

Woollahra Local Planning Panel (Electronic Meeting)

Thursday 19 September 2024 at the Conclusion of the Public Meeting

Agenda



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 <u>records@woollahra.nsw.gov.au</u>

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

10 September 2024

To: Woollahra Local Planning Panel Members Chair Experts Community Representative

Dear Panel Members,

Woollahra Local Planning Panel (Electronic Meeting) – 19 September 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 19 September 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

ltem	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	DA124/2024/1 - 12 Kulgoa Road Bellevue Hill - 24/162152* *See Recommendation Page 43	7
D2	DA96/2024/1 - 30-36 Bay Street Double Bay - 24/160412********************************	87
D3	DA202/2024/1 - 40 Latimer Road, Bellevue Hill - 24/160832* *See Recommendation Page 186	159
D4	DA278/2024/1 - 451 New South Head Road Double Bay - 24/160534*******************************	297
D5	DA143/2024/1 - 144 Glenmore Road Paddington - 24/162560*******************************	329

LOCAL PLANNING PANEL DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D1
FILE No.	DA124/2024/1
ADDRESS	12 Kulgoa Road BELLEVUE HILL
COUNCIL WARD	Bellevue Hill
SITE AREA	435.7m ² (By calculation as per Survey)
ZONING	R2 Low Density Residential
PROPOSAL	Alterations and additions to existing dwelling
TYPE OF CONSENT	Local development
COST OF WORKS	\$1,000,188.00
DATE LODGED	18/04/2024
APPLICANT	Cave Urban Pty Ltd
OWNER	N J Linz
AUTHOR	Mr W Ou
TEAM LEADER	Mr T Wong
SUBMISSIONS	Nil.
RECOMMENDATION	Refusal

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 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; and
- The proposal is not in the public interest.

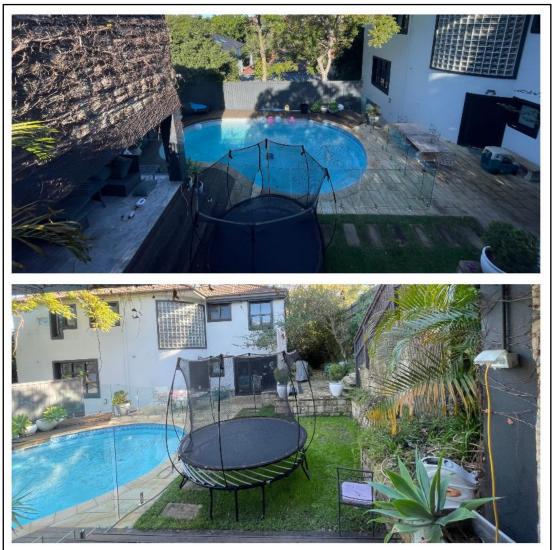
3. LOCALITY PLAN



Aerial view of subject site (Source: WMC)



Aerial view of subject site (Source: WMC)



Outlook of front setback area (Source: WMC)

PROPOSAL 4.

The proposal involves alterations and additions to the existing dwelling.

Specifically, a floor by floor description has been provided below as per the submitted Statement of **Environmental Effects:**

Lower Ground Floor (RL 40.63)

- "Reconfiguring the storage area and internal stairs on the Lower Ground Floor;
- Extending the external stairs on the north-western side of the Lower Ground Floor;
- Constructing new external stairs leading from the pedestrian gate at the south-eastern end of the site to the private open space area."

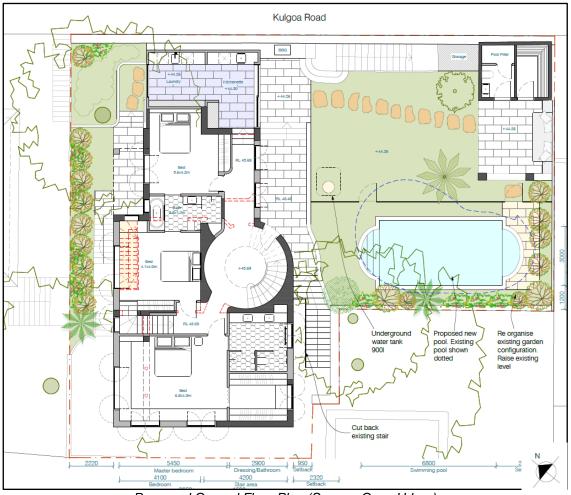


Proposed Lower Floor Plan (Source: Cave Urban)

Ground Floor – (RL 43.59)

- "Extending the Ground Floor to the front to accommodate a laundry, kitchenette and larger floor area for the front bedroom and reconfiguring the floor layout of the Ground Floor;
- Removing the existing swimming pool in the eastern part of the site and replacing it with a new swimming pool;
- Constructing an outdoor WC, storage for pool filter and storage room in the front eastern corner of the site at Ground Level, within the existing under croft area beneath the existing garage;
- New landscaping works to the private open space area in the eastern part of the site and around the perimeters of the dwelling;

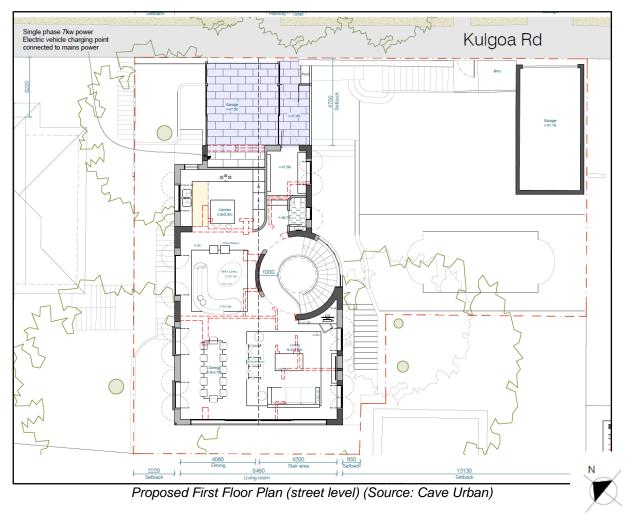
• Raising the level of the south-eastern part of the private open space to make the private open space area level."



Proposed Ground Floor Plan (Source: Cave Urban)

First Floor - (RL 46.76)

- "Extending the front part of the First Floor to the northwest and reconfiguring the floor layout of the First Floor;
- Removing the front part of the First Floor and constructing a new single garage at the northwestern end of the site and a new dwelling entry at the First Floor".



<u> Roof Plan – (RL 51.23)</u>

• No Roof plan was submitted.

Amended architectural plans were received on 02/07/2024 which included the following changes and clarifications:

- Accurate and consistent site area annotations
- Accurate gross floor area calculations

5. ISSUES

5.1 Primary Issues

Issue	Conclusion	Section
Non-compliance with the	Satisfactory – The submitted written request pursuant to	5.2, 13.3
Height of Buildings	Clause 4.6 of the WLEP 2014 is considered to be well	and 13.5
development standard	founded.	
Non-compliance with the	Satisfactory – The submitted written request pursuant to	5.2, 13.4
Floor Space Ratio	Clause 4.6 of the WLEP 2014 is considered to be well	and 13.5
development standard	founded.	
Chapter 2 – Vegetation in	Unsatisfactory – The proposal does not achieve the relevant	10.1 and
Non-rural Areas	objectives of these Parts.	13.10
& Part 6.9 Tree canopy cover		
in Zones R2 and R3		

Issue	Conclusion	Section
Chapter B1 – Bellevue Hill North Residential Precinct	Unsatisfactory – The proposal does not achieve the relevant Streetscape Character and Key Elements or Desired Future Character Objectives of this Part.	14.1
Part B3.2.3 – Front setback	Unsatisfactory – The proposal does not achieve the relevant objectives and controls of this Part.	14.2.1
Part B3.2.3 – Side setback	Unsatisfactory – The proposal does not achieve the relevant objectives and controls of this Part.	14.2.1
Part B3.5.1 – Streetscape	Unsatisfactory – The proposal does not achieve the relevant objectives and controls of this Part.	14.2.3
Part B3.5.4 – Visual Privacy	Unsatisfactory – The proposal does not achieve the relevant objectives and controls of this Part.	14.2.3
Part B3.6 – Onsite Parking	Unsatisfactory – The proposal does not achieve the relevant objectives and controls of this Part.	14.2.4
Chapter E1.10 Parking and Access Design Standards	Unsatisfactory – The application is recommended for refusal.	14.3.1 and 14.3.1.1
Chapter E3 Tree Management	Unsatisfactory – The application is recommended for refusal.	14.5

5.2 Exceptions to Development Standards in Woollahra Local Environmental Plan 2014

Clause	Development Standard	Departure from Control	Conclusion
Part 4.3	Height of Buildings – 9.5m	Existing dwelling:11.4m (1.9m or 20% departure from the 9.5m control) Proposed Height: 10.65 (1.15m or 12.1% departure from the 9.5m control)	Satisfactory*
Part 4.4E	Floor Space Ratio – 0.5:1 (217.85m ²)	Existing GFA/FSR: 270.9m ² (53.05m ² or 24.35% departure from the 217.85m ² control) Proposed GFA/FSR: 291.4m ² (73.55m ² or 33.76% departure from the 217.85m ² control)	Satisfactory*

*The submitted Clause 4.6 written request is considered to be well founded

5.3 Summary of Submissions

No submissions were received.

PROPERTY DETAILS AND REFERRALS

6. SITE AND LOCALITY

Physical features

The subject site is located at 12 Kulgoa Road, Bellevue Hill and is legally described as Lot B DP 365759. The site is on the southern side of Kulgoa Road between Kulgoa Lane to the west and Yamba Road to the east and is irregularly shaped with a northern street frontage of 24.384m to Kulgoa Road and a total site area of 435.7m².

Topography

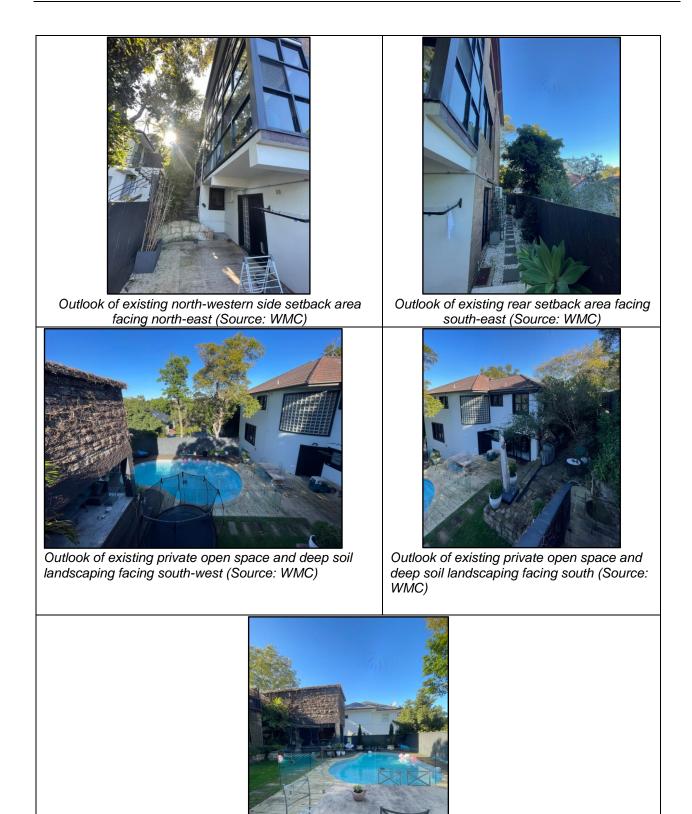
The site slopes approximately 4m front the front (north) of the site to the rear of the site (south).

Existing buildings and structures

The site is occupied by a 3-storey detached dwelling in the western part of the site and a swimming pool in the eastern part of the site which are both set below the street level. The site has existing vehicular access at the eastern end of the site leading from Kugloa Road to a detached single garage (located at street level).

Surrounding Environment

The site is located in Bellevue Hill North Precinct. The immediate locality is characterised by residential developments which generally range from 1-3 storeys in appearance.



Outlook of existing private open space and deep soil landscaping facing south-west (Source: WMC)

7. RELEVANT PROPERTY HISTORY

Divelling House Relevant Application History Nil. Relevant Compliance History Nil. Relevant Compliance History Nil. Requests for Additional Information On 01 May 2024 Council sent the applicant via the NSW Planning Portal a 'Stop the Clock Letter' dated 01 May 2024 requesting the following: "Revised Architectural Plans A preliminary assessment of the submitted architectural plans has identified the following issue which shall be submitted by the applicant prior to further assessment: a) Pursuant to Part B3.6 of the Council's DCP, only one driveway crossing per property will be permitted. In this regard, the applicant should replace the single garage with a double garage and construct a new 4m vehicular crossing where the centreline of the new crossing shall align with the centreline of the double garage. Revised architectural plans addressing the above issue shall be submitted to Council for further assessment." On 03 May 2024, Jennie Askin of aSquare Planning responded to the above via email providing the following response (Note: no revised architectural plans were submitted): "As with any non-compliance, we are requesting that Council consider this against the objectives of the control as part of the detailed assessment and in particular, undertake a site visit. In terms of the parking, we note the following: The existing garage is at the south-eastern end of the site and if this was altered to a double garage, it would have a significant impact on solar access to the private open space of the dwelling (see shadow diagrams provided). Whether parking is proposed in a double garage or two single garages, the proposal results in the loss of one on-street space only. There is therefore no benefit in providing the parking as proposed was to allow for reasonable amenity to the private open space of the dwelling two singles. The site has a frontage of more than 24m and the two driveways will be separated by more than 13m allow for a substantial consolidated nature strip to the front of the site. Much consideration	Current use
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	Land and Environment Court Appeal(s)
NII.	Nil.

8. **REFERRALS**

Referral	Summary of Referral Response	Attachment
Development Engineering	Unsatisfactory.	4
Trees and Landscaping	Unsatisfactory.	5

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. The likely impacts of that development:
 - i) Environmental impacts on the natural and built environments
 - ii) Social and economic impacts
- 8. The suitability of the site
- 9. Any submissions
- 10. The public interest

9. ADVERTISING AND NOTIFICATION

9.1 Submissions

The application was advertised and notified from 08/05/2024 to 23/05/2024 in accordance with Chapter 6 of the Woollahra Community Participation Plan. No submissions were received.

9.2 Statutory Declaration

The applicant has completed the statutory declaration dated 02/07/2024 declaring that the site notice for DA124/2024/1 was erected and maintained during the notification period in accordance with Schedule 1 of the Woollahra Community Participation Plan.

10. SEPP (BIODIVERSITY AND CONSERVATION) 2021

10.1 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 the WDCP 2015 is applicable.

An Arboricultural Impact Assessment has been provided with a total of four (4) non-prescribed trees removed with two (2) street trees to be adversely impacted.

Council's Tree and Landscape Officer has reviewed the application and do not support the proposal as the additional driveway crossing would result in adverse impact upon two existing street trees.

The proposed development therefore fails to preserve existing trees. This is further discussed in Section 13.10 and 14.5 below.

Accordingly, the proposed development is unacceptable with regards to Chapter 2 of the Biodiversity and Conservation SEPP as forms as **a reason for refusal.**

10.2 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.

Council's Development Engineer has reviewed the proposal and considers it to be satisfactory, subject to relevant Conditions of Consent.

Accordingly, the proposal will have no unreasonable impacts on the Sydney Harbour Catchment.

The proposal therefore satisfies the relevant criteria prescribed by Chapter 6 – Water Catchments of the Biodiversity and Conservation SEPP 2021.

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

11.1 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.

11.2 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, demonstrated in BA 1144/1980/1. It is considered that the land does not require further assessment 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 Part 4.6, Chapter 4 of the Resilience and Hazards SEPP 2021.

12. 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.

12.1 Chapter 2 Standards for residential development—BASIX

Chapter 2 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 **BASIX Certificate No. A1742224** demonstrating compliance with the SEPP. These requirements are imposed by standard conditions.

13. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

13.1 Part 1.2: Aims of Plan

The proposal does not achieve the following aims in Part 1.2(2) of the Woollahra LEP.

(g) to protect and enhance amenity and the natural environment;

(k) to minimise and manage traffic and parking impacts;

(I) to ensure development achieves the desired future character of the area.

13.2 Land Use Table

The proposal is permissible but is not consistent with the following objectives of the R2 Low Density Residential zone:

- To ensure development conserves and enhances tree canopy cover.
- To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.

13.3 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	11.4m*	10.65m	9.5m	No

*Existing non-compliance

The proposal does not comply with Part 4.3 of Woollahra LEP 2014 but is considered acceptable as detailed and assessed in Section 13.5 below.

13.4 Part 4.4: Floor Space Ratio

Part 4.4E limits development to a maximum floor space ratio of 0.5:1 for dwelling houses in the R2 and R3 zones.

Site Area: 435.7m ²	Existing	Proposed	Control	Complies
Floor Space Ratio	270.9m ^{2*} (0.62:1)	291.4m ² (0.66:1)	217.85 m ² (0.5:1)	No

*Existing non-compliance

The proposal does not comply with Part 4.4E(3) of Woollahra LEP 2014 and is considered acceptable as detailed and assessed in Section 13.5 below.

13.5 Part 4.6: Exceptions to Development Standards

Purpose

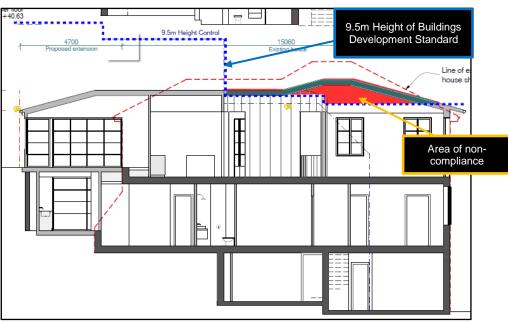
Clause 4.6 allows for the contravention of a development standard (provided that the standard is not expressly excluded from the section), with the objectives of the clause being:

- 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.

Departures

Section 4.3 - Height of Buildings

The proposal attains a height of 10.65m which involves a 1.15m (12.1%) departure from the 9.5m height control under Clause 4.3 of Woollahra LEP 2014. The existing development has a ridge height of 11.4m which already exceeds the development standard. The area of non-compliance (shown in hatched red colour) is limited to portion of the proposed new roof which is illustrated in the section drawing below.



Section illustrating the maximum building height (Source: Cave Urban)

Section 4.4E – Floor Space Ratio

The proposal results in a Floor Space Ratio of 0.66:1 (291.4m²) which involves a 73.55m² (33.76%) departure from the 0.5:1 Floor Space Ratio control under Clause 4.4E of Woollahra LEP 2014. The existing development has a Floor Space Ratio of 0.62:1 which is already non-compliant with the control.



Gross Floor Calculations (Source: Cave Urban)

Applicant's Written Requests

Section 35B of the *Environmental Planning and Assessment Regulation 2021* requires a development application for development that proposes to contravene a development standard to be accompanied by a document [the written request] setting out the grounds on which the applicant seeks to demonstrate the matters in clause 4.6(3) paragraphs (a) and (b).

The applicant has provided written requests in accordance with Section 35B of the *Environmental Planning and Assessment Regulation 2021*. (Refer to **Attachments 2** and **3**)

Council's Assessment

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

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

Step 1: Are the planning instrument, development standard and proposed variation identified in the written request accurate?

In determining whether the information contained within the written request is accurate, the following questions have been considered:

- Are the provisions proposed to be varied a development standard?
- Are the development standards proposed to be varied one that can be varied, and not excluded from the operation of section 4.6 by section 4.6(8)?

- Are the correct LEP or SEPP section (and objectives if relevant) referenced?
- Are the extent of the variations correctly identified?

Assessment:

Having regard to the definition of 'development standards' under the EP&A Act 197, Council is satisfied that the provisions proposed to be varied are development standards and are not excluded from the operation of Clause 4.6 by Clause 4.6(8).

The submitted Cl 4.6 written requests have accurately referenced Clause 4.3 Height of Buildings and Clause 4.4E Floor Space Ratio and the associated objectives under the WLEP 2014. The extent of variation with Clause 4.3 and 4.4E has been accurately identified in the submitted written requests.

Step 2: Section 4.6(3)(a): Is compliance unreasonable or unnecessary?

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 the 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.

Assessment:

The submitted Section 4.6 Written Requests to Clause 4.3 Height of Buildings and Clause 4.4E Floor Space Ratio and the arguments provided are relevant to Test 1 – in that the objectives of the development standards are achieved notwithstanding non-compliance with the standards - are largely agreed with and supported.

The applicant's written request principally adopts the first method of the *Wehbe* tests to demonstrate that compliance is unreasonable or unnecessary in the circumstances.

The applicant's written requests with regards to Clause 4.3 Height of Buildings and 4.4E Floor Space Ratio have adequately demonstrated that the objectives of the development standards are achieved notwithstanding the non-compliances with the standards. An assessment against the objectives of the subject development standards have been included below.

Objectives underlying Clause 4.3 Height of Buildings 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

The proposal is assessed against the objectives of Clause 4.3 as follows:

- The proposal would replace the existing roof with a new roof with shallower roof pitch. Therefore, it does not exceed the existing non-compliant height and maintains consistency with the desired future character of the neighbourhood. The works exceeding the standard are lower than the existing ridge height and would retain the existing single storey presentation of the dwelling when viewed from Kulgoa Road;
- The proposal does not result in any significant adverse additional overshadowing upon adjoining development or open space.
- The areas that breach the height standard do not result in any unacceptable impact on adjoining or nearby properties in terms of disruption of views, loss of privacy, overshadowing or visual intrusion.
- The proposed development will ensure public views of the harbour and of surrounding areas are maintained.

Objectives underlying Clause 4.4E Floor Space ratio are as follows:

- (a) to ensure the bulk and scale of development is compatible with the desired future character of the area,
- (b) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,
- (c) to ensure development makes adequate provision for deep soil planting, tree canopy cover and private open space.

The proposal is assessed against the objectives of Clause 4.4E as follows:

- The proposed (FSR) areas that contribute to the bulk and scale of the development are compatible with the relevant objectives of the Bellevue Hill North Desired Future Character objectives.
- The proposal would also maintain the single storey presentation along Kulgoa Road which is consistent with the existing streetscape;
- The proposal does not result in any adverse environmental effects on the use or enjoyment of adjoining properties and the public domain.
- The proposal increases the deep soil landscaping within the site, maintains compliant private open space and where development falls under gross floor area do not result any existing significant trees within the site.

Step 3: Section 4.6(3)(b) Are there sufficient environmental planning grounds to justify the contravention?

In *Initial Action* Preston CJ provided the following guidance (at paragraphs 23 and 24) concerning whether there will be sufficient environmental planning grounds to justify a contravention of 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.
- 24 The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". ... the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) 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. 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: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15].

Section 1.3 of the EPA Act reads as follows:

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.

Assessment:

To determine whether the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of the development standards, the following questions have been considered:

• What environmental planning grounds have been put forward to justify the variation?

- Are the environmental planning grounds specific to the proposed variation?
- Are there sufficient environmental planning grounds to justify the proposed variation to the development standard?

The applicant has provided the following environmental planning grounds to justify the variation of Clause 4.3:

"Overall, the proposed building height and bulk is of an appropriate form and scale and matches the existing, which is compatible with surrounding development and the desired future character for the locality.

- Exceedance of the height control will not create additional building bulk that results in unreasonable environmental amenity impacts as follows:
 - The proposed minor non-compliance will not result in the loss of views from surrounding development;
 - The proposal will not result in unreasonable overshadowing of adjoining properties. The site is oriented north-south with a northern frontage to Kulgoa Road. As demonstrated in the accompanying Shadow Diagrams, the proposal results in only some minimal additional overshadowing from 12pm to the private open space area of the subject site. The proposal does not result in any overshadowing to the adjoining properties. The proposal reduces overshadowing to the adjoining properties to the south at No.s 147 and 149 Bellevue Road due to the proposal reducing the bulk of the roof and lowering the ridgeline.
 - The proposal will provide a development, which has been designed to ensure that the visual and acoustic privacy of adjoining properties is maintained.
 - 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 component of the development above the height control is limited to the rear part of the dwelling, due to the sloping topography of the site. The remainder of the dwelling complies with the building height standard. Refer to the extract of the Sections above.
- The site and dwelling are set below street level. The proposed building height variation will therefore be indiscernible from the street and adjoining properties. Refer to the extract of the Front Elevation above. A reduction of the proposed building height would provide an indiscernible benefit to the streetscape and would reduce the amenity of the proposal.
- It is noted that the proposal sits below the maximum building height of the existing dwelling (11.4m). Refer to the extracts of the Section and Front Elevation above.
- The proposed development incorporates modulation and a varied palette of materials. The articulated building form minimises perceived bulk and scale impacts when viewed from the surrounds of the site.
- The proposal provides a high level of internal amenity as demonstrated by compliance with the key amenity criteria within DCP, including side setbacks, building width, building length, solar access, parking and private open space. The excess building height thereby does not compromise the ability to meet or outperform the above criteria. This demonstrates that the site can accommodate the additional building height on the site.

The proposal will provide a suitable design and 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 and 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 height 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 outcome"

The applicant has provided the following environmental planning grounds to justify the variation of Clause 4.4E:

"The components proposed above the FSR control are:

• 73.55m2 of GFA

In addition to the consistency of the proposal against the FSR objectives (see Point 2 above), in my opinion there are sufficient environmental planning grounds to justify contravening the development standard.

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:

o The proposal will not result in the loss of views from surrounding development.

o The proposal will not result in unreasonable overshadowing of adjoining properties. The site is oriented north-south with a northern frontage to Kulgoa Road. As demonstrated in the accompanying Shadow Diagrams, the proposal results in only some minimal additional overshadowing from 12pm to the private open space area of the subject site. The proposal does not result in any overshadowing to the adjoining properties. The proposal reduces overshadowing to the adjoining properties to the south at No.s 147 and 149 Bellevue Road due to the proposal reducing the bulk of the roof and lowering the ridgeline.

o The proposal will provide a development, which has been designed to ensure that the visual and acoustic privacy of adjoining properties is maintained.

o 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 dwelling as proposed to be altered with the additional FSR is appropriate to its context and will not appear out of character when viewed in its context of other buildings in the vicinity.

• The site and dwelling are set below street level. The proposed FSR variation will therefore be indiscernible from the street and adjoining 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 proposed development incorporates modulation and a varied palette of materials. The articulated building form minimises perceived bulk and scale impacts when viewed from the surrounds of the site.

• The proposed FSR is sited and designed to maintain the predominance of soft landscaped areas on the site. The proposal complies with the DCP overall site deep soil landscaping and tree canopy controls. It is noted that the proposal increases the amount of front deep soil planting area compared to that currently existing on the site.

• Despite the FSR contravention, the proposal is not an overdevelopment of the site and achieves an appropriate correlation between maximum height and density.

• The proposal provides a high level of internal amenity as demonstrated by compliance with the key amenity criteria within DCP, including side setbacks, building width, building length, solar access, parking and private open space. The excess FSR thereby does not compromise the ability to meet or outperform the above criteria. This demonstrates that the site can accommodate the additional floor area on the site.

• 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 outcome.

The lack of impact on adjoining properties in terms of solar access, privacy, view loss and visual bulk establishes sufficient planning grounds."

The environmental planning grounds forwarded by the applicant are considered to be specific to the proposed variation against Clauses 4.3 Height of Buildings and 4.4E Floor Space Ratio.

The written requests provide explanation of how the proposed development and in particular the breach of the Height of Building and Floor Space Ratio standards is reasonable and supportable in the circumstances. In doing so, the written requests against the Height of Building and Floor Space Ratio standards provide sufficient environmental planning grounds to justify the contraventions as they demonstrate that the proposal achieves Objects (c) and (g) of Section 1.3 of the Act.

Accordingly, there are sufficient environmental planning grounds to justify the proposed variation to the Clause 4.3 Height of Buildings and Clause 4.4E Floor Space Ratio development standard of the Woollahra LEP 2014.

Conclusion

Council is satisfied that the applicant has demonstrated that compliances with the Height of Building and Floor Space Ratio development standards are unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contraventions in this instance.

13.6 Part 5.10: Heritage Conservation

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

The subject site is not located within a Heritage Conservation Area and is not identified as being a Heritage Item.

The subject site is however located in an area of potential aboriginal heritage sensitivity.

Council's Heritage Officer (DARC) has reviewed the application and has raised no objection, subject to recommended Conditions of Consent.

The proposal is acceptable with regard to the relevant objectives in Parts 5.10 of the Woollahra LEP 2014.

13.7 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

The subject site is not identified as being within a Flood Planning area.

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

13.8 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 of the Woollahra LEP 2014.

13.9 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 minor excavation to accommodate the replacement swimming pool and the footings associated with the new vehicular crossing and landscaping works. The excavation extends to a maximum depth of 1.8m and involves an approximate 15m³ of total volume of excavation.

Council's Development Engineer has reviewed the application and raised no objections with regards to this Part.

Conclusion

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

13.10 Part 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.

Part 6.9(3) requires Council to consider whether the development incorporates planning and design measures to enable the retention and planting of trees to minimise the urban heat island effect, and will avoid, minimise or mitigate adverse impacts on the existing tree canopy.

The proposed development does not reduce any existing tree canopy cover within the subject lot. However, it is considered by Council's Tree Officer that the proposed new vehicular driveway crossing between two existing street trees, being identified as Trees 2 and 3 (Water Gums), would result in unacceptable impacts due to a major encroachment upon their structural root zones. These impacts have not been thoroughly considered and assessed in the submitted Arborist report (Refer to **Attachment 5** – Referral Response - Tree and Landscaping for detailed comments).

Therefore, the proposed car parking structure and associated vehicular driveway crossing are not supported.

As a result, the proposal is considered unsatisfactory with regards to Part 6.9 of Woollahra LEP 2014 and therefore forms **as a reason for refusal.**

14. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

14.1 Chapter B1: Bellevue Hill North Residential Precinct

The proposal does not meet the following Streetscape Character and Key Elements of the precinct and Desired Future Character Objectives of the Bellevue Hill North Residential precinct, as noted in Part B1.8.2 of the Woollahra DCP 2015.

The relevant Streetscape Character and Key Elements of the precinct are as follows:

To respect and enhance the following:

d) the tree canopy formed by both street and private yard plantings; *e)* mature street trees, grassed verges and sandstone walls;

The relevant Desired Future Character Objectives of the precinct are as follows:

O1 To respect and enhance the streetscape character and key elements of the precinct. **O8** To retain and reinforce the green setting of mature street trees, private trees and garden plantings and minimise hard stand areas.

O11 To ensure on-site parking does not dominate the streetscape.

<u>Assessment</u>

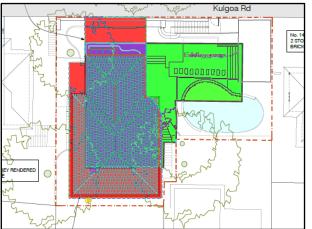
The proposal fails to achieve the above Streetscape Character and Key Elements and Desired Future Character Objectives for the following reasons:

- The proposed development does not respect or enhance the existing street tree canopy as the proposed car parking structure and associated vehicular crossing would adversely impact the two existing mature street trees as discussed in Sections 10.1 and 13.10 above.
- Multiple parking structures and driveways on a single allotment is not a common characteristic within both the Bellevue Hill North Precinct or along the low side of Kulgoa Road and would be considered an undesirable anomaly. The proposal does not respect or enhance the existing streetscape

- The nature of the proposed garage structure outside the building envelope is excessive, dominating the streetscape, and cannot be considered subservient to the principal dwelling. This will diminish the existing single storey dwelling presentation upon the street;
- Approval of the proposed development would encourage multiple parking structures and vehicular crossings on single allotment of land. In turn, it would result in the domination of on-site parking structures for the subject site, Kulgoa Road and the precinct.

14.2 Chapter B3: General Development Controls

14.2.1 Part B3.2: Building Envelope



Buildable Envelope (proposed in red vs allowable building envelope in green) (Source: WMC)

Part B3.2.2: Front Setback

Site Area: 435.7m ²	Existing	Proposed	Control	Complies
Site Width: 24.384m				
	Lower Ground Floor (LGF): 9m	Lower Ground Floor (LGF): 9m (unchanged)		Yes
Front Setback (C1)	Ground Floor (GF): 3.6m (kitchen)	Ground Floor (GF): 0.76m (laundry)	>2.95m	No
	First Floor (FF): 4.7m (bedroom 1)	First Floor (FF): 4.7m (door entry)		Yes
	LGF:	LGF:		
	1m – 4.5m	1m – 4.5m		
Maximum Unarticulated	GF:	GF:	<6.0m	Yes
Length to Street (C2)	2.67 – 3.2m	5.7m	<0.0III	162
	FF:	FF:		
	5.89m	5.89m		

O1 To reinforce the existing streetscape and character of the location.

O2 To provide consistent front setbacks in each street.

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.

The proposal does not achieve the relevant Objectives and Controls for the following reasons:

- The proposed development as illustrated in the above compliance table generally complies with Control C1, with the exception of the new car parking structure which does not achieve Objectives O1 and O2.
- The proposed additional car parking structure is located outside the permissible building envelope and does not achieve Objective O1 and O2 as it fails to reinforce the existing streetscape and character of the location by resulting in car parking structures dominating the streetscape and front setback area. This is further discussed in Section 14.2.3 and 14.2.4 below.

Conclusion

The proposal is considered unacceptable with regards to Part B3.2.2 of the Woollahra DCP 2015 and therefore forms as **a reason for refusal.**

Site Area: 435.7m ²				
Site Width 24 20 Am	Existing	Proposed	Control	Complies
Site Width: 24.384m				
	LGF:	LGF:		
	>3.4m	>3.4m		
Side Boundary Setbacks (north-east)	GF:	GF:	>3.4m	Yes
(C1)	>3.4m	>3.4m	20. 4 11	163
	FF:	FF:		
	>3.4m	>3.4m		
	LGF:	LGF:		No
	2.2m*	2.2m		INO
Side Boundary Setbacks (north-	GF:	GF:	0.4	Vee
west) (C1)	2.2m*	3.8m (laundry)	>3.4m	Yes
*existing non-compliance	FF:	FF:		NL.
	2.2m*	2.2m		No
	LGF:	LGF:		
	7.9m	7.9m		
Maximum Unarticulated Wall Length	GF:	GF:	10	Maria
(C4) (north-east)	4.5m – 10.8m	8.6m – 10.8m	<12m	Yes
	FF:	FF:		
	4.5m – 10.8m	9m – 10.8m		
	LGF:	LGF:		
	4.56m – 6.1m	4.56m – 6.1m		Yes
Maximum Unarticulated Wall Length	GF:	GF:	10	
(C4) (north-west)	5.4m – 10.7m	8.3m – 10.7m	<12m	Yes
	FF:	FF:		
				No
	FF: 4.3m – 10.7m	FF: 5.4m – 14m		No

Part B3.2.3: Side Setbacks

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.

O3 To protect the acoustic and visual privacy of residents on neighbouring properties.

O4 To facilitate solar access to habitable windows of neighbouring properties.

C1 requires a minimum side setback of 3.4m.

C4 notes a maximum unarticulated wall length of 12m to the side elevation.

<u>Comment</u>

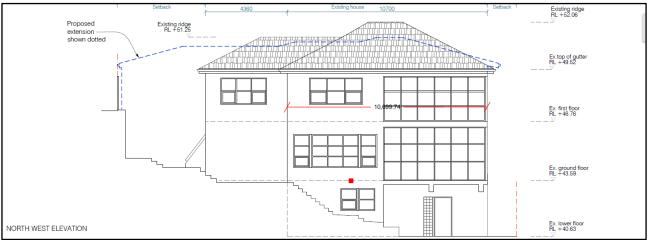
• The proposed alterations and additions towards the north-western and north-eastern side setbacks are generally maintained and do not further encroach into the existing non-

compliances. Subsequently, the proposal does not result in an unacceptable sense of enclosure upon adjoining properties.

- Additionally, the proposal would not result in any unacceptable acoustic or solar access impacts upon adjoining properties.
- However, the proposed kitchen window which was previously a bedroom window would result in direct sightlines into the private open space of No. 10 Kulgoa Road which contravenes Control C4 and does not achieve Objective O3.
- Therefore, the proposal would result in unacceptable visual privacy impacts which is further discussed in Section 14.2.3.



Northern-western elevation of proposed alterations and additions (Source: BBD)



South-western elevation of proposed alterations and additions (Source: BBD)

Conclusion

The proposal is considered unacceptable with regards to Part B3.2.3 of the Woollahra DCP 2015 and therefore forms as **a reason for refusal.**

Part B3.2.4: Rear Setback

The proposal does not seek to alter the existing rear setback and therefore is considered acceptable with regards to Part B3.2.4 of the Woollahra DCP 2015.

Part B3.2.5: Wall Height and Inclined Plane

Site Area: 435.7m ² Site Width: 24.384m	Existing	Proposed	Control	Complies
Maximum Wall Height (C1) *existing non-compliance	8.69m*	9.1m	<7.2m	No
Inclined Plane From Wall Height (C1)	<45°	<45°	<45°	Yes

O1 To limit the bulk, scale and visual impact of buildings as viewed from the street and from neighbouring properties.

O2 To limit overshadowing of neighbouring properties across side boundaries.

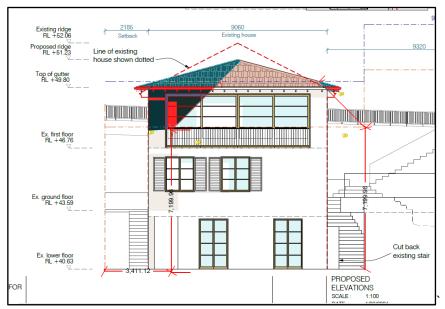
O3 To limit overshadowing to south facing rear yards.

O4 To provide acoustic and visual privacy to adjoining and adjacent buildings.

C1 specifies a maximum external wall height of 7.2m with an inclined plane of 45 degrees above this height.

The proposal achieves the above Objectives of the Controls for the following reasons:

- Given that the proposal reduces the extent of the existing non-compliance with Control C1 and the elements that continue to breach the Control do not result in unacceptable overshadowing, acoustic and or visual privacy. The proposal can be considered acceptable with regards to this Part.
- Additionally, the areas of non-compliance would primarily maintain the single storey presentation when viewed from the public domain. This does not include the consideration of the additional car parking structure which is discussed in Section 14.2.3.



South West Elevation (Source: Cave Urban)



North East Elevation (Source: Cave Urban)

Conclusion

The proposal does not achieve all the relevant Parts of Part B3.2 of the Woollahra DCP 2015, however, the non-compliance alone does not warrant a reason for refusal.

14.2.2 Part B3.4: Excavation

Site Area: 435.7m ²	Existing	Proposed	Control	Complies
Maximum Volume of Excavation (C1)	-	Approximately 15m ³ for swimming pool (assessed in Section 14.2.5 of this report)	140m ³	Yes

C1 limits the volume of excavation to 140m³.

<u>Comment</u>

As discussed in Section 13.9 above, the proposal involves minor excavation for the proposed replacement swimming pool and associated works.

Council's Development Engineer has reviewed the application and raised no objections on technical grounds.

Conclusion

The proposal is acceptable with regard to the Part B3.4 of the Woollahra DCP 2015.

14.2.3 Part B3.5: Built Form and Context

Part B3.5.1: Streetscape and Local Character

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.

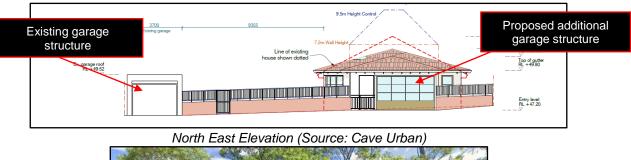
C1 The building is consistent with the desired future character of the area set out in the precinct controls in Parts B1 and B2 of this DCP.

C2 Development retains vegetation of landscape value.

C4 Development minimises disturbance and adverse impacts on existing canopy trees which are to be retained.

The proposal is unacceptable with regards to this Part for the following reasons:

- As discussed in Section 14.1 above, the proposed car parking structure outside the building envelope is incompatible with the streetscape and the desired future character of the Bellevue Hill North Precinct.
- The introduction of two separate car parking structures that abut Kulgoa Road would result in a street-front presentation being dominated by garage structures vastly obscuring the visibility of the existing dwelling house behind. This does not achieve good visual quality, and does not enhance a desirable streetscape outcome.
- Furthermore, the proposed new driveway results in adverse impacts upon two existing street trees (Trees 2 and 3) which provide substantial tree canopy cover.
- Note: Although the applicant has submitted a streetscape analysis of existing garage structures within the locality, the presence of two individual car parking structures along the low-side of Kulgoa Road is not established and therefore would result in an undesirable anomaly.





Subject site viewed from Kulgoa Road (Source: WMC)



Subject site viewed from Kulgoa Road (Source: WMC)



Streetscape Analysis, subject site in dotted red (Source: Cave Urban)

Conclusion

The proposal is unacceptable with regards to Part B3.5.1 of the Woollahra DCP 2015 and forms as **a reason for refusal.**

Part B3.5.2: Overshadowing

Site Area: 435.7m ²	Existing	Proposed	Control	Complies
Solar Access to Open Space of Neighbouring Properties (C1a)	>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 to upper Living Areas of Neighbouring Properties (C1b)	>3 hours on 21 June	>3 hours on 21 June	3 hours on 21 June	Yes

The submitted shadow diagrams demonstrate that the proposal will not cast unacceptable additional shadows upon adjoining properties and is acceptable with respect to the limits prescribed by Control C1.

Conclusion

The proposal is acceptable with regards to Part B3.5.2 of the Woollahra DCP 2015.

Part B3.5.3: Public and Private Views

The proposal will not obstruct any significant private or public views and therefore is acceptable with regards to Part B3.5.3 of the Woollahra DCP 2015. Part B3.5.4: Acoustic and Visual Privacy

Acoustic Privacy

O1 To ensure adequate acoustic privacy for occupants and neighbours.

C1 Dwellings are designed to ensure adequate acoustic separation and privacy to the occupants of all dwellings.

The proposal is considered acceptable with regards to the above Objective and Control for the following reasons:

• The proposal maintains the existing use of the subject site as a residential dwelling with swimming pool.

- It is considered that the proposed works are unlikely to result in significant additional acoustic impacts.
- Although the proposed swimming pool equipment has not been clearly identified on the proposed plans, relevant Conditions of Consent could be imposed to ensure the proposal is acceptable with regards to acoustic privacy provisions of Part B3.5.4 of the Woollahra DCP 2015.

Visual Privacy

Site Area: 435.7m ²	Existing	Proposed	Control	Complies
Distance of Habitable Room Windows to Neighbouring Dwellings (C4)	<9m	<9m	9.0m	No

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.

C4 New windows in habitable rooms are designed to prevent a direct sightline to the habitable room windows or private open space of an adjacent dwelling within 9m.

C5 Windows to bathrooms and toilet areas have translucent glazing where these have a direct view to, and from, habitable rooms and private open space on adjoining and adjacent properties.

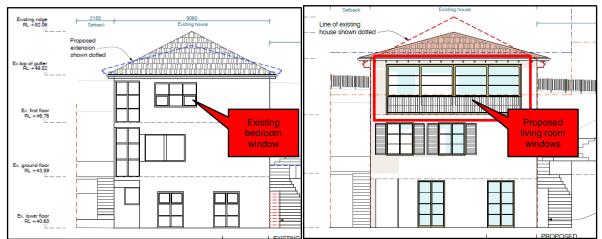
- It is noted that no objections relating to privacy were received.
- However, as briefly discussed in Section 14.2.1, the proposal results in new windows to habitable rooms which were originally passive uses, having direct sightlines upon adjoining private open space which negatively intensify the existing visual privacy situation. Specifically, the north-west facing first floor kitchen, south-east and south-west living room widows and south-east facing ground floor bathroom window as illustrated in red in the below figures do not comply with Control C4 and C5 or achieve Objectives O2 and O3 as proposed.



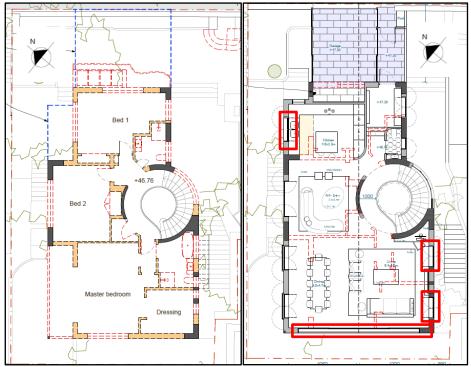
Existing North West Elevation v Proposed North West Elevation (Source: Cave Urban)



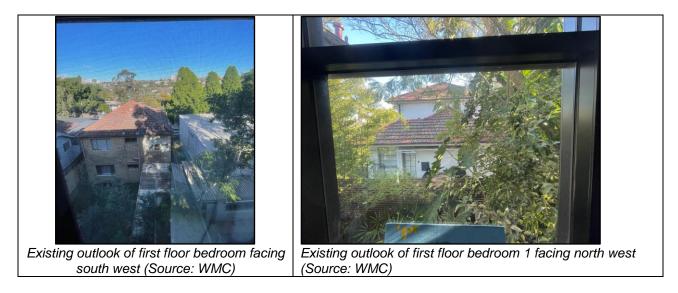
Existing South East Elevation v Proposed South East Elevation (Source: Cave Urban)



Existing South West Elevation v Proposed South West Elevation (Source: Cave Urban)



Existing First Floor Plan v proposed First Floor Plan (Source: Cave Urban)



Conclusion

The proposal results in unacceptable visual privacy impacts and does not achieve the relevant objectives and controls of Part B3.5.4 of the Woollahra DCP 2015 and therefore is listed <u>as a reason for refusal.</u>

Part B3.5.5: Internal Amenity

C1 All habitable rooms in a dwelling must have at least one external wall primarily above the existing ground level which provides an unobstructed window opening. C2 All habitable rooms and sanitary compartments in a dwelling must have direct natural light and direct natural ventilation.

C3 The area of unobstructed window openings should be equal to at least 20% of the room floor area for habitable rooms.

The proposal is considered to be satisfactory with regard to Council's internal amenity requirements under B3.5.5 of Woollahra DCP 2015.

14.2.4 Part B3.6: On-Site Parking

Site Frontage: 24.384m	Proposed	Control	Complies
Location of Parking (C1)	Outside the building envelope	Within the Building Envelope	No
Parking Structures Outside Building Envelope (C3)	Minimum Deep Soil Landscaping not met	Minimum Deep Soil Landscaping and Private Open Space Requirements met	No
Width of Parking Structure (C4)	4m	<6m	Yes
Max Height of Car Parking Structures in Front Setback (C7)	2.5m	< 2.7m	Yes
Width of Driveway (C9)	2.5m	< 3.0m	Yes
Maximum Number of Driveways (C10)	Two	< One	No

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.

C1 On-site parking is designed and located so that it: is located within the building envelope; does not dominate the street frontage; and preserves trees and vegetation of landscape value. C3 Parking structures outside the building envelope are only permitted when: a) minimum deep soil landscaped area and private open space requirements are met, as set out in Section B3.7.1 Landscaped areas and private open space; and

C4 For car parking structures facing the street frontage— the maximum car parking structures width is no greater than 40% of the site frontage width or 6m, whichever is the lesser

C7 For car parking structures located in the front setback, the maximum height of the structure is 2.7m above the footpath level. If the existing height of the retaining/street wall or the two adjoining car parking structures is higher than 2.7m, that greater height may be permitted (refer to Figure 19B).

C9 The width of driveways is minimised. Generally the width is no more than the minimum width required to comply with the relevant Australian Standards (see Section E1).

C10 Only one driveway entrance is provided. For example, development involving more than one dwelling shares the driveway access.

The proposal is unacceptable with regards to the relevant Objectives and Controls for the following reasons:

- As discussed in Section 14.1 and 14.2.3 the proposed car parking structure outside the building envelope and associated driveway would result in adverse streetscape impacts.
- The presence of two concrete driveways and two single car parking structures does not minimise the visual impact of car parking structures and driveways along the streetscape and would substantially obscure the existing dwelling on the site contravening Control C10.
- Although the proposed new driveway complies with Control C9, the combined width of the two driveways does not and results in a loss of on-street parking.
- The presence of two individual car parking structures are also considered to be an anomaly along the Kulgoa Road streetscape.
- The proposed car parking structure would further erode the streetscape by adversely impacting the existing two street trees as illustrated in Section 14.2.3.
- The proposed development does not comply with the minimum landscaping areas as discussed in Section 14.2.5 below.
- Council Development Engineer has reviewed the application and determined that the application is unsatisfactory, providing the following commentary:

"It is noted the submitted parking analysis uses lengths of 6 metres to represent a single onstreet car parking space as opposed to 5.4 metres as stipulated in Chapter E1.10.6 of Council's DCP. Accordingly, the proposed vehicular crossing will result in the loss of one onstreet car parking space.

Further, the centerline of the proposed crossing is insufficiently aligned with the centreline of the proposed parking space due to proximity of existing street trees and the proposed width of 2.5 metres does not comply with the minimum width requirement of 3 metres pursuant to AS2890.1.

In light of the aforementioned and pursuant to the objectives of Part B3.6 of the Council's DCP to minimise the loss of on-street parking and to minimise visual and environmental impacts of driveways, the proposed vehicular crossing is not supported."

Conclusion

Considering the above commentary, the proposal is unacceptable with regards to Part B3.6 of the Wollahra DCP 2015 and forms as **a reason for refusal.**

14.2.5 Part B3.7: External Areas

Part B3.7.1: Landscaped Areas and Private Open Space

Site Area: 435.7m ²	Existing	Proposed	Control	Complies
Tree Canopy Area (C1)	37.3% (162.4m²)	37.3% (162.4m²)	35% of Site Area (152.495m ²)	Yes
Deep Soil Landscaping – (C2)	0.1% (40m²)	32% (142.23m²)	35% of Site Area (152.495m ²)	No
Deep Soil Landscaping – Front Setback Area: 72m ² (C3)	15% (11.2m²)	25% (18.22 m²)	40% of Front Setback Area (28.8m ²)	No
Minimum Area of Primary Open Space at Ground Level (C4)	>35m ²	>35m ²	>35m²	Yes

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.

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 requires that each dwelling must have primary open space with a minimum area of 35m²

The proposal is acceptable with regards to the above for the following reasons:

- The proposal retains existing trees that would form part of the Tree Canopy Cover area calculations which complies with Control C1.
- Although the proposal does not comply with the minimum landscaping requirements for the overall site and front setback area, the proposal substantially increases the existing landscaping situation which positively contributes to the desired future character of the Bellevue Hill North Precinct and encourages urban greening.

Conclusion

The proposal is acceptable with regards to Part B3.7.1 of the Woollahra DCP 2015.

Part B3.7.2: Fences

Site Area: 435.7m ²	Existing	Proposed	Control	Complies
		Solid: 0.85m		
Maximum Height of Fencing (C4)	Open: 1.8m	Open: 0.71m	1.2m 1.5m and 50% open	No
		Total: 1.6m		

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.

C1 Fencing is designed and located to protect the inhabitants of the property, and allows for casual surveillance from the building to the street.

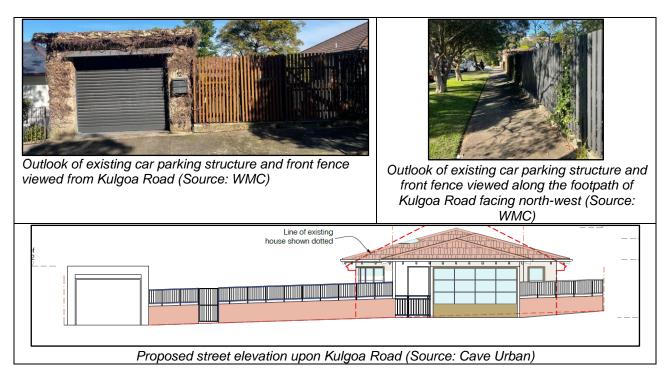
C2 The arrangement of built form, fences, landscaping and other features clearly defines any public, common, and private space

C3 Front fences and walls assist in defining building entrances.

C4 The height of front fences does not exceed: 1.2m if solid; or 1.5m if 50% transparent or open;

The proposal is acceptable with regards to this Part for the following reasons:

- The proposed fencing whilst having a minor numerical non-compliance with Control C4 is considered to provide a balanced delineation of public, common and private space areas as well as maintaining casual surveillance from the building to the street.
- Additionally, as the proposed fencing is lower than the existing height, it is considered to enhance the amenity for new residents and improve the visual presentation of the streetscape when compared to the existing fence structure.



Conclusion

The proposal is acceptable with regards to Part B3.7.2 of the Woollahra DCP 2015.

Part B3.7.3: Site Facilities

The proposal is considered satisfactory with regards to Part B3.7.3 of the Woollahra DCP 2015.

Part B3.7.4: Ancillary Development – Swimming Pools

Site Area: 435.7m ²	Existing	Proposed	Control	Complies
Level of Swimming Pool Above or Below Ground Level (C4)	unknown	<1.2m	Maximum 1.2m Change	Yes
Maximum Depth of Swimming Pool (C5)	unknown	1.8m	<2.0m	Yes

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

O2 To limit excavation.

O3 To retain trees and vegetation of landscape value.

C4 states that swimming pool surrounds are to be no more than 1.2m above or below ground level. C5 limits the depth of a swimming pool to 2.0m.

The proposed replacement swimming pool is acceptable for the following reasons:

- The proposed replacement swimming pool complies with Control C3 and C5 as illustrated in the above compliance table.
- As briefly discussed in Section 14.2.2, the proposal only involves 15m³ of excavation volume which is an acceptable amount.
- No unacceptable amenity impacts would occur as a result of the proposed replacement swimming pool.
- No trees or landscaping value are lost as a result of the replacement swimming pool. Overall the existing landscaping is greatly increased as discussed above.

• Council's Development Engineer has reviewed the application and raised no objections with respect to this Part.

Conclusion

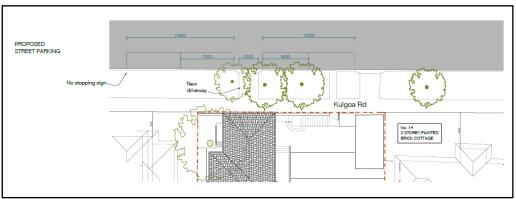
The proposal is acceptable with regard to Part B3.7.4 of the Woollahra DCP 2015.

14.3 Chapter E1: Parking and Access

14.3.1 Part E1.10: Parking and Access Design Standards

14.3.1.1 Part E1.10.6 Driveways and access points

Council's Development Engineer has reviewed the application and provided the following commentary with regards to this Part.



Parking Analysis Plan (Source: Cave Urban)

"The submitted parking analysis uses lengths of 6 metres to represent a single on-street car parking space as opposed to 5.4 metres as stipulated in Chapter E1.10.6 of Council's DCP. Accordingly, the proposed vehicular crossing will result in the loss of one on-street car parking space.

Further, the centreline of the proposed crossing is insufficiently aligned with the centreline of the proposed parking space due to proximity of existing street trees and the proposed width of 2.5 metres does not comply with the minimum width requirement of 3 metres pursuant to AS2890.1."

Additionally, as discussed throughout the report, the proposed additional driveway and car parking structure would result in adverse impacts upon the streetscape and reduces the amount on on-street parking.

Conclusion

Considering the above, the proposal is unacceptable with regard to Chapter E1 of the Woollahra DCP 2015 and forms as **a reason for refusal.**

14.4 Chapter E2: Stormwater and Flood Risk Management

Council's Development Engineer has reviewed the application and did not raise any objections with regards to this Part.

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

14.5 Chapter E3: Tree Management

As discussed in Section 13.10 and throughout the report, Council's Tree Officer has reviewed the application and does not support the application as the proposed vehicular driveway crossing would adversely impact the two existing street trees.

Therefore, the proposal is unacceptable with regard to Chapter E3 of the Woollahra DCP 2015 and forms as **a reason for refusal.**

14.6 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 applicant provided a SWMMP with the development application and it was found to be unsatisfactory. However, if the application was recommended for approval, relevant Conditions of Consent would be recommended to ensure an accurate SWMMP was submitted.

15 THE LIKELY IMPACTS OF THE PROPOSAL

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

16 THE SUITABILITY OF THE SITE

The site is <u>not</u> suitable for the proposed development.

17 THE PUBLIC INTEREST

The proposal is <u>not</u> considered to be in the public interest.

18 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 <u>recommended for refusal</u>.

19 DISCLOSURE STATEMENTS

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

20 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, refuse development consent to Development Application No. 124/2024/1 for alterations and additions to existing dwelling on land at 12 Kulgoa Road Bellevue Hill, for the following reasons:

1. SEPP (Biodiversity and Conservation) 2021: Chapter 2 – Vegetation in Non-rural Areas

The proposal fails to achieve the following aims in Part 2.1(a) and (b)

- (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State; and
- (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

2. Woollahra Local Environmental Plan 2014 (WLEP 2014) Part 1 Clause 1.2: Aims of Plan

The proposal does not achieve the following aims in Part 1.2(2)

- (g) to protect and enhance amenity and the natural environment;
- (k) to minimise and manage traffic and parking impacts; and
- (I) to ensure development achieves the desired future character of the area.

3. Woollahra Local Environmental Plan 2014 (WLEP 2014) Land Use Table

The proposal does not achieve the following Objectives of the R2 Low Density Residential zone:

- To ensure development conserves and enhances tree canopy cover.
- To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.

4. Woollahra Local Environmental Plan 2014 (WLEP 2014) Part 6.9: Tree canopy cover in Zones R2 and R3

The proposal does not achieve the following Objectives of Part 6.9 of the WLEP 2014

- (a) incorporates planning and design measures to enable the retention and planting of trees to minimise the urban heat island effect, and
- (b) will avoid, minimise or mitigate adverse impacts on the existing tree canopy.

5. Woollahra Development Control Plan 2015 (WDCP 2015), Chapter B1 Residential Precincts

a. Part B1.8: Bellevue Hill North Residential Precinct

The proposal does not achieve consistency with regard to the streetscape character and key elements aims (d) and (e) and desired future character Objectives O1, O8 and O11 as prescribed in Part B1.8.2 of the WDCP 2015.

6. WDCP 2015, Chapter B3 General Development Controls

a. Part B3.2.2: Front Setback

The proposal does not achieve the underlying Objectives O1 and O2 outlined in Part B3.2.2 of the WDCP 2015.

b. Part B3.2.3: Side Setback

The proposal does not comply with Control C4 and does not achieve the underlying Objective O3 outlined in Part B3.2.3 of the WDCP 2015.

c. Part B3.5.1: Streetscape and Local Character

The proposal does not comply with Controls C1, C2 and C4 and does not achieve the underlying Objectives O1, O2 and O3 outlined in Part B3.5.1 of the WDCP 2015.

d. Part B3.5.4: Visual Privacy

The proposal does not comply with Controls C4 and C5 and does not achieve the underlying Objectives O2 and O3 outlined in Part B3.2.3 of the WDCP 2015

e. Part B3.6: On-Site Parking

The proposal does not comply with Controls C1, C3, C9 and C10 and does not achieve the underlying Objectives O1, O2, O4 and O5 outlined in Part B3.6 of the WDCP 2015.

7. WDCP 2015, Chapter E1: Parking and Access

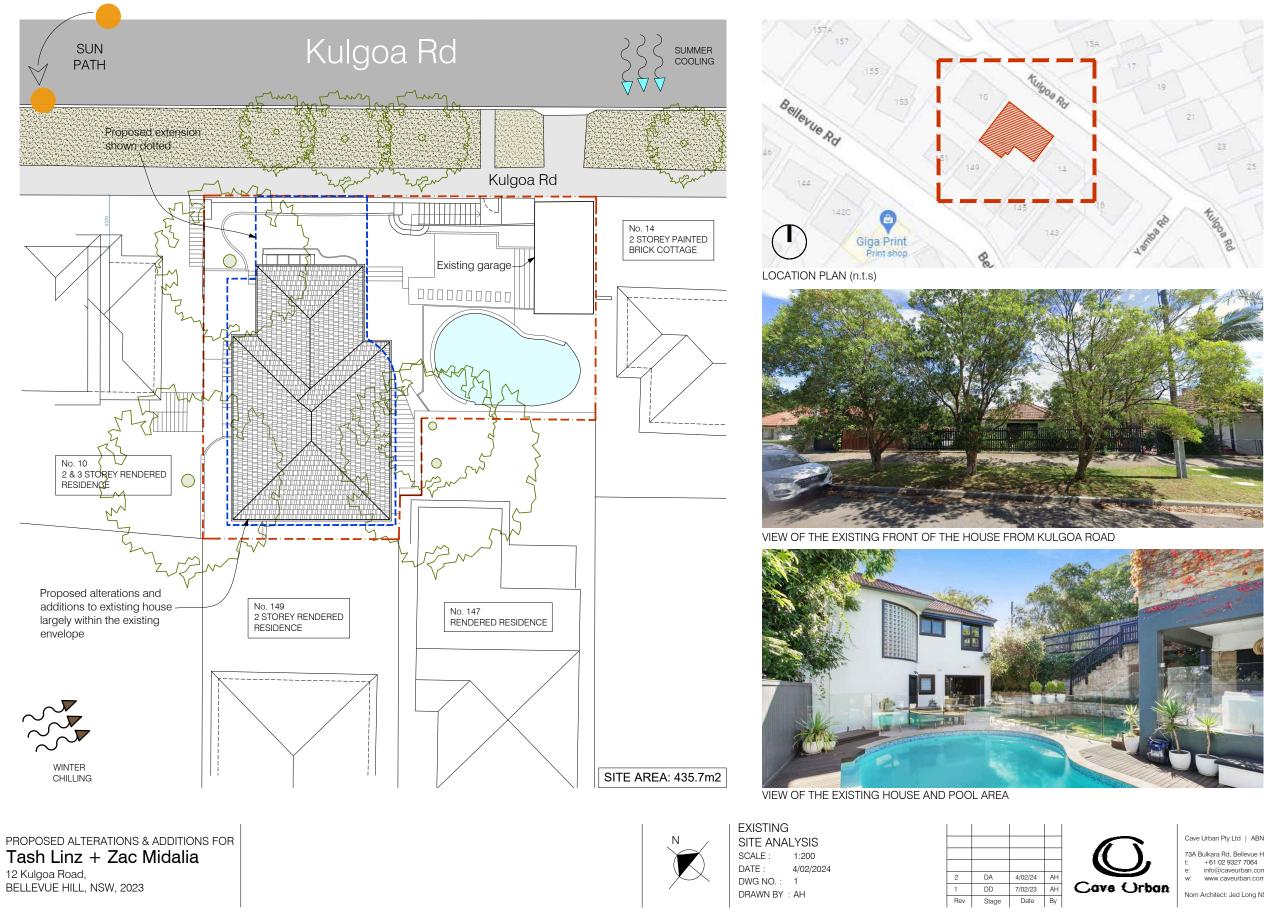
The proposal does not achieve consistency with the underlying requirements outlined in Part E1.10.6 of Chapter E1 of the WDCP 2015.

8. WDCP 2015, Chapter E3: Tree Management

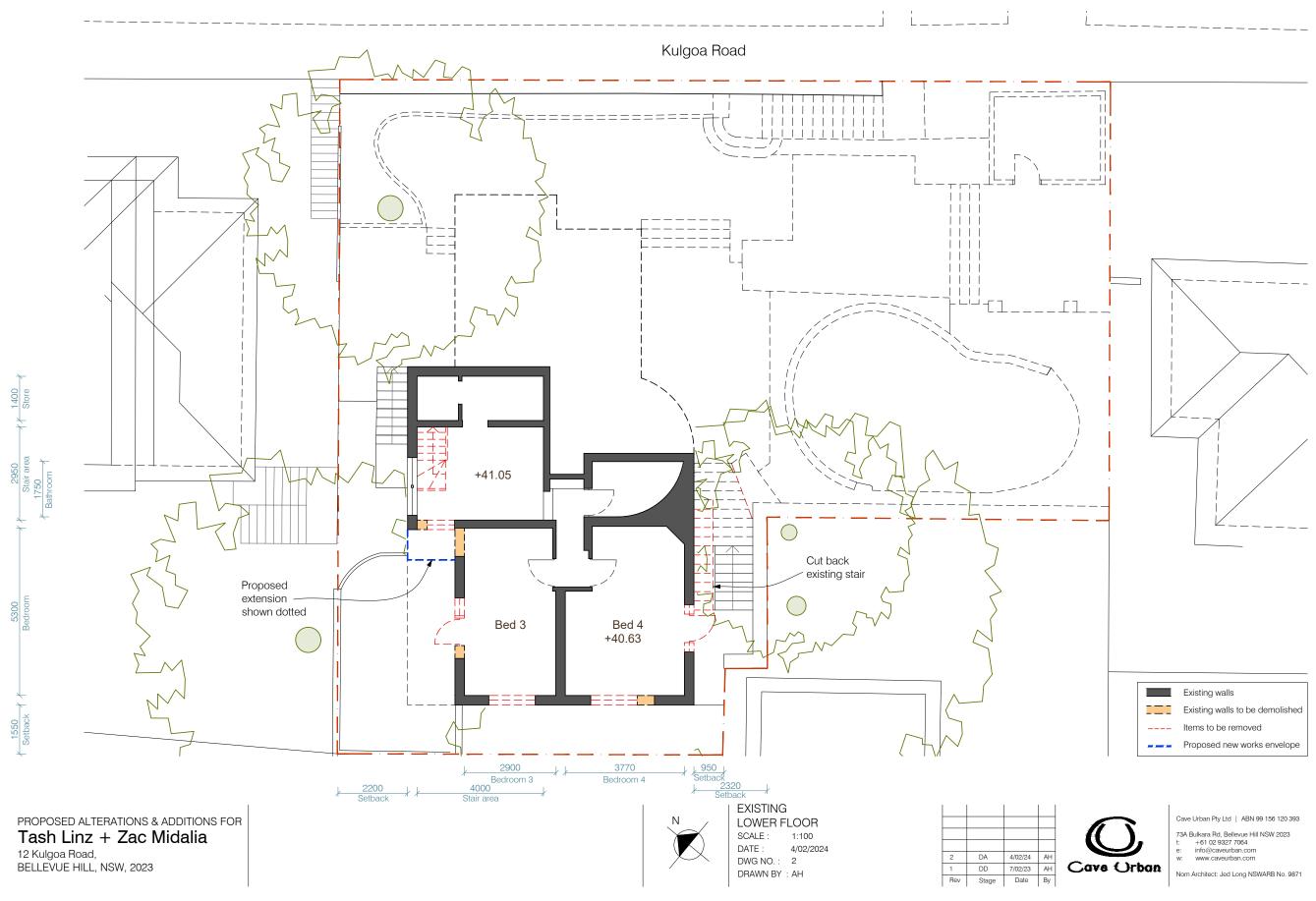
The proposal does not achieve consistency with the underlying Objectives O3, O4 and O5 outlined in Part E3.1.3 Chapter E3 of the WDCP 2015.

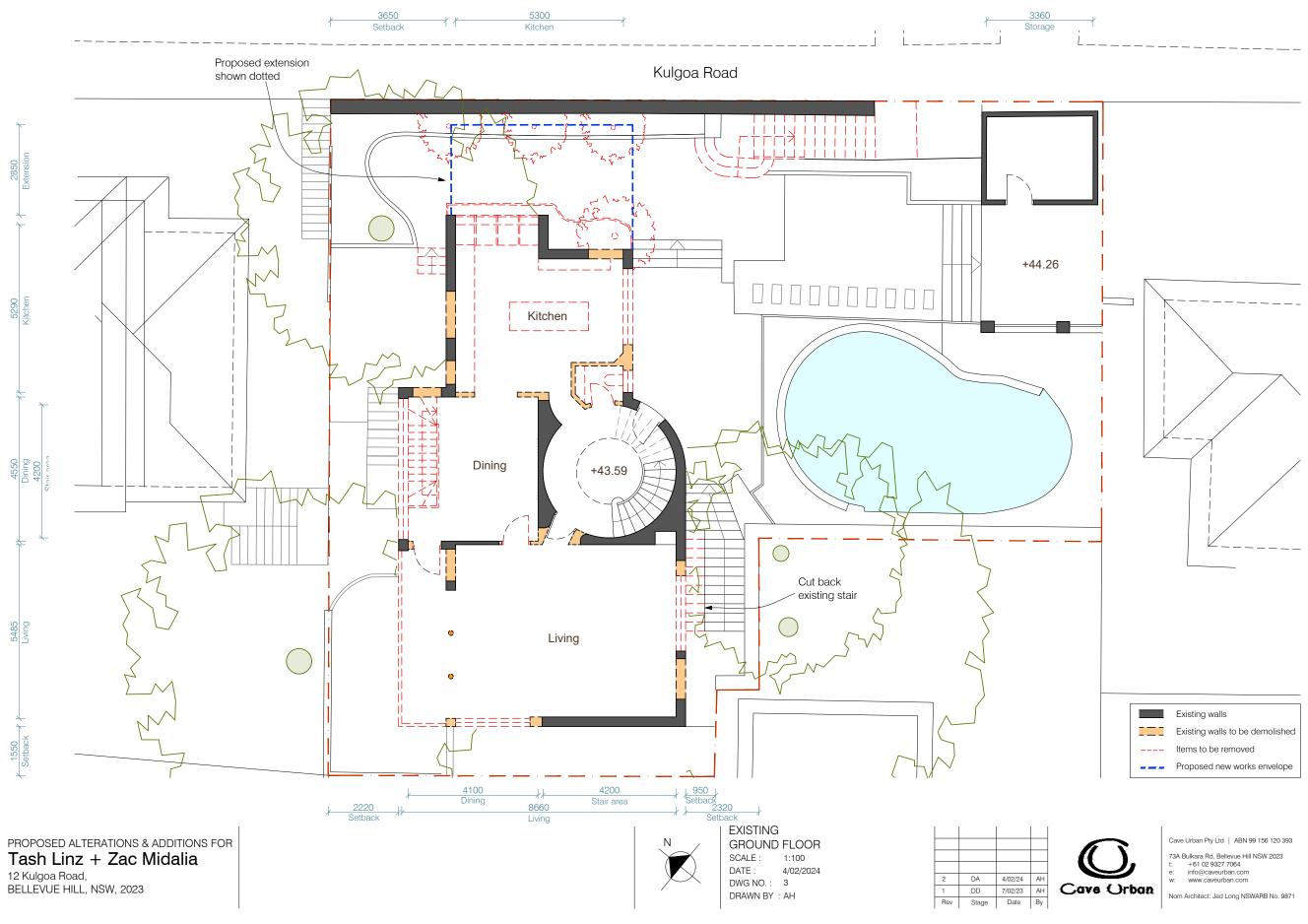
Attachments

- 1. Architectural Plans, Elevations, Sections 😃 🛣
- 2. Clause 4.6 Written Request (HOB) 🕂 🛣
- 3. Clause 4.6 Written Request (FSR) &
- 4. Referral Response Development Engineering 😃 🖀
- 5. Referral Response Trees and Landscaping 😃 🛣

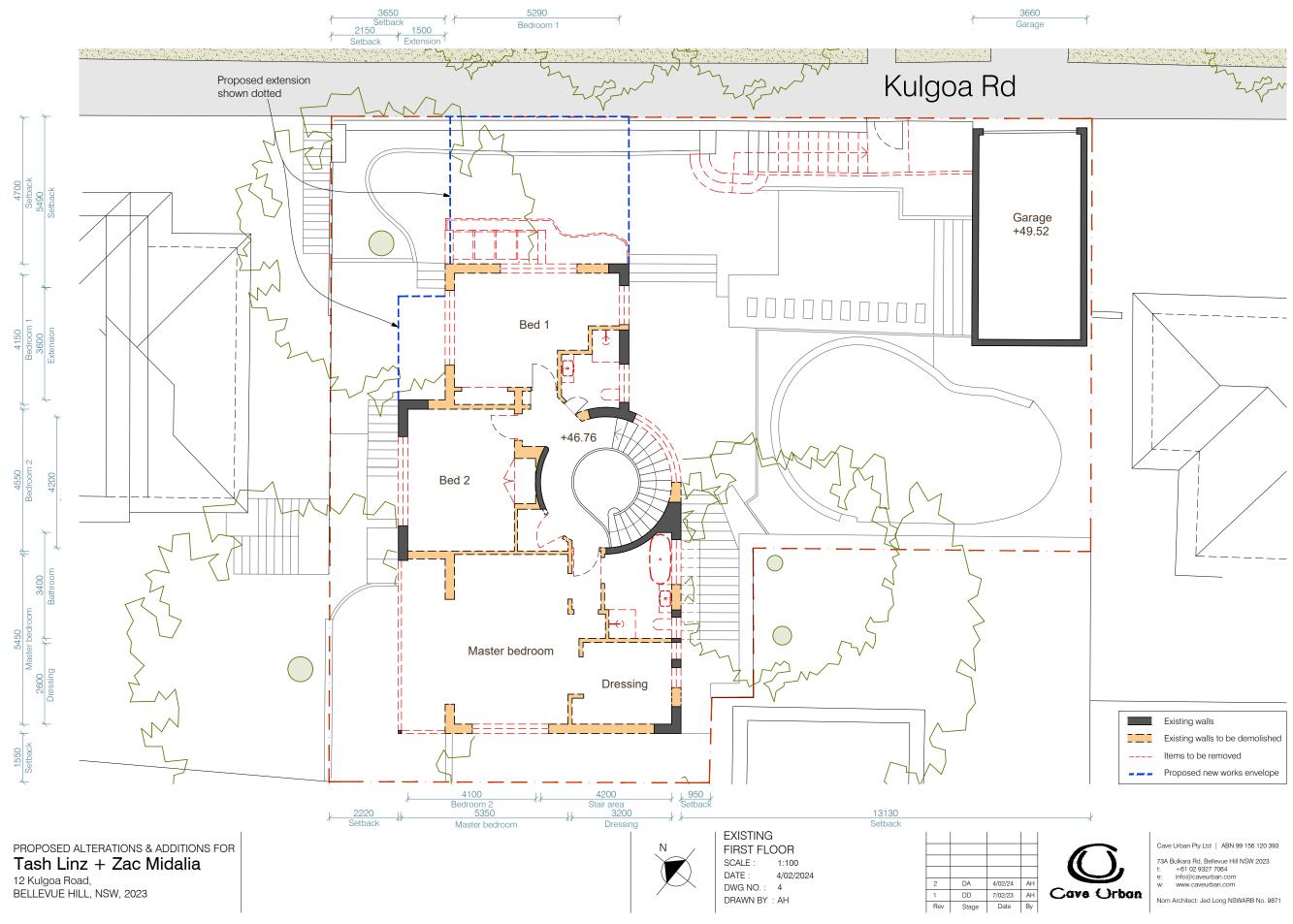


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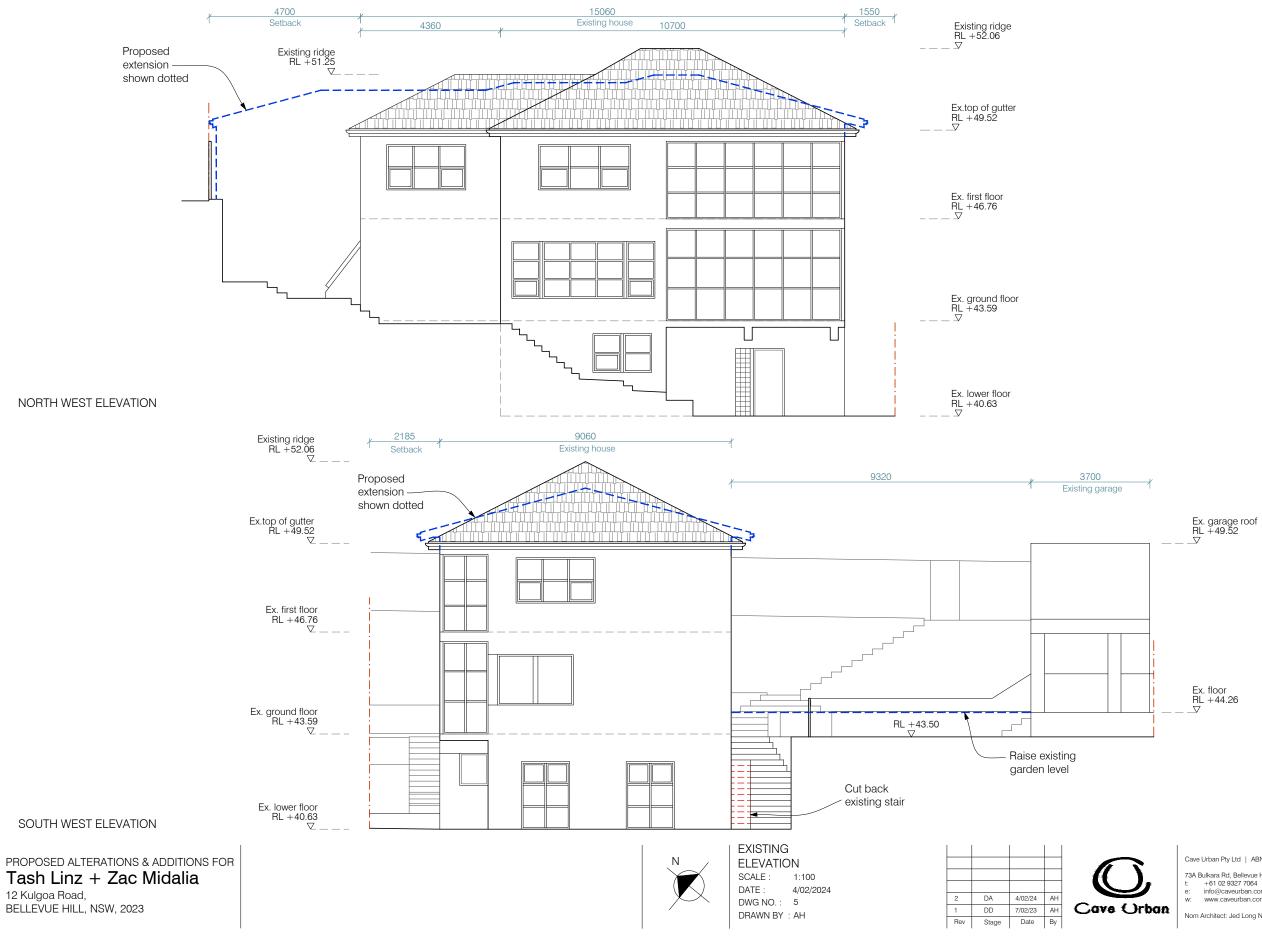




Woollahra Municipal Council Woollahra Local Planning Panel (Electronic Meeting) Agenda

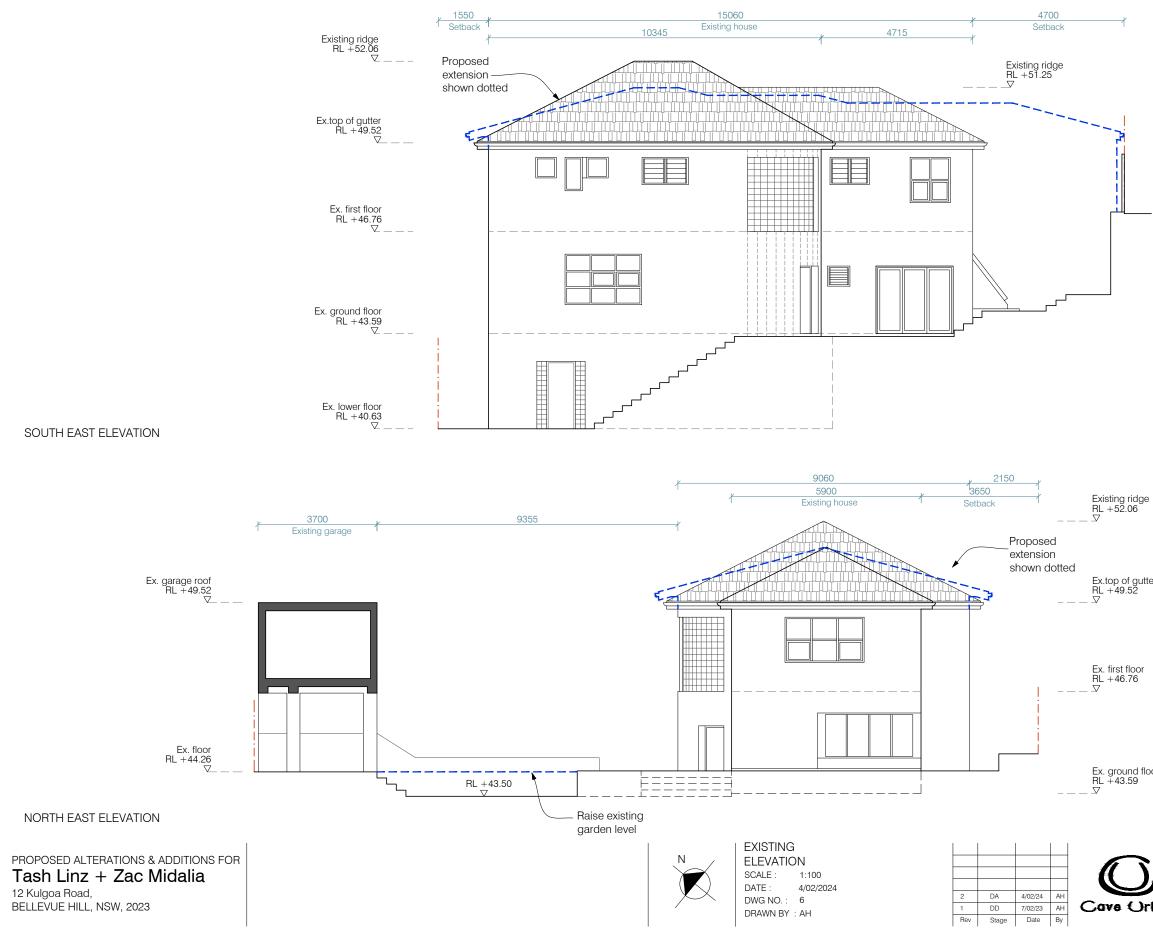


Woollahra Municipal Council Woollahra Local Planning Panel (Electronic Meeting) Agenda



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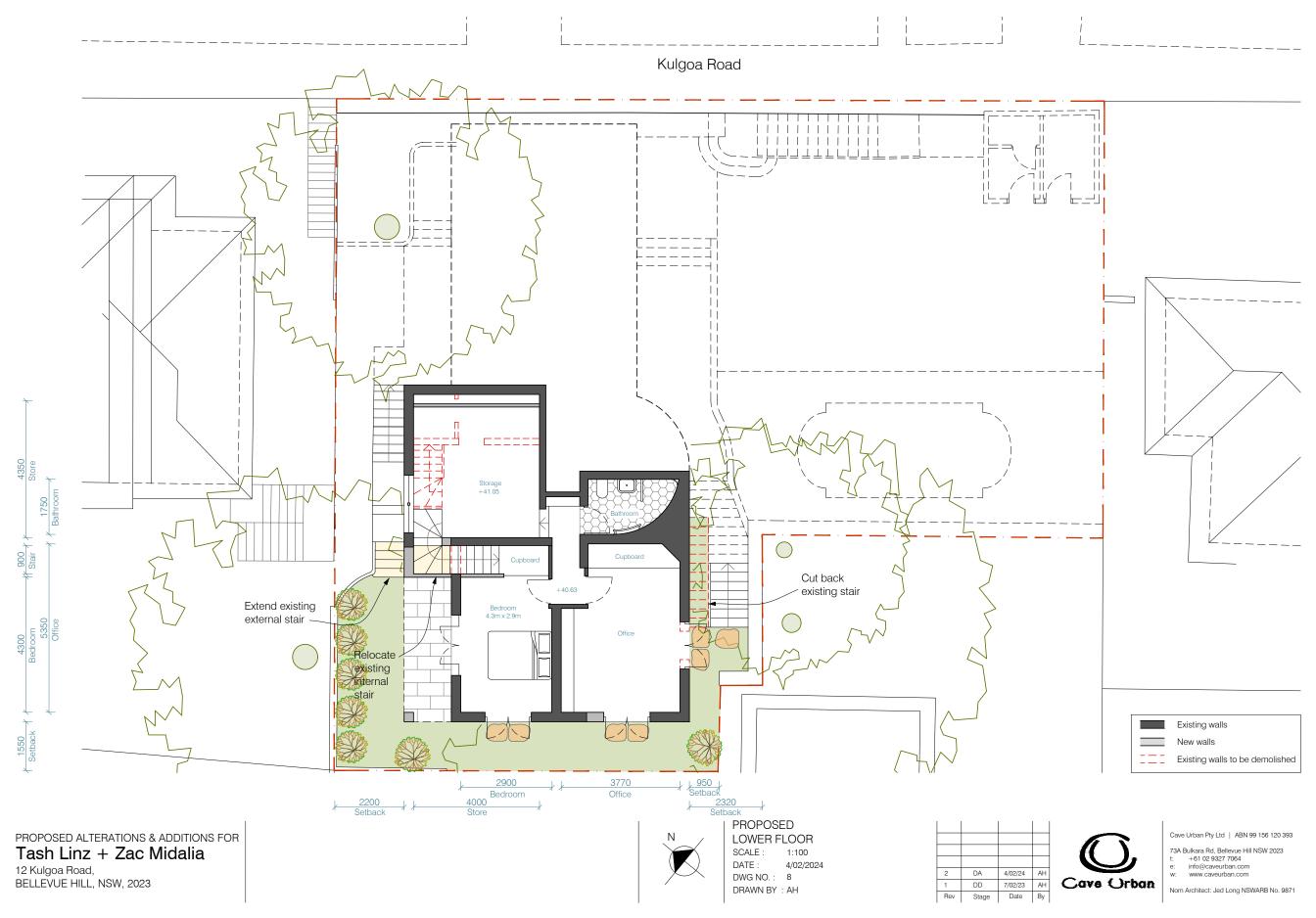
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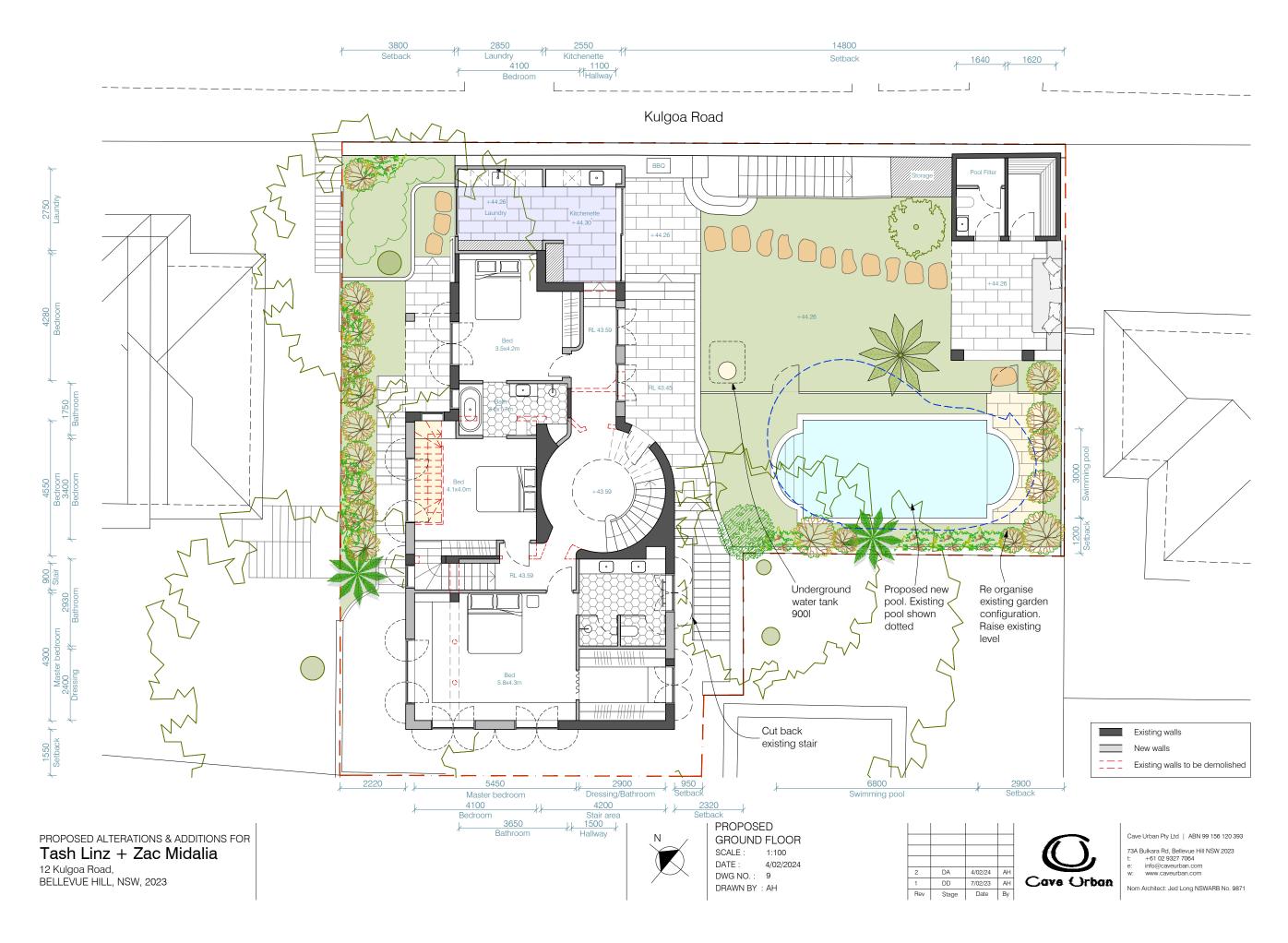
Nom Architect: Jed Long NSWARB No. 9871

Ex. ground floor RL +43.59 ∽

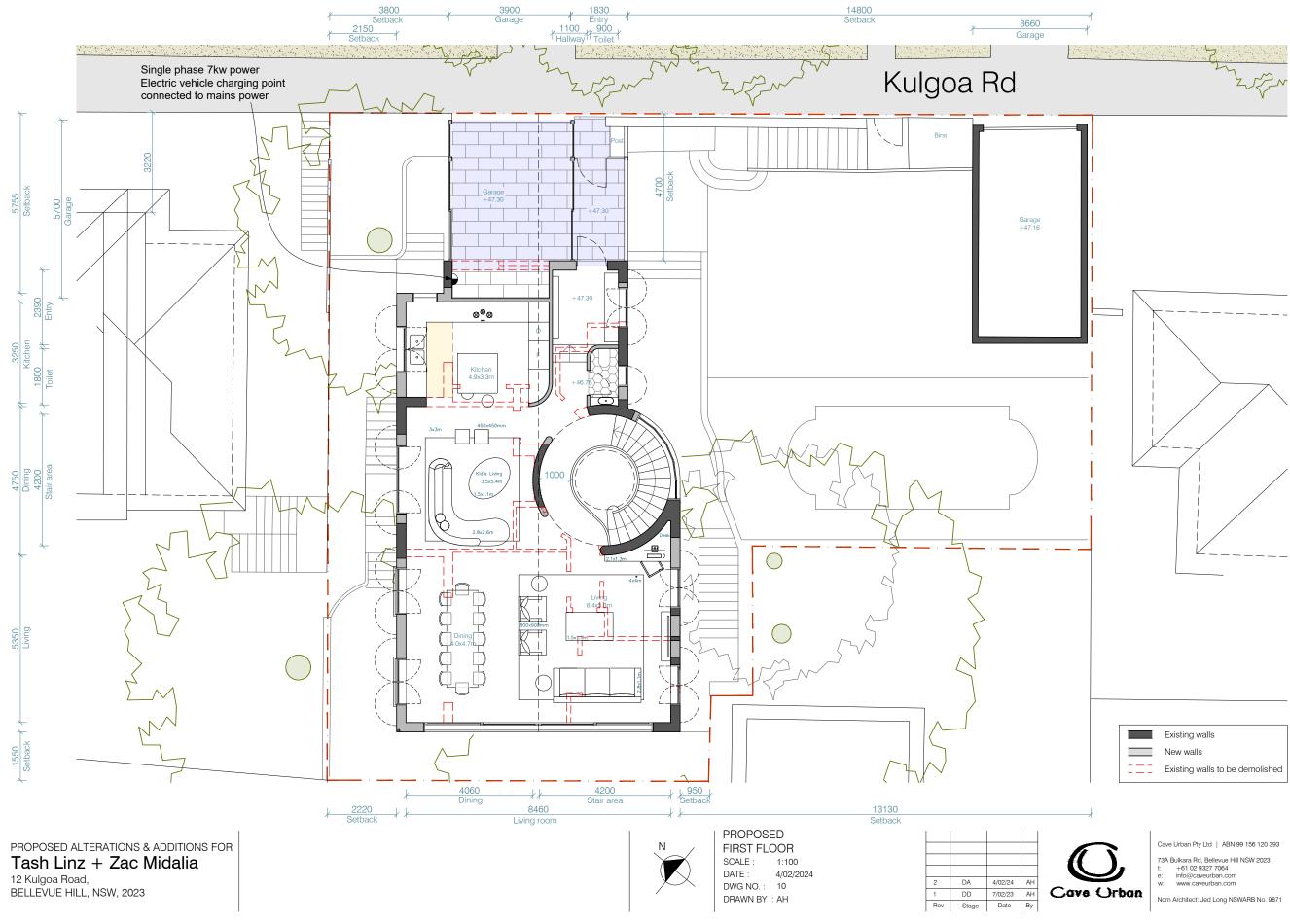


Ex.top of gutter RL +49.52 ☑



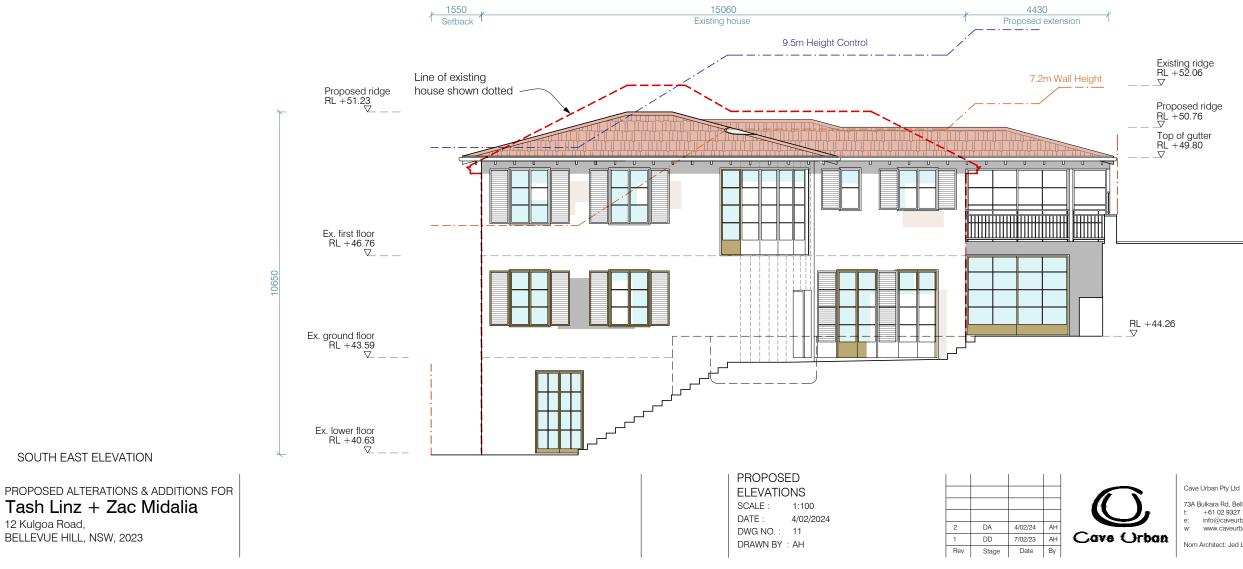


Woollahra Municipal Council Woollahra Local Planning Panel (Electronic Meeting) Agenda





NORTH EAST ELEVATION TO KULGOA RD





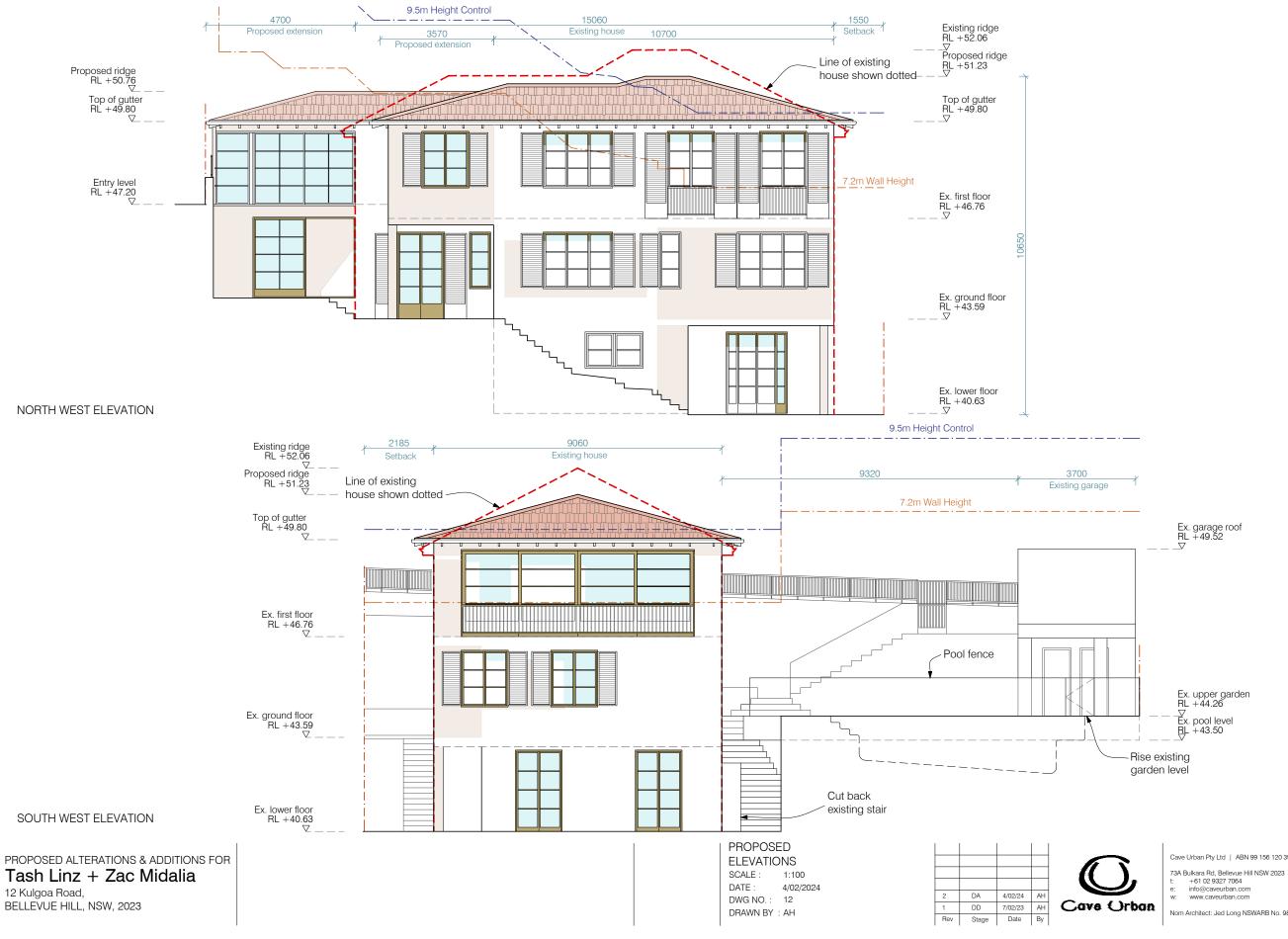


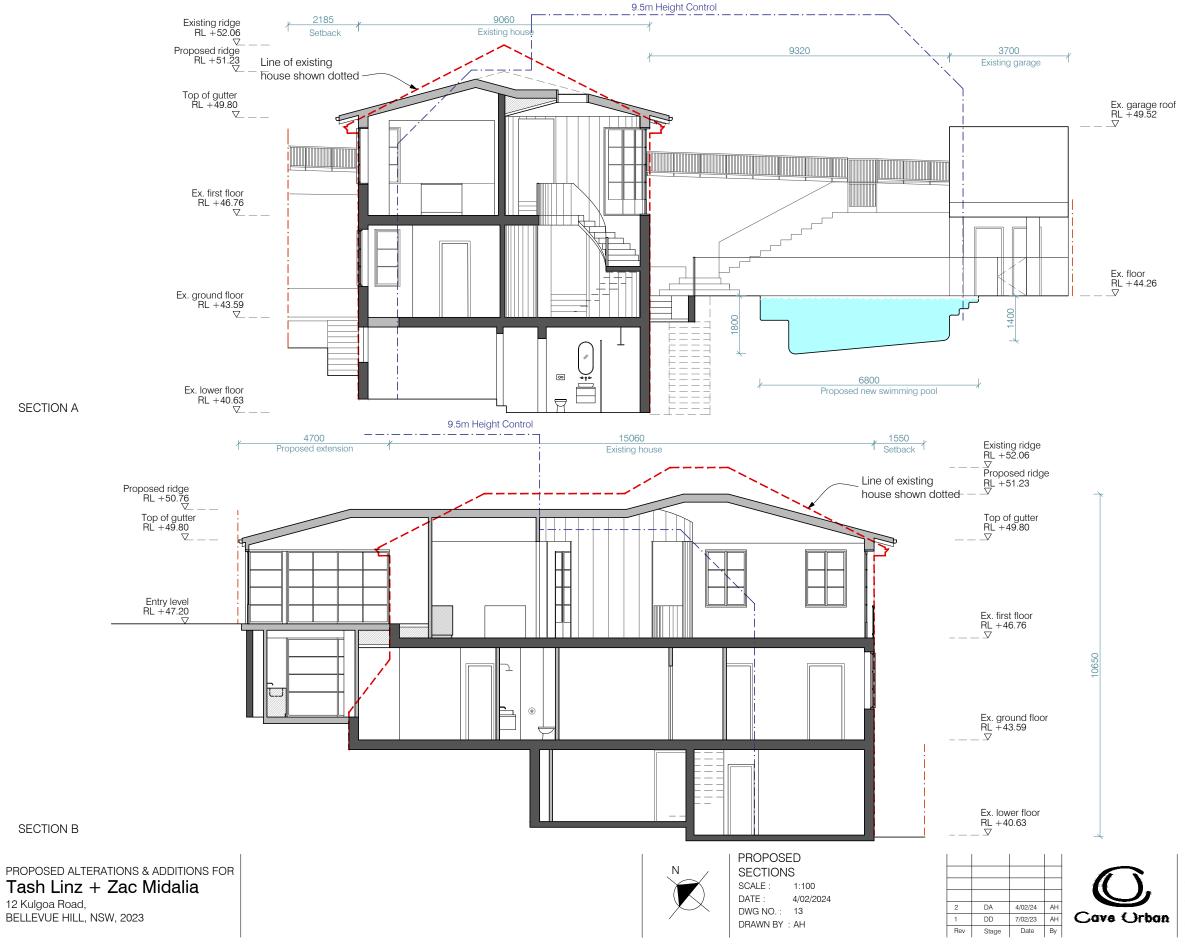
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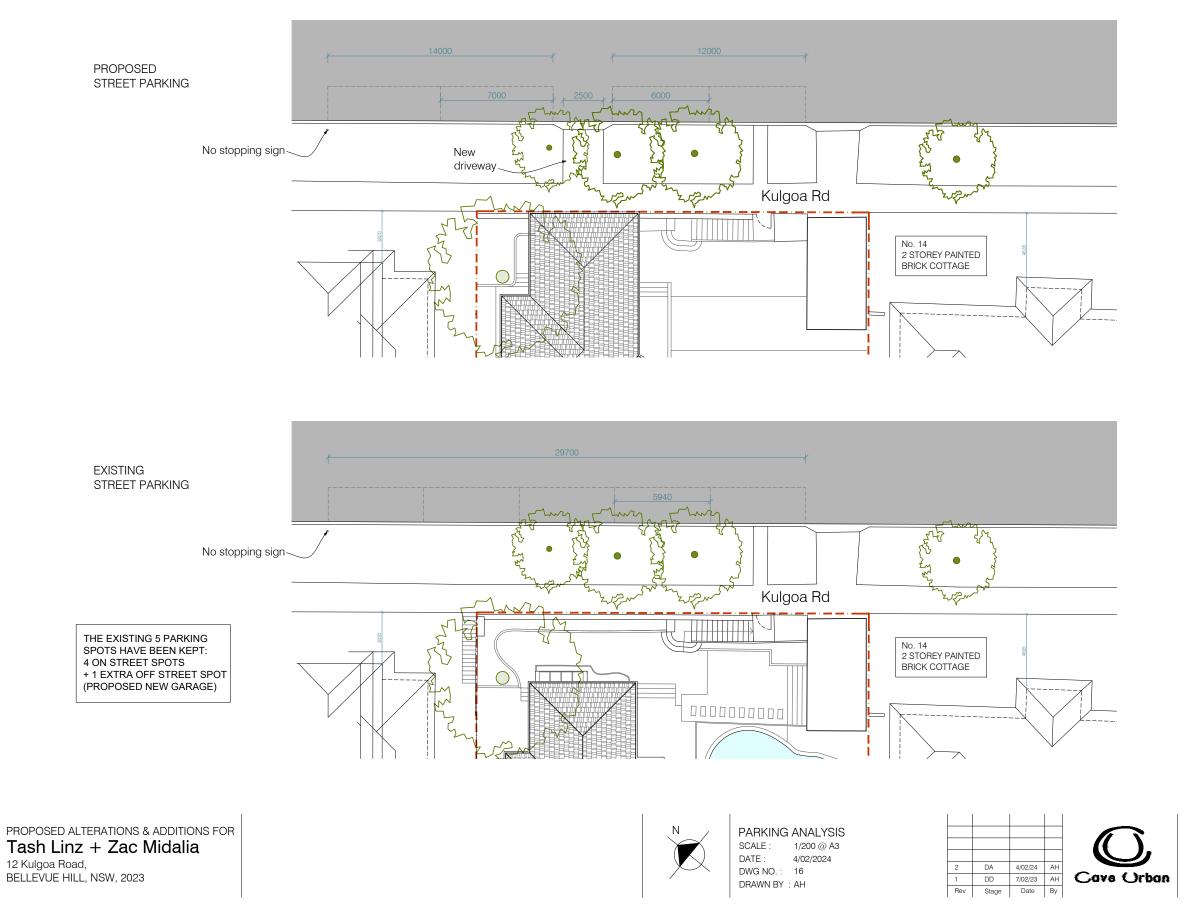
Nom Architect: Jed Long NSWARB No. 9871

Proposed ridge RL +50.76 Top of gutter RL +49.80 ∇

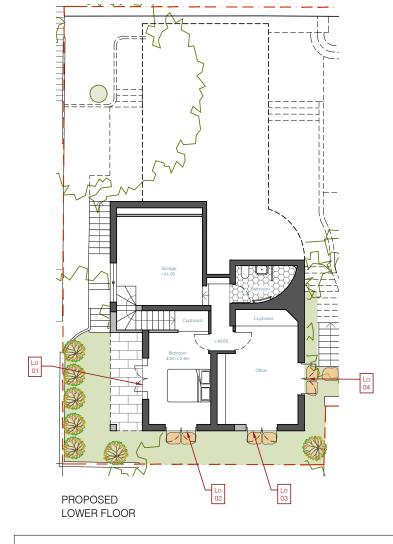




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BASIX Commitments - Certificate Number: A1742224

Rainwater tank

- The applicant must install a rainwater tank of at least 892 litres on the site. This rainwater tank must meet, and be installed in accordance with, the requirements of all applicable regulatory authorities
- The applicant must configure the rainwater tank to collect rainwater
- runoff from at least 100 square metres of roof area.
- The applicant must connect the rainwater tank to a tap located within 10 metres of the edge of the swimming pool.

Outdoor Swimming Pool

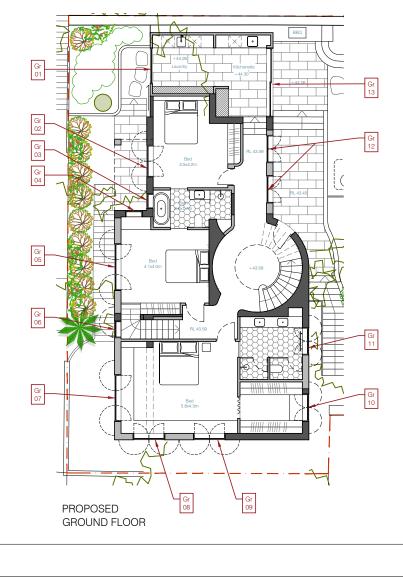
- The swimming pool will be outdoors
- The swimming pool will not have a capacity greater than 27 kilolitres.
- The swimming pool will have a pool cover.
- The applicant will install a pump timer for the swimming pool. The applicant will install the following heating system for the swimming
- pool that is part of this development: gas

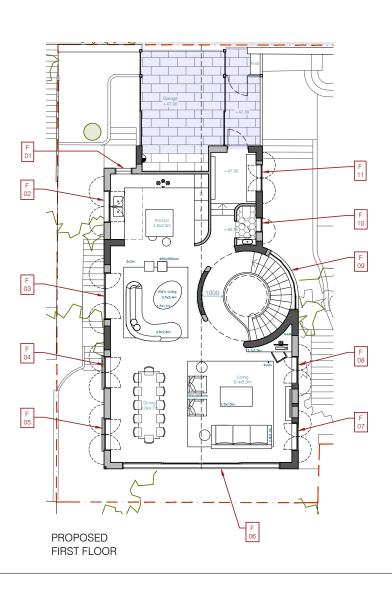
Hot Water

The applicant must install the following hot water system in the development: gas storage.

PROPOSED ALTERATIONS & ADDITIONS FOR Tash Linz + Zac Midalia 12 Kulgoa Road,

BELLEVUE HILL, NSW, 2023





Construction and Insulation requirements Concrete slab on ground floor: nil

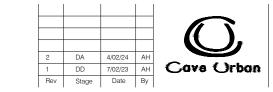
- Suspended floor with enclosed subfloor, concrete (R0.6): R0.7(down)(or R1.30 including construction)
- Floor above existing dwelling: nil
- External wall (framed, weatherboard): R1.30 (or R1.70 including construction)
- External wall (cavity brick): nil
- Internal wall shared with garage, plasterboard (R0.36): nil
- Raked ceiling, pitched roof (framed): ceiling: R1.80 (up), roof: thermocellular reflective, light colour (solar absorptance <0.475)
- Flat ceiling, pitched roof : ceiling: R2.00 (up), roof: thermocellular reflective, light colour (solar absorptance <0.475)

Fixtures

- New or altered showerheads will have a flow rate no greater than 9 litres per minute or a 3 star water rating.
 - New or altered toilets will have a flow rate no greater than 4 litres per average flush or a minimum 3 star water rating.
- New or altered taps will have a flow rate no greater than 9 litres per minute or minimum 3 star water rating.

Lighting A minimum of 40% of new or altered light fixtures will be fitted with fluorescent, compact fluorescent, or light-emitting-diode (LED) lamps

- Windows and glazed doors
 All new windows, glazed doors and skylights will be installed in accordance with the specifications
- listed in the table below. (Refer to BASIX Certificate)
- than 2400 mm above the sill.
- when fully drawn or closed.



N BASIX COMMITMENT SCALE : DATE : DWG NO.: 17 DRAWN BY : AH

1/300 @ A3

4/02/2024

Architectural Plans, Elevations, Sections Attachment 1

Each window or glazed door with standard aluminium or timber frames and single clear or toned glass may either match the description, or, have a U-value and a Solar Heat Gain Coefficient (SHGC) no greater than that listed in the table below. Total system U-values and SHGCs must be calculated in accordance with National Fenestration Rating Council (NFRC) conditions.

For projections described in millimetres, the leading edge of each eave, pergola, verandah, balcony or awning must be no more than 500 mm above the head of the window or glazed door and no more

External louvres and blinds must fully shade the window or glazed door beside which they are situated

Overshadowing buildings or vegetation must be of the height and distance from the centre and the base of the window and glazed door, as specified in the 'overshadowing' column in the table below.

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12 Kolgoa Road, Bellevue Hill

REQUEST FOