;
- e) Waste management will be contracted to a private collection company prior to commencement of the operations.

6.3.5 Litter Checks

Litter patrols will be undertaken in the general vicinity of the premises (20 metres from the front door of the premises). Such patrols will take place intermittently during the hours of operation with the final check conducted at the end of trade. A register will be maintained and kept on the premises at all times detailing date, time of check, staff member responsible and signature.

Appendix 1: Waste Storage and Transfer Route



Appendix 2: "Federicas" Restaurant House Policy

"Federicas" Restaurant Management in compliance with the Liquor Act, 2007 and in the interests of patrons and staff has adopted practices to ensure the responsible service of alcohol. It is our Policy to:

- Prevent underage drinking by requiring that proof of age be provided.
- Only serve alcohol when accompanied by a meal.
- Minimise the likelihood of intoxication by recognising the signs of intoxication and refusing alcohol to patrons who reach this point. Any person who is already intoxicated is to be denied entry to the licensed premises.
- Prevent disruptive and/or anti-social behaviour.
- Minimise the likelihood of drink driving by arranging safe transport options such as contacting taxi companies to collect patrons.
- · Educate staff in respect of Responsible Service of Alcohol and this Policy.

Preventing Underage Drinking

If in any doubt as to the age of a person, always check. It is better to be over-cautious than serve alcohol to a minor and place the licence in jeopardy through prosecution. If patrons object to providing identification, clearly explain it is a requirement of Management and the law.

Preventing Intoxication

For the purposes of the Act a person is intoxicated if:

- the person's speech, balance, co-ordination or behaviour is noticeably affected; and
- it is reasonable in the circumstances to believe that the affected speech, balance, co-ordination
 or behaviour is the result of the consumption of liquor.

Management and staff are to ensure that adequate steps are in place to minimise the likelihood of intoxication on the premises by:

- Monitoring patrons;
- Refusal of service to patrons showing signs of intoxication;
- · Not allowing intoxicated persons to enter or remain on the licensed premises.

Preventing Disruptive or Anti-Social Behaviour

Management and staff are not to allow disruptive, violent or anti-social behaviour to occur on or in the vicinity of the premises by patrons having been in attendance at the premises. Staff are to ensure that this is prevented by:

- Not tolerating any conduct or behaviour which a reasonable person would consider undesirable.
- Identifying potential problems and taking steps to alert senior staff/security and preventing them from escalating.





1. INTRODUCTION

This Clause 4.6 Exceptions to Development Standards request has been prepared BMA Urban on behalf of BJB Architects. It is submitted in support of a Development Application ('DA') for the 'alterations and additions' and 'change of use' of the existing 'retail space' for the purpose of a 'licenced restaurant'. at No. 464 Oxford Street, Paddington.

This request seeks approval to vary the FSR standard in clause 4.4 of the Woollahra LEP 2014. This Clause operates in conjunction with the FSR Map which indicates a maximum 1:1 applies to the subject site. Clause 4.4 is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

The degree in which the proposal departs from this standard is demonstrated in **Part 2** of this variation request.

Clause 4.6 of the *Woollahra Local Environmental Plan 2014* ('LEP') enables consent for development to be granted even though it contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards and to achieve better outcomes for and from development.

As the following request demonstrates, flexibility may be afforded by Clause 4.6 because compliance with the FSR development standard is unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify contravening the standard. This request also demonstrates that the proposal will be in the public interest, as the proposed development will be consistent with the objectives of the development standard and the zoning of the site.

The following sections of the report provide an assessment of the request to vary the development standard relating to "*Floor Space Ratio*" in accordance with Clause 4.6 of the Woollahra LEP.

Consideration has been given to the following matters within this assessment:

- Varying development standards: A Guide, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgments issued by the Land and Environment Court. The Initial
 Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 court judgment is the most relevant
 of recent case law.

Chief Justice Preston of the Land and Environment Court confirmed in the above judgment:

 The consent authority must, primarily, be satisfied the applicant's written request adequately addresses the 'unreasonable or unnecessary' and 'sufficient environmental planning grounds' tests:

"that the applicant's written request ... has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ... and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard ..." [15]

- On the 'Five Part Test' established under Wehbe v Pittwater Council [2007] NSWLEC 827:

"The five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most



commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way..." [22]

That in establishing 'sufficient environmental planning grounds' the focus must be on the contravention and not the development as a whole:

"The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole" [26]

 That clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development:

"Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard will have a better environmental planning outcome than a development that complies with the development standard." [88]

This clause 4.6 variation has specifically responded to the matters outlined above and demonstrates that the request meets the relevant tests with regard to recent case law.

In accordance with the Woollahra LEP requirements, this Clause 4.6 variation request:

- identifies the development standard to be varied (Part 2);
- identifies the variation sought (Part 2);
- · summarises relevant case law (Part 3);
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Part 4);
- demonstrates there are sufficient environmental planning grounds to justify the contravention (Part 4);
- demonstrates that the proposed variation is in the public interest because it is consistent with the
 objectives of the particular standard and the objectives for development within the zone in which the
 development is proposed to be carried out (Part 4);
- provides an assessment of the matters the secretary is required to consider before providing concurrence (Part 4); and
- provides a conclusion summarising the preceding parts (Part 5).

This Clause 4.6 Exceptions to Development Standards request should be read in conjunction with the plan detail prepared by BJB Architects accompanying this application.



2. VARIATION OF FSR STANDARD

2.1 DEVELOPMENT STANDARD

Clause 4.4 of the Woollahra LEP sets out the maximum FSR for development as shown on the FSR Map. The site is subject to an FSR of 1:1, as illustrated in **Figure 1** below.



2.2 EXTENT OF VARIATION

The existing building on the site has a gross floor area (GFA) of area of approximately 136.3m² which, based on a site area of 121.7m², equates to an FSR of 1.12:1 which fails to comply with the development standard. The proposal seeks to introduce an additional 7.31m² of GFA which will now generate a total floor area of 143.6m² and an FSR of 1.179:1, which further exaggerates the already non-compliant GFA and will not represent a variation of 17.9%. The proposed variation is a function of the existing built form on site and the need to create provide a commercial floor layout that meets the requirements of the new use.



3. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of the Woollahra LEP includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of the Woollahra LEP are:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority consider a written request from the applicant that seeks to justify the contravention of the development by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Planning Secretary to have been obtained. In deciding whether to grant concurrence, subclause (5) requires the Planning Secretary to consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

The concurrence of the Planning Secretary may be assumed to have been granted, for the purpose of this variation request, in accordance with the NSW Department of Planning Circular PS 18–003 'Variations to development standards' dated 21 February 2018. This planning circular is a notice under section 64(1) of the Environmental Planning and Assessment Regulation 2021 and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been granted.

The Planning Secretary may also be assumed to have given concurrence if the matter is determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

This clause 4.6 variation request demonstrates that compliance with the FSR prescribed for the subject site via clause 4.4 of the Woollahra LEP is unreasonable or unnecessary; there are sufficient environmental planning grounds to justify the requested variation; and approval of the variation is in the public interest because it is consistent with the objectives relating to the relevant development standard and land use zone.

In accordance with clause 4.6(3), the applicant requests that the FSR standard be varied.



4. ASSESSMENT OF THE CLAUSE 4.6 VARIATION

The following sections of this report provide a comprehensive assessment of the request to vary the development standard relating to FSR, in accordance with clause 4.4 of the Woollahra LEP. Detailed consideration has been given to the following matters within this assessment:

- 'Varying development standards: A Guide' as prepared by the Department of Planning & Infrastructure (dated August 2011).
- Relevant planning principles and judgements issued by the NSW Land and Environment Court.

The following sections of this report provide detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the Woollahra LEP.

4.1 ABILITY TO VARY THE STANDARD

The FSR standard as prescribed in Clause 4.4 of the Woollahra LEP is a development standard capable of being varied under clause 4.6(2) of that LEP. The proposed variation is not excluded from the operation of clause 4.6(2) of the Woollahra LEP, as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of that LEP.

4.2 CONSIDERATION

4.2.1 Clause 4.6(3)(a) – Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in Wehbe v Pittwater Council [2007] NSWLEC 827. This method requires that the objectives of the standard are achieved despite the non-compliance with the standard.

This was recently reaffirmed by the Chief Judge in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 at [16]-[17]. Similarly, in Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 at [34] the Chief Judge held that "establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary".

This Request addresses the first method outlined in Wehbe v Pittwater Council [2007] NSWLEC 827. This method alone is sufficient to satisfy the 'unreasonable or unnecessary' requirement.

• The objectives of the standard are achieved notwithstanding non-compliance with the standard (the first method in Wehbe v Pittwater Council [2007] NSWLEC 827 [42]-[43]).

The specific objective of the FSR development standard, as specified in clause 4.4(1)(b) of the Woollahra LEP, is detailed in the table below.



Objectives

(b) for buildings in Zone E1 Local Centre and Zone MU1 Mixed Use—to ensure that buildings are compatible with the desired future character of the area in terms of bulk and scale.

Assessment

The site is located in the MU-1 Mixed Use Zone and the area is characterised by predominantly two storey buildings containing commercial and or a mix of commercial/residential uses.

The proposal is for a change of use from a single commercial tenancy (designer clothing shop) and involves alterations and additions so to accommodate a new internal layout capable of accommodating for the proposed restaurant. The works have been carefully designed to ensure consistency with surrounding development do not extent beyond the already established front and or rear building setback. As such, the proposal provides an appropriate balance of bulk and scale relative to the existing situation and surrounding development. Also, given the additional GFA is located on the north-western side of the ground floor level only, it will not appear visually dominant when viewed from the street. In terms of the neighbouring property in this location, the additional GFA will be obscured by the currently dividing solid masonry fence and will therefore, not contribute to any perceivable bulk across this interface location.

Accordingly, it is considered that the height, bulk and scale of the building is compatible with adjoining development, the character of the locality and the natural setting. The resultant FSR breach does not offend this compatibility in any noticeable way.

4.2.2 Clause 4.6(3)(b) – Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?

Clause 4.6(3)(b) of the Woollahra LEP requires the consent authority to be satisfied that the applicant's written request has adequately addressed that clause, by demonstrating:

"that there are sufficient environmental planning grounds to justify contravening the development standard."

The environmental planning grounds relied upon in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development, as summarised in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] (NSWLEC 118).

There are a number of environmental planning grounds that justify the additional FSR in this particular circumstance. In addition to compliance with the objectives of the zone and the development standard; environmental planning grounds include consistency with the surrounding context, acceptable environmental impacts, the existing built form on site, location of additional FSR and compliance with the built form controls.

Specifically, the extent of additional GFA provided is located behind the established built form at the ground floor level and does not extend beyond the existing ground floor rear setback. Boundary to boundary construction at the ground level is permissible within the context which is made evident across other

7



developments across both the immediate and border site context. Enforcing strict compliance would prohibit a minor extension of the ground floor to the north-western boundary resulting in a built form that will differ from surrounding development. A reduced FSR would also minimise the potential for enhanced commercial amenity and utility of the site without noticeable benefits to neighbouring properties or streetscape.

The proposal will result in a built form which is consistent with the surrounding and desired density of the area. In Initial Action v Woollahra Municipal Council [2019] NSWLEC 1097, Commissioner O'Neill states at [42] that:

I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act).

The proposal maintains the existing building height and results in a minor extent of additional GFA across the north-western ground floor plate in a location that will not be perceptible from the public domain This is consistent with the bulk and scale of surrounding development.

More generally, the extent of additional GFA will unlikely create additional environmental impacts when compared to a compliant scheme in terms of solar access, views or privacy. The breach in this instance can be directly attributed to the north-western side of the ground floor level and extends only to the existing rear setback along this building periphery. The additional GFA does not affect the bulk above the ground floor level

The proposal only increases the GFA by 7.31m² and occurs at the ground floor level, behind the principal built form. The additional GFA will facilitate for the provision of the new restaurant use. The proposal makes the most efficient use of the existing built form while maintaining the established scale characteristics to Oxford Street and the traversing pedestrian accessway along the rear. Accordingly, the minor extent of additional FSR is appropriate for the site.

The proposal has been carefully designed in consideration of the statutory and non-statutory controls for the site. The proposal satisfies the relevant objectives of the zone under the LEP and the area of FSR non-compliance does not affect compliance with the development standard.

The additional FSR has been designed to ensure the proposal continues to comply with the relevant built form and amenity provisions of the DCP including the provisions for the MU-1 Mixed Use Zone and general provisions. Despite the FSR exceedance, the proposal continues to provide a building envelope envisioned by Council and a built form that is compatible with surrounding development.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed non-compliance with the FSR standard.

The Objects of the Environmental Planning & Assessment Act 1979 ('EP&A Act') under Section 1.3 of that Act are also relevant to whether grounds exist to warrant a variation. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, in **the table below** we consider whether the proposed development is consistent with each object.

The objects of the EP&A Act and how this proposal responds to each of the objects are detailed as follows:

Object	Comment
To promote the social and economic welfare of the community and a better environment by the proper	This object is not relevant to this development.

8



management, development and conservation of the State's natural and other resources	
To facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	The proposal will facilitate an ecologically sustainable development given that no negative impact on environmental and social considerations will arise. This in turn will serve to offer the ongoing sustainment of the economic health of the area.
To promote the orderly and economic use and development of land	The proposed development will promote the orderly and economic use of the land by way of providing a land use typology and intensity, consistent with that envisaged by Council.
To promote the delivery and maintenance of affordable housing	This object is not relevant to this development.
To protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	Given the nature and character of the urban setting the proposed development is located within, no impact on threatened species or ecological communities is likely to result.
To promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	This object is not relevant to this development
To promote good design and amenity of the built environment	The proposed development promotes good design in that it serves to provide a built form and massing arrangement that serves to positively influence the future commercial amenity of occupants while adopting an architectural form and language, with an overall silhouette, height and land use intensity compatible with both the established and emerging development and housing typology.
To promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	The proposed development will comply with all relevant BCA codes and will promote the health and safety of occupants.
To promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	This object is not relevant to this development
To provide increased opportunity for community participation in environmental planning and assessment	This proposed development will be publicly notified in accordance with Council's Community Engagement Strategy.

Based on the above, the consent authority can be satisfied that the proposed development remains consistent with the Objects of the Act despite the FSR non-compliance.

4.2.3 Clause 4.6(4)(a)(i) - Has the Written Request adequately Addressed the Matters in Sub-Clause (3)?

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

9



Each of the subclause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

4.2.4. Clause 4.6(4)(a)(ii) - Will the Proposed Development be in the Public Interest because it is Consistent with the Objectives of the Particular Standard and Objectives for Development within the Zone in Which the Development is Proposed to be Carried Out?

Clause 4.6(4)(a)(ii) provides that development consent must not be granted for development that contravenes a development standard, unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the land use zone in which the development is proposed to be carried out.

In Section 4.2.1 of this request, it was demonstrated that the proposal is consistent with the objectives of the development standard. The proposal (inclusive of the FSR non-compliance) is also consistent with the objectives of the MU-1 Mixed Use zoning, as follows:

Zone MU-1 - Mixed Use Zone

Objective	Comment
To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.	The proposal seeks to maintain a commercial use of the site, albeit, in an alerted form for the purpose of a new restaurant. This new use serves to ensure future employment opportunities are generated.
To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.	The proposal will activate the street frontage along Oxford Street noting the nature and function of the use.
To minimise conflict between land uses within this zone and land uses within adjoining zones.	No adverse increase amenity impacts are deemed to arise as a result of the development noting the transitional zoning interface along the rear of the site.
• To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.	The proposed use as a restaurant satisfies this objective.
To provide for development of a scale and type that is compatible with the amenity of the surrounding residential area.	The proposal will maintain the principal built form as it presents along Oxford Street, and includes sympathetic alterations and additions which ensure a similar building envelope to the existing situation which is compatible with the amenity of the nearby residential area.
To ensure development is of a height and scale that achieves the desired future character of the centre.	The proposed works will retain the existing maximum height and will have a bulk and scale that is consistent with the desired future character of the area.



To maximise public transport patronage and encourage walking and cycling.	The proposal is ideally located near public and active transport options. This will encourage sustainable transport usage by staff and visitors.
To encourage the retention and planting of trees and other vegetation as part of development to minimise the urban heat island effect and to improve microclimates.	No trees are proposed to be removed as part of this development.

The objectives of the land use zone as detailed above, as well as the objectives of the standard, have been adequately satisfied. Therefore, the proposal is considered to be in the public interest.

4.2.5. Clause 4.6(5)(a) – Would the Non-Compliance raise any Matter of Significance for State or Regional Planning?

The proposed non-compliance with the FSR development standard will not raise any matter of significance for state or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

4.2.6. Clause 4.6(5)(b) – Is there a Public Benefit of Maintaining the Planning Control Standard?

The proposed development achieves the objectives of the FSR development standard and the land use zone objectives. As such, there is no public benefit in maintaining the development standard.

4.2.7. Clause 4.6(5)(c) – Are there any other matters required to be taken into consideration by the Planning Secretary before granting concurrence?

There are no known additional matters that need to be considered within the assessment of this clause 4.6 variation request and prior to granting concurrence, should it be required.



5. CONCLUSION

For the reasons set out in this written request, strict compliance with the FSR development standard contained within clause 4.4 of the Woollahra LEP 2014 is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

It is reasonable and appropriate to vary the FSR development standard to the extent proposed, for the reasons detailed within this submission and as summarised below:

- Compliance with the FSR development standard is unnecessary in the circumstances of the proposed development.
- The proposal, notwithstanding the non-compliance, is consistent with the objectives of the FSR standard and the MU-1 Mixed Use Zone.
- There are sufficient environmental planning grounds to justify the contravention, which results in a better
 planning outcome than a strictly compliant development in the circumstances of this particular case.
- There is an absence of any environmental impacts arising from the proposed variation.
- The proposed non-compliance with the FSR standard will not result in any matter of significance for State or regional environmental planning

For the reasons outlined above, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the FSR development standard should be applied.

Completion Date: 17 May 2024

REFERRAL RESPONSE - TRAFFIC

FILE NO: Development Applications: 301/2023/1 ADDRESS: 464 Oxford Street PADDINGTON

PROPOSAL: Alterations and additions to the existing building and change of use

from retail to a licensed restaurant

FROM: Ms E Fang **TO:** Mr V Aleidzans

I refer to the memo from the Planning Department dated 11 March 2024 requesting comments in relation to the above.

1. DOCUMENTATION

I refer to the following documents received for this report:

- Amended Operational Plan of Management, unreferenced, prepared by BMA Urban, dated 11 March 2024;
- Amended Traffic and Parking Assessment Report, referenced 23137, prepared by CJP Consulting Engineers, dated 11 March 2024.

2. ISSUES

Ni.

3. ASSESSMENT

Parking provision and traffic generation has been previously assessed and are deemed satisfactory. Refer to TRIM #24/19231.

It is understood that waste will be manually wheeled to be collected in the existing waste area at the rear of the site in George Street. Waste collection will be undertaken by a private contractor every second day. Given the quantity and frequency of waste collection, the proposed arrangements are considered acceptable.

4. RECOMMENDATION

Council's Traffic Engineer has determined that the proposal is satisfactory, subject to the following conditions:

Approved Plans and Supporting Documents

A. GENERAL CONDITIONS

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with both the architectural plans to which is affixed a Council stamp "Approved" and supporting documents listed below unless modified by any following condition.

Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Planning Portal - Traffic - Re-Referral Response - DA20233011 - 464 Oxford Street PADDINGTON

1 of 5

Reference	Description	Author	Date
unreferenced	Amended Operational Plan of Management	BMA Urban	11 March 2024
23137	Amended Traffic and Parking Assessment Report	CJP Consulting Engineers	11 March 2024

Notes:

- Warning to Principal Certifier You must always insist on sighting the original Council stamped approved plans. You must 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 plans.
- These plans and supporting documentation may be subject to conditions imposed under section 4.17(1)(g) of the Act modifying or amending the development.

Condition Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

B. BEFORE DEMOLITION WORK COMMENCES

B. 1. Construction Management Plan

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

An application for the CMP must be submitted for approval, and all associated application fees must be paid.

The CMP must be submitted as a self-contained document that outlines the nature of the construction project and as applicable, include the following information:

- a) Detail the scope of the works to be completed including details of the various stages, e.g. demolition, excavation, construction etc. and the duration of each stage.
- b) Identify local traffic routes to be used by construction vehicles.
- c) Identify ways to manage construction works to address impacts on local traffic routes.
- d) Identify other developments that may be occurring in the area and identify ways to minimise the cumulative traffic impact of these developments. Should other developments be occurring in close proximity (500m or in the same street) to the subject site, the developer/builder is to liaise fortnightly with the other developers/builders undertaking work in the area in order to minimise the cumulative traffic and parking impacts of the developments.
- e) Detail how construction workers will travel to and from the site and parking arrangements for those that drive.
- f) Identify any proposed road closures, temporary traffic routes, loss of pedestrian or cyclist access, or reversing manoeuvres onto a public road, and provide Traffic Control Plans (TCPs) prepared by an accredited RMS Red or Orange card holder to manage these temporary changes.
- g) Detail the size (including dimensions), numbers and frequency of arrival of the construction vehicles that will service the site for each stage of works.
- h) Provide for the standing of vehicles during construction.

- i) If construction vehicles are to be accommodated on the site, provide a scaled drawing showing where these vehicles will stand and the vehicle swept path to show that these vehicles can access and egress the site in a forward direction (including dimensions and all adjacent traffic control devices, such as parking restrictions, pedestrian facilities, kerb extensions, etc.).
- j) If trucks are to be accommodated on Council property, provide a scaled drawing showing the location of any proposed Works Zone (including dimensions and all adjacent traffic control devices, such as parking restrictions, pedestrian facilities, kerb extensions, etc.).
- k) Show the location of any site sheds and any anticipated use of cranes and concrete pumps and identify the relevant permits that will be required.
- I) If a crane/s are to be accommodated on site, detail how the crane/s will be erected and removed, including the location, number and size of vehicles involved in the erection/removal of the crane/s, the duration of the operation and the proposed day and times, any full or partial road closures required to erect or remove the crane/s and appropriate Traffic Control Plans (TCPs) prepared by an approved RMS Red or Orange Card holder.
- m) Make provision for all materials, plant, etc. to be stored within the development site at all times during construction.
- n) State that any oversized vehicles proposed to operate on Council property (including Council approved Works Zones) will attain a Permit to StandPlant on each occasion (Note: oversized vehicles are vehicles longer than 7.5m or heavier than 4.5T.)
- o) Show the location of any proposed excavation and estimated volumes.
- p) When demolition, excavation and construction works are to be undertaken on school days, all vehicular movements associated with this work must only be undertaken between the hours of 9.30am and 2.30pm, in order to minimise disruption to the traffic network during school pick up and drop off times.
- q) Show the location of all Tree Protection (Exclusion) zones (Note: storage of building materials or access through Reserve will not be permitted without prior approval by Council).

Notes:

- A minimum of eight weeks will be required for assessment. Site work must not commence until the Construction Management Plan is approved.
- Failure to comply with this condition may result in fines and proceedings to stop work.
- Council and NSW Police approval is required prior to a partial or full temporary road closure.
 If you are seeking a partial or full temporary road closure you must comply with the relevant conditions of this consent and you must also gain the approval of the Eastern Suburbs Police Area Command.
- If you partial or full close a road without compliance with Council and NSW Police requirements Council Rangers or the Police can issue Penalty Infringement Notices or Court Attendance Notices leading to prosecution.
- Traffic Supervisors at the Eastern Suburbs Police Area Command can be contacted on eastsubtraffic@police.nsw.gov

Condition Reason: To facilitate the efficient operation of construction projects, minimise traffic disruption, and protect the public, and the surrounding environment, during site works and construction.

B. 2. Works (Construction) Zone – Approval and Implementation

If the Construction Management Plan relies upon a Works Zone, before any site work commences, a Works Zone application must be made.

If the works zone is approved, all fees for the Works Zone must be paid before it can be installed.

All Works Zone signs must have been erected by Council to permit enforcement of the Works Zone by Council's Rangers and NSW Police before commencement of any site work. Signs are not erected until full payment of Works Zone fees is made.

Notes:

- A minimum of four to six weeks must be allowed (for routine applications) from the date of
 making an application to the Traffic Committee (Woollahra Local Traffic Committee)
 constituted under clause 20 of the Transport Administration (General) Regulation 2018 to
 exercise those functions delegated by Transport for New South Wales under section 31(3) of
 the Transport Administration Act 1988.
- The enforcement of the Works Zone is at the discretion of Council's Rangers and the NSW Police Service. Any breach of the Works Zone must be reported to either Council or the NSW Police Service.

Condition Reason: To facilitate the efficient operation of construction projects and to minimise traffic disruption.

C. ON COMPLETION OF REMEDIATION WORK

Nil.

D. BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Nil.

E. BEFORE BUILDING WORK COMMENCES

Nil.

F. DURING BUILDING WORK

F 1. Compliance with Construction Management Plan

While site work is being carried out, all development activities and traffic movements must be carried out in accordance with the approved Construction Management Plan (CMP). All controls in the CMP must be maintained at all times. A copy of the CMP must be kept on-site at all times and made available to the Principal Certifier on request.

Notes:

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

Condition Reason: To ensure compliance with the Construction Management Plan.

Planning Portal - Traffic - Re-Referral Response - DA20233011 - 464 Oxford Street PADDINGTON

G. BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Nil.

H. OCCUPATION AND ONGOING USE

Н	1.	Operation in Accordance with Operation Traffic Management Plan (OTMP)
		During the occupation and ongoing use:
		 a) The delivery and waste collection operations shall be in accordance with the operational traffic management plan submitted in the Amended Operational Plan of Management, prepared by BMA Urban dated 11 March 2024; b) The delivery and waste collection vehicles attending the site must not impede safe access to the neighboring properties at all times.

Condition Reason: To maximise road safety and performance.

I. BEFORE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

Nil.

J. BEFORE SUBDIVISION WORK COMMENCES

Nil.

K. BEFORE ISSUE OF A SUBDIVISION CERTIFICATE (subdivision works)

Nil

L. BEFORE ISSUE OF A SUBDIVISION CERTIFICATE (no subdivision works)

Nil.

M. BEFORE ISSUE OF A STRATA CERTIFICATE

Nil.

Ever Fang Traffic & Transport Team Leader 17/05/2024 Completion Date

Completion Date: 2 February 2024

REFERRAL RESPONSE - TRAFFIC

FILE NO: Development Applications: 301/2023/1 ADDRESS: 464 Oxford Street PADDINGTON

PROPOSAL: Alterations and additions to the existing building and change of use

from retail to a licensed restaurant

FROM: Ms E Fang

TO: Mr S Grevler-Sacks

I refer to the memo from the Planning Department dated 6 September 2023 requesting comments in relation to the above.

1. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environmental Effects, referenced SRG-175/23, prepared by BMA Urban, dated 18 August 2023;
- Waste Management Plan, unreferenced, prepared by Jim Apostolou, dated 17 August 2023;
- Operational Plan of Management, unreferenced, prepared by BMA Urban, dated August 2023;
- Traffic and Parking Assessment Report, referenced 23137, prepared by CJP Consulting Engineers, dated 17 August 2023;
- Floor Space Calculations, Issue 2 Rev A, referenced Drawing No.A1401, prepared by BJB Architects, dated 31 October 2023;
- Architectural Drawings, Issue 1, referenced Job 2023-019, prepared by BJB Architects, dated 18 August 2023.

2. ISSUES

Waste collection.

3. ASSESSMENT

3.1 Parking Provision

The parking provision for the proposed development has been assessed in accordance with Council's DCP 2015 Chapter E1 Parking and Access.

It is understood that the proposal includes change of use from a retail premise to a licenced restaurant for the ground floor level within an existing building. No additional off-street car parking is required for this proposal, as per E1.8.4 of Council's DCP.

In addition, the proposal does not result in change of onsite bicycle or motorbike parking requirements to the existing use. Retaining the current parking arrangements are deemed satisfactory.

3.2 Traffic Generation

Traffic generation from the proposed development has been calculated in accordance with RMS Guide to Traffic Generating Developments 2002, and RMS Guide to Traffic Generating Developments Updated traffic surveys TDT 2013/04a.

Existing Development

Retail - Specialty shops

- Weekday peak hour vehicle trips: 80.41m² x 0.75 x 5.6 per 100m² GLFA = 6.5 trips
- Daily vehicle trips: 80.41m² x 0.75 x 55.5 per 100m² GLFA= 33.5 trips

Proposed Development

Restaurant

- Weekday peak hour vehicle trips: 80.41 x 5 per 100m² GFA = 4.0 trips
- Daily vehicle trips: 80.41m² x 60 per 100m² GFA= 48.3 trips

Net Increase

- Weekday peak hour vehicle trips = -2.5 trips
- Daily vehicle trips = 14.8 trips

Based on the calculations above, the proposal will not create significant increase of traffic than the existing use and is unlikely to generate unacceptable adverse impacts on the surrounding road network in terms of traffic flow safety and efficiency.

3.3 Service Vehicles

It is understood that deliveries will be undertaken by light commercial vehicles using nearby available on-street parking spaces and the loading zone in close vicinity, as per the existing.

It is understood that waste collection will continue to be undertaken by private contractor using a small rigid garbage truck, however given the change of use, more information should be provided as where and how frequently the collection would occur.

4. RECOMMENDATION

Council's Traffic Engineer has reviewed the application and recommend that the development not be supported at this stage until the following issues are addressed:

 Service Vehicles – Considering the change of use, more information should be provided as where and how frequently the waste collection would occur.

Ever Fang Traffic & Transport Engineer 02/02/2024

Completion Date



5 September 2023

REFERRAL RESPONSE - DRAINAGE

FILE NO: Development Applications: 301/2023/1

ADDRESS: 464 Oxford Street PADDINGTON 2021

PROPOSAL: Alterations and additions to the existing building and change of use

from retail to a licensed restaurant

FROM: Michael Casteleyn

TO: Mr S Grevler-Sacks

1. ISSUES

None.

2. DOCUMENTATION

I refer to the following documents received for this report:

23/155118 plan - Architectural - DA2023/301/1 - 464 Oxford Street PADDINGTON

3. ASSESSMENT

The DA submission has been reviewed

4. RECOMMENDATION

Council's Drainage Engineer has determined that the proposal is satisfactory, subject to the following conditions:

D 1. Flood Protection

Before the issue of any construction certificate, the construction certificate plans and specifications required under clause 7 of the Development Certification and Fire Safety Regulation, must include a Flood Risk Management Plan on the basis of the Flood Planning Level (FPL).

Flood Warning:

 a) A permanent flood risk management plan shall be installed in an area frequented by the occupants such as the Kitchen,

Flood Proof Material

 a) Flood compatible materials shall be used for all flood exposed construction,

Page 1 of 2



Electricals

a) All flood exposed electrical wiring and equipment shall be waterproofed, Flood protection is to comply with Woollahra DCP 2015, Part E General Controls for All Development, Chapter E2 –Stormwater and Flood Risk Management.

Notes:

The revised driveway profile, gradients and transitions must be in accordance with Australian Standard 2890.1, Part 1: Off-street car parking. The driveway profile submitted to Council must contain all relevant details: reduced levels, proposed grades and distances. Council will not allow alteration to existing reduced levels within the road or any other public place to achieve flood protection.

Condition Reason: To ensure the development incorporates flood inundation protection measures.

Michael Casteleyn 5/09/2023

Drainage Engineer **Completion Date**



9 May 2024

REFERRAL RESPONSE - FIRE SAFETY

FILE NO: Development Applications: 301/2023/1

ADDRESS: 464 Oxford Street PADDINGTON 2021

PROPOSAL: Alterations and additions to the existing building and change of use

from retail to a licensed restaurant

FROM: A Wang

TO: Mr V Aleidzans

1. ISSUES

• The existing building is not submitting annual fire safety statement which could indicate that it is deficient in fire safety measures and egress concerns.

2. DOCUMENTION

I refer to the following documents received for this report:

- Statement of Environment Effects, referenced 175/23 prepared by BMA Urban, dated 18/08/23.
- Architectural Plans, referenced A1011-A1012, A1101, A1111, A1121, A1201-A1203 & A1301-A1302, prepared by BJB Architects, dated 18.08.2023,
- BCA Assessment Report, referenced 23117.2-BCA, prepared by Nest Consulting Group, dated 18 August 2023,
- Building Upgrade Strategy Report, referenced 23117.2-USR, prepared by Nest Consulting Group, dated 18 August 2023.

3. RESEARCH

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

• A site inspection was carried out on the following date: 26 September 2023

4. LEGISLATION

A Building Code of Australia (BCA) assessment of this development application is required to satisfy the following statutory provisions of the *Environmental Planning & Assessment Regulation 2021*.

- Clause 62 Change of Use 'Fire safety and other considerations'
 - Category 1 fire safety provisions required
- ☐ Clause 64 'Consent authority may require buildings to be upgraded'

Page 1 of 4



- Compliance with the BCA if more than 50% of the volume has been changed in the last 3
 years
- Fire safety to protect persons using the building and facilitate their egress from the building as well as restricting the spread of fire from the building to other buildings
- Clause 63 'Fire safety and other considerations applying to erection of temporary structures'
 - fire protection and structural capacity of the structure will be appropriate to the proposed
 use of the structure, and the ground or other surface on which the structure is to be
 erected will be sufficiently firm and level to sustain the structure while in use.

5. BUILDING DESCRIPTION

Type of Construction: C

Class: 4 & 6

Number of Storeys: 2

Rise in Storeys: 2

Effective Height: < 12 metres

6. ASSESSMENT

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

7. RECOMMENDATION

Council's Fire Safety Officer has determined that the proposal is satisfactory, subject to the following conditions:

A. GENERAL CONDITIONS

Nil

B. BEFORE DEMOLITION WORK COMMENCES

Nil

C. ON COMPLETION OF REMEDIATION WORK

Nil

D. BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

D	1.	Building Upgrade (clause 64 of the Regulation)	
		Before the issue of any construction certificate, the construction certificate plans and specification required to be submitted to the Principal Certifier,	
		under clause 7 of the Development Certification and Fire Safety Regulation	

Page 2 of 4



must ensure the existing building is brought into total or partial conformity with the BCA, by detailing all building upgrade works required by this condition.

The Principal Certifier must be satisfied that such work, to be implemented as part of the development, will upgrade the building to bring it into compliance with the following provisions of the BCA as in force at the date of the construction certificate application:

a) upgrade work required by Building Upgrade Strategy Report, referenced 23117.2-USR, prepared by Nest Consulting Group, dated 18 August 2023

Notes:

- · The measures contained in the building are inadequate:
 - a) to protect persons using the building, and to facilitate their egress from the building, in the event of fire, and/or
- b) to restrict the spread of fire from the building to other buildings nearby.
- The Principal Certifier issuing the construction certificate has no power to remove the requirement to upgrade the existing building as required by this condition. Where this conditions specifies compliance with performance requirements of the BCA the Principal Certifier, subject to their level of accreditation, may be satisfied as to such matters. Where this condition specifies compliance with prescriptive (Deemed-to-Satisfy) provisions of the BCA these prescriptive requirements must be satisfied and cannot be varied unless this condition is reviewed Part 8 Division 8.2 or amended under section 4.55 of the Act.
- This condition does not set aside the Principal Certifier's responsibility to ensure compliance with clause 14 of the Development Certification and Fire Safety Regulation in relation to Fire Protection and Structural Adequacy.

Condition Reason: To ensure that, in accordance with clause 64 of the Regulation, that the existing building be upgraded to total or partial conformity with the BCA.

E. BEFORE BUILDING WORK COMMENCES

Nil

F. DURING BUILDING WORK

Nil

G. BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

G 1. Fire Safety Certificates

Before the issue of any occupation certificate to authorise a person:

- a) to commence occupation or use of a new building, or
- b) to commence a change of building use for an existing building, the Principal Certifier must be satisfied that a final fire safety certificate has been issued for the building.

Notes:

In this condition:

interim fire safety certificate has the same meaning as it has in Part 11 of the Development Certification and Fire Safety Regulation.

Page 3 of 4



final fire safety certificate has the same meaning as it has in Part 11 of the Development Certification and Fire Safety Regulation. *new building* has the same meaning as it has in section 6.1 of the Act.

Condition Reason: To ensure that a final fire safety certificate is issued prior to occupation.

H. OCCUPATION AND ONGOING USE

H 1. Annual Fire Safety Statements (Class 1b to 9c buildings inclusive)

During the occupation and ongoing use, each year, an annual fire safety statement must be provided to Council and the Commissioner of Fire and Rescue NSW. The annual fire safety statement must be prominently displayed in the building.

Notes

- essential fire safety measure has the same meaning as in Schedule 2 of the Development Certification and Fire Safety Regulation.
- annual fire safety statement has the same meaning as in clause 88 of the Development Certification and Fire Safety Regulation.
- Visit Council's website for additional information in relation to fire safety www.woollahra.nsw.gov.au.

Condition Reason: To ensure public safety.

A Wang Fire Safety Officer 9 May 2024 **Completion Date**



8 March 2024

REFERRAL RESPONSE - ENVIRONMENTAL HEALTH

FILE NO: Development Applications: 301/2023/1

ADDRESS: 464 Oxford Street PADDINGTON 2021

PROPOSAL: Alterations and additions to the existing building and change of use

from retail to a licensed restaurant

FROM: Jasmine Sutrina

TO: Mr V Aleidzans

1. ISSUES

- · Acoustics licenced restaurant
- · Ventilation and exhaust

2. DOCUMENTION

I refer to the following documents received for this report:

- Architectural Plans, prepared by BJB Architects, dated 18/08/2023
- Noise Impact Assessment, 230402, prepared by Pulse White Noise Acoustics, dated 16/08/2023.
- Operational Plan of Management ("Federicas"), BMA Urban, dated 08/2023.

3. RESEARCH

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

• A site inspection was carried out on the following date: #Insert/delete as appropriate

4. SUMMARY OF PROPOSAL

 Additions and alterations to existing ground level commercial building (retail / office), to convert the building into a licenced restaurant venue with a maximum capacity of 46 patrons.

The proposed development is proposing to operate from:

- Monday Friday: 5pm midnight
- Saturday Sunday: 12pm midnight

Page 1 of 16



5. ASSESSMENT

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

a) Acoustics

Environmental Health - Review

Review of Noise Impact Assessment, prepared by Pulse White Noise Acoustics, dated 16/08/2023.

An acoustic report was prepared by PWMA to assess the noise emissions associated with the alterations and change of use from an existing commercial retail/office building into a licensed restaurant.

As part of the acoustic review unattended noise monitoring was conducted at the rear awning of the northwestern boundary of the subject site from 26th of July to 8th of August 2023. Noise measurements recorded were processed in accordance with the NSW EPA's Noise Policy for Industry 2017, for the daytime, evening and nighttime period (see table 1). Recordings of the single octave (1/1) noise spectra for each day, evening and night period, were also taken to later establish the patron and music acoustic criteria as per NSW Liquor and Gaming requirements (see table 2).

The acoustic report adopts a range of criteria's to assess the noise emissions associated with operation of the site upon surrounding receivers.

The NSW EPA Noise Policy for Industry 2017, intrusive, amenity and maximum noise level event criteria's were adopted in assessing impacts upon nearby receivers.

Section 5.1.3 refers to the intrusive and amenity criteria's, as derived from the measurement data, used to establish project specific external noise emission levels for mechanical plants upon (see table 4). It is noted that a maximum noise level criterion of 52 dB(A) LAFmax was established for the night period (10:00pm to 7:00am) at residential receivers.

With respect to the proposed licensed premises operational noise impacts, i.e. noise from patrons and background music, the NSW Liquor & Gaming Acoustic Requirements L10 Criteria were adopted (see table 5).

As part of the acoustic assessment, the following parameters were adopted:

- For the purpose of this assessment, it is assumed that a single person speaking with a
 raised voice has a Sound Power Level (Lw) of 76 dBA. This has been formulated in
 accordance with the published noise levels from Klark Teknik (The Audio System Designer
 Technical Reference, Chapman Partnership). This represents a conservative assessment
 approach.
- It is assumed that there are a maximum of 46 patrons within the restaurant dining area;
- It is assumed that one in two patrons are talking at any one time, which is a conservative assumption;
- Internal music is being played within the restaurant seating area with a sound pressure level of 75 dB(A);
- All operable windows and doors to external seating areas are to be closed during all
 proposed operational hours

Page 2 of 16



Section 6.1.2 refers to the predicted licensed venue noise levels from patron and music noise (see table 6). According to the noise modelling, the noise emissions are expected to be complaint as per the established NSW Liquor & Gaming Acoustic Requirements acoustic criteria.

Section 6.1.3 refers to recommendations which are to be implemented to ensure the noise emissions are compliant as per the acoustic criteria.

Regarding mechanical plants, it is noted that plant selections and locations have yet to be determined. The report however provides mechanical plant options adopted by similar projects which are expected to achieve compliance as per the section 5.1.3.

The report further advises details of the required mechanical services equipment and acoustic treatments to ensure the relevant noise level criteria is achieved will be provided as the CC submission of the project.

Environmental Health - Conclusion

Environmental Health Unit has concerns regarding the operational and mechanical plant impacts associated with the proposed development. Specifically regarding the intertenancy noise transmissions from the proposed licensed to the directly above shop top residences. Predicted noise levels were included as part of the acoustic assessment, however further clarification is required detailing how these levels were determined. It is noted that management controls have been outlined in section 6.1.3 of the report as means of attenuating noise emissions, however no reference is made regarding the potential transmission and reduction of noise and vibrations through ceiling, floors and walls.

In light of the proposed trading hours and potential top shop residence, it is expected that further details be provided regarding existing and intended sound insulations and attenuations to ensure noise impacts from operational and mechanical plant noise are appropriately addressed.

As per the acoustic report, plant locations and selections have yet to be determined, however the Architectural Plans, prepared by BJB Architects (18/08/2023), places the proposed exhaust at the rear of the subject site, flush to the above top shop residence. Further clarification and affirmation is required regarding plant locations and/or selections.

Section 6.1.4 of the report, provides a brief assessment of the proposed mechanical plant as based on a 'proof of concept approach'. With respect to the nearby residential receivers, particularly the above top shop residences, further assessment of the cumulative mechanical plant emissions by way of predicted noise modelling is required.

Environmental Health Unit notes these areas of concerns for mechanical plants and acoustic treatments are to be further assessed and the CC submission stage of the project. The Environmental Health Unit is satisfied with this proposal, provided these raised issues of intertenancy noise intrusions from licenced restaurant operations and mechanical plant emissions are also be addressed at the CC stage by way of a detailed acoustic assessment involving further noise modelling.

i) Ventilation

Environmental Health Unit has concerns regarding the positioning of the aforementioned exhaust, and the corresponding kitchen, toilet and air conditioning exhaust ventilation emissions achieving compliance with Part F.4 of the BCA or clause 3.8.4 and 3.8.5 of the BCA Housing Provisions,

Page 3 of 16



inclusive of AS 1668.1, AS 1668.2 and AS/NZS 3666.1. Further details should be prepared with respect to this matter at the CC stage.

6. RECOMMENDATION

Council's Environmental Health Officer has determined that the proposal is satisfactory, subject to the following conditions:

See comment made in section 5 of the report.

A. GENERAL CONDITIONS

A. 1. Approved Plans and Supporting Documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with both the architectural plans to which is affixed a Council stamp "Approved" and supporting documents listed below unless modified by any following condition.

Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author	Date
	Acid Sulphate Soil Management Plan		
230402	Noise Impact Assessment	Pulse White Noise Acoustics	16/08/2023
	Architectural Plans		
	Contaminated Land - Initial Site Investigation Report (Stage 1)		
	Contaminated Land - Detailed Site Investigation Report (Stage 2)		
	Contaminated Land - Remedial Action Plan (Stage 3)		
	Plan of Management		
	Noise Management Plan		

Notes:

- Warning to Principal Certifier You must always insist on sighting the original Council stamped approved plans. You must 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 plans.
- These plans and supporting documentation may be subject to conditions imposed under section 4.17(1)(g) of the Act modifying or amending the development.

Condition Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

B. BEFORE DEMOLITION WORK COMMENCES

Page 4 of 16



C. ON COMPLETION OF REMEDIATION WORK

D. BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

D	1.	Waste Storage – Commercial
		Before the issue of any construction certificate, the construction certificate plans and specifications required by clause 7 of the Development Certification and Fire Safety Regulation, must make provision for: a) A dedicated and enclosed waste and recycling storage area behind the building line or within non-habitable areas of the building.
		Condition Reason: To ensure a waste and recycling storage area is provided.

D	2.	Light and Ventilation



Before the issue of any construction certificate, the construction certificate plans and specifications required under clause 7 of the Development Certification and Fire Safety Regulation, must detail all lighting, mechanical ventilation or air-conditioning systems complying with Part F.4 of the BCA or clause 3.8.4 and 3.8.5 of the BCA Housing Provisions, inclusive of AS 1668.1, AS 1668.2 and AS/NZS 3666.1.

If an alternate solution is proposed then the construction certificate application must include a statement as to how the performance requirements of the BCA are to be complied with and support the performance based solution by expert evidence of suitability.

This condition does not set aside the mandatory requirements for 'Legionella Control' under the Public Health Act 2010 and Public Health Regulation 2022 in relation to regulated systems. This condition does not set aside the effect of the Protection of the Environment Operations Act 1997 in relation to offensive noise or odour.

Notes:

- Clause 69 of the Regulation requires compliance with the BCA. Clause 19 of the Development Certification and Fire Safety Regulation prevents the issue of a construction certificate unless the Principal Certifier is satisfied that compliance has been achieved.
- Part 3, Division 1 of the Development Certification and Fire Safety Regulation details what information must be submitted with any construction certificate. It is the Applicant's responsibility to demonstrate compliance through the construction certificate application process.
- Applicants must also consider possible noise and odour nuisances that may arise.
 The provisions of the Protection of the Environment Operations Act 1997 have overriding effect if offensive noise or odour arises from the use.
- Applicants must pay attention to the location of air intakes and air exhausts relative
 to sources of potentially contaminated air and neighbouring windows and air intakes
 respectively, see section 2 and 3 of AS 1668.2.

Condition Reason: To ensure the development is provided with adequate light and ventilation.

D 3. Acoustic Certification of Mechanical Plant and Equipment

Before the issue of any construction certificate, the construction certificate plans and specifications required under clause 7 of the Development Certification and Fire Safety Regulation, must be accompanied by a certificate from a professional acoustic engineer certifying that the noise level measured at any boundary of the site at any time while the proposed mechanical plant and equipment is operating will not exceed the background noise level. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed background noise level, at any time.

The background noise level is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed

Page 6 of 16



For assessment purposes the background noise level is the LA90, 15 minute level measured by a sound level meter.

Where sound attenuation is required this must be detailed.

Notes

- Further information including lists of Acoustic Engineers can be obtained from:
 - Australian Acoustical Society professional society of noise-related professional www.acoustics.asn.au
 - Association of Australian Acoustical Consultant professional society of noise related professionals www.aaac.org.au

Condition Reason: To ensure the development does not result in any unreasonable acoustic impacts.

D 4. Food Premises – Construction Certificate Plans and Specifications

Before the issue of any construction certificate, the person with the benefit of this consent must submit to Council details for the construction and fit out of the food premises. Such details must demonstrate compliance with the Food Act 2003, Food Regulation 2015, and the Food Standards Code as published by Food Standards Australia and New Zealand and Australian Standard AS 4674: Construction and fit out of food premises.

No construction certificate relating to the construction or fitout of food premises must be issued until Council's Environmental Health Officer has advised in writing that the plans and specification are considered satisfactory.

The details for the construction and fit out of food premises, as considered satisfactory by Council's Environmental Health Officer must form part of any construction certificate.

Notes:

The assessment of food premises fitout plans and specifications is subject to an
adopted fee. The construction and fitout of food premises is not listed under clause
73 of the Development Certification and Fire Safety Regulation as a matter that a
Principal Certifier may be satisfied as to. Hence, the detailed plans and
specifications must be referred to Council and be to Council's satisfaction prior to
the issue of any construction certificate for such works.

Condition Reason: To ensure that the food premises fitout plans and specifications are assessed and approved by Council.

D 5. Noise Control - Hydraulic Noise Control-Sound Insulation Rating of Services

Page 7 of 16



Before the issue of any construction certificate, the requirements of the Building Code of Australia BCA Clause F5.6: *Ducts, Hot and Cold Domestic Water, Stormwater, Soil and Waste Pipes,* which serves or passes through more than one sole occupancy unit must be separated from habitable rooms (other than a kitchen) in any other sole occupancy unit by a weighted sound reduction index + traffic noise spectrum adaptation term of not less than 40 if it is adjacent to a habitable room, and 25 if it is adjacent to a wet area (bathroom, laundry etc.) or kitchen.

Details are to be provided by the applicant clearly indicating how this requirement will be achieved in respect to controlling hydraulic noise emission to adjoining habitable rooms.

Condition Reason: To ensure the development does not result in any unreasonable acoustic impacts.

D 6. Noise Control - Acoustic Protection of adjoining residential units-Operation of Air Conditioning Plant

Before the issue of any construction certificate, the applicant must ensure that the operation of the proposed Air Condition System and associated plant does not create interior noise intrusion and vibration to occur within any adjoining residential unit.

Condition Reason: To ensure the development does not result in any unreasonable acoustic impacts.

D 7. Ventilation - Kitchen Exhaust- Smoke & Odour Control

Before the issue of any construction certificate:

- a) As the discharge of air from the kitchen exhaust ventilation system(s) is considered an obnoxious discharge under Section 3.7 of Australian Standard 1668.2-1991, the ductwork serving the proposed kitchen exhaust system(s) shall be arranged vertically with a discharge velocity of not less than 5 m/s and be situated at least 1 m above the ridge of a pitched roof or 3 m above the flat of the building.
- b) All exhaust air and spill air shall be discharged to atmosphere in such a manner as not to cause a danger or nuisance to occupants in the building, occupants of neighbouring buildings or members of the public.
- c) The design, construction and installation of the kitchen exhaust hood(s) shall comply with the requirements of Appendix E, 'Kitchen Exhaust Hoods' of AS 1668.2-1991 and Appendix F, 'Capture of Emissions By Kitchen Exhaust Hoods' of AS 1668.2-1991.
- d) A Smoke & Odour Impact Assessment Report is to be prepared by a suitably qualified engineer detailing the design specification of the proposed kitchen exhaust system, including all smoke and odour inhibiting controls and filtering systems.

Page 8 of 16



e) The Construction Certificate plans and specifications, required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation, must detail all the kitchen exhaust ventilation system(s), including all smoke and odour controls and filtering systems. Upon completion and prior to occupation of the premises, the kitchen exhaust ventilation system(s) shall be certified by a qualified engineer that the system(s) has been installed in accordance with AS 1668.1 and AS 1668.2 and the design specification as detailed in the Smoke & Odour Impact Assessment Report.

Condition Reason: To ensure the development does not result in any unreasonable exhaust, smoke or odour impacts.

D 8. Ventilation - Internal Sanitary Rooms

Before the issue of any construction certificate, all internal sanitary rooms and laundry facilities not provided with natural ventilation must be provided with a system of mechanical exhaust ventilation in accordance with *Table B1 Minimum Exhaust Ventilation Flow Rates of AS 1668.2-1991*. Details of any proposed mechanical ventilation system(s) must be submitted with the Construction Certificate plans and specifications to the Certifying Authority demonstrating compliance with AS 1668 Parts 1 & 2.

Condition Reason: To ensure the development is adequately ventilated.

E. BEFORE BUILDING WORK COMMENCES

F. DURING BUILDING WORK

F 1. Hours of Work –Amenity of the Neighbourhood

While site work is being carried out:

- a) No work must take place on any Sunday or public holiday.
- b) No work must take place before 7am or after 5pm any weekday.
- c) No work must take place before 7am or after 1pm any Saturday.
- d) The following work must not take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday:
 - piling,
 - piering,
 - rock or concrete cutting, boring or drilling,
 - rock breaking,
 - rock sawing,
 - · jack hammering, or
 - machine excavation.
- e) No loading or unloading of material or equipment associated with the activities listed in part d) above must take place before 9am or after 4pm

Page 9 of 16



- any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.
- f) No operation of any equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.
- g) No rock excavation being cutting, boring, drilling, breaking, sawing , jack hammering or bulk excavation of rock, must occur without a 15 minute interval break within every hour.

Notes:

- 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.
- Each and every breach of this condition by any person may be subject to a separate penalty infringement notice or prosecution.
- The delivery and removal of plant, equipment and machinery associated with wide loads subject to Transport for NSW and NSW Police restrictions on their movement outside the approved hours of work will be considered on a case by case basis.
- 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 2017.
- NSW EPA Noise Guide is available at www.epa.nsw.gov.au/noise/nglg.htm

Condition Reason: To mitigate the impact of work upon the amenity of the neighbourhood.

F 2. Dust Mitigation

While site work is being carried out, dust mitigation must be implemented in accordance with "Dust Control - Do it right on site" and the accompanying facts sheets published by the Southern Sydney Regional Organisation of Councils.

This generally requires:

- h) Dust screens to all hoardings and site fences.
- i) All stockpiles or loose materials to be covered when not being used.
- j) All equipment, where capable, being fitted with dust catchers.
- k) All loose materials being placed bags before placing into waste or skip bins.
- I) All waste and skip bins being kept covered when not being filled or emptied.
- m) The surface of excavation work being kept wet to minimise dust.
- Landscaping incorporating trees, dense shrubs and grass being implemented as soon as practically possible to minimise dust.

Notes

- "Dust Control Do it right on site" and the accompanying factsheets can be downloaded from Council's website www.woollahra.nsw.gov.au
- Special precautions must be taken when removing asbestos or lead materials from development sites. Additional information can be obtained from

Page 10 of 16



www.safework.nsw.gov.au and www.epa.nsw.gov.au. Other specific conditions and advice may apply.

 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.

Condition Reason: To mitigate the impact of dust upon the amenity of the neighbourhood and prevent water pollution.

F 3. Food Premises – Construction and Fitout

While site work is being carried out, all construction and fitout of the food premises must comply with the details for the food premises submitted to and considered satisfactory by Council's Environmental Health Officer but no less compliant than with the Food Act 2003, Food Regulation 2015, the Food Standards Code as published by Food Standards Australia and New Zealand and AS 4674: Construction and fit out of food premises.

Condition Reason: To protect public health and ensure that food premises are easily maintained in a clean condition fit for food preparation and consumption.

G. BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

G 1. Food Premises - Inspection and Registration

Before the issue of any occupation certificate or occupation or use of any food premises:

- a) an inspection of the fit out of the food premises must be arranged with Council's Environmental Health Officer,
- b) a satisfactory final inspection must have been undertaken by Council's Environmental Health Officer, and
- c) the food premises must be registered (notification of conduct) under section 100 of the Food Act 2003.

Notes:

- To notify conduct of a food business, Councils approved form can be accessed at: https://www.woollahra.nsw.gov.au
- · Inspections are subject to payment of the adopted inspection fee.
- Section 100 of the Food Act 2003 requires: "100 Notification of conduct of food businesses The proprietor of a food business must not conduct the food business unless the proprietor has given written notice, in the approved form, of the information specified in the Food Safety Standards that is to be notified to the appropriate enforcement agency before the business is conducted. Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation."

Page 11 of 16



- Principal Certifiers are unable to issue compliance certificates in relation to compliance with the Food Act 2003, Food Regulation 2015; the Food Standards Code and the Australian Standard AS 4674: Construction and fit out of food premises since these are not matters which an Principal Certifier can be satisfied in relation to under clause 73 of the Development Certification and Fire Safety Regulation.
- This condition can only be satisfied following an inspection and sign off from Council's Environmental Health Officers.

Condition Reason: To ensure food premises accord with food safety and public health requirements.

G 2. Maintenance of the Kitchen Exhaust

Before the issue of any occupation certificate, the proprietor(s) of the subject site shall enter into a contract agreement for the regular maintenance and cleaning of the odour control units and filtering systems. A copy of the contract agreement shall be made available to Council's Health Services Section prior to the occupation of the building.

Condition Reason: To ensure the kitchen exhaust is maintained.

H. OCCUPATION AND ONGOING USE

H 1. Trading Hours

During the occupation and ongoing use, trading hours are limited to:

- a) Monday to Friday: 5pm midnight
- b) Saturday and Sunday: 12pm midnight

Notes:

- c) This condition does not apply to deliveries to, or dispatches from, the site of wholesale goods or internal activities that occur under the approved hours of use.
- d) General use and deliveries or dispatches may be restricted by hours of use conditions.
- e) This condition does not restrict the operation of noise pollution laws.

Condition Reason: To mitigate amenity impacts upon the neighbourhood by commercial or retail trading including, but not limited to, external impacts associated with clients attending the site for business or otherwise.

H 2. Storage and Handling of Flammable and Combustible Liquids

Page 12 of 16



During the occupation and ongoing use, the storage and handling of flammable and combustible liquids must be in accordance with AS1940: The storage and handling of flammable and combustible liquids.

Condition Reason: To protect public safety.

H 3. Food Premises - Maintenance of Food Premises

During the occupation and ongoing use, the food premises must be maintained in accordance with the Food Act 2003, Food Regulation 2015; the Food Standards Code as published by Food Standards Australia and New Zealand and Australian Standard AS 4674: Construction and fit out of food premises.

Condition Reason: To protect public safety.

H 4. Outdoor Lighting – Commercial

During the occupation and ongoing use, outdoor lighting must comply with AS/NZS 4282: Control of the obtrusive effects of outdoor lighting. The maximum luminous intensity from each luminare and threshold limits must not exceed the level 1 control relevant under tables in AS/NZS 4282.

Notes:

Council may consider, subject to an appropriate Section 4.55 Application, relaxation
of this condition where it can be demonstrated, by expert report, that the level of
lighting in the existing area already exceeds the above criteria, where physical
shielding is present or physical shielding is reasonably possible.

Condition Reason: To protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting in public places.

H 5. Noise Control

During the occupation and ongoing use, the use of the premises must not give rise to the transmission of offensive noise to any place of different occupancy. Offensive noise is defined in the Protection of the Environment Operations Act 1997.

Notes:

- Council will generally enforce this condition in accordance with the Noise Guide for Local Government (www.epa.nsw.gov.au/your-environment/noise/regulatingnoise/noise-guide-local-government) and the NSW Industrial Noise Policy (www.epa.nsw.gov.au/your-environment/noise/industrial-noise) published by the NSW Environment Protection Authority. Other State Government authorities also regulate the Protection of the Environment Operations Act 1997.
- · Useful links:

Page 13 of 16



- Community Justice Centres—free mediation service provided by the NSW Government www.cjc.nsw.gov.au.
- NSW Environment Protection Authority— see "noise" section www.environment.nsw.gov.au/noise.
- NSW Government legislation- access to all NSW legislation, including the Protection of the Environment Operations Act 1997 and the Protection of the Environment Noise Control Regulation 2017 is available at www.legislation.nsw.gov.au.
- Australian Acoustical Society—professional society of noise related professionals www.acoustics.asn.au.
- Association of Australian Acoustical Consultants—professional society of noise related professionals www.aaac.org.au.
- Liquor and Gaming NSW—www.liquorandgaming.nsw.gov.au.

Condition Reason: To protect the amenity of the neighbourhood.

H 6. Maintenance of Sound Attenuation

During the occupation and ongoing use, sound attenuation must be maintained in accordance with the *Noise Impact Assessment*, 230402, prepared by Pulse White Noise Acoustics, dated 16/08/2023.

Condition Reason: To protect the amenity of the neighbourhood.

H 7. Noise from Licensed Premises

During the occupation and ongoing use, the LA10 noise level emitted from the licensed premises must not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8k Hz inclusive) by more than 5dB(A) between 07:00 am and 12:00 midnight at the boundary of any affected residence.

The LA10 noise level emitted from the licensed premises must not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz - 8k Hz inclusive) between 12:00 midnight and 07:00am at the boundary of any affected residence.

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

Notes

- dB(A) is a value used for 'A-weighted' sound pressure levels 'A' frequency weighting is an adjustment made to approximate the response of the human ear.
- licensed premises means premises licensed under the Liquor Act 2007.
- For the purposes of this condition, the LA10 is the A-weighted sound pressure level that is exceeded for 10% of the time over which a given sound is measured.
- The background noise level is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the LA90 level measured by a sound level meter over the applicable period.

Page 14 of 16



- This condition reflects the minimum standard condition imposed by the former Casino Liquor and Gaming Control Authority. Liquor & Gaming NSW or the Independent Liquor & Gaming Authority may specify other standards in respect of the above condition under the Liquor Act 2007, and associated Regulations. Section 79 of the Liquor Act 2007 provides an informal mechanism for complaints to be made (by residents, Police, local consent authorities and others) where the amenity of local neighbourhoods is unduly disturbed by the conduct of licensed premises including registered clubs (or their patrons). The Secretary of the Department of Industry is responsible for resolving such complaints and may impose temporary or permanent conditions on any licence. For more information go to Liquor and Gaming NSW website www.liquorandgaming.nsw.gov.au
- Interior noise levels of licensed premises which exceed safe hearing levels are not supported or condoned by Council.

Condition Reason: To protect the amenity of the neighbourhood.

H 8. Noise from Mechanical Plant and Equipment

During the occupation and ongoing use, the noise level measured at any boundary of the site at any time while the mechanical plant and equipment is operating must not exceed the background noise level. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed background noise level at any time.

The background noise level is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the LA90, 15 minute level measured by a sound level meter.

Notes:

Words in this condition have the same meaning as in the Noise Policy for Industry
(2017) www.epa.nsw.gov.au/your-environment/noise/industrial-noise/noise-policy-for-industry-(2017) and Noise Guide for Local Government (2013)
www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government

Condition Reason: To protect the amenity of the neighbourhood.

H 9. Maintenance of the Kitchen Exhaust log

During the occupation and ongoing use, a logbook detailing the schedule maintenance and cleaning of the odour control units and filtering systems shall be kept on the premises at all times and be made available for viewing by Council's Environmental Health Officer's as required.

Condition Reason: To protect the amenity of the neighbourhood.

Page 15 of 16



Jasmine Sutrina **Environmental Health Officer** 08/03/2024 Completion Date

Page 16 of 16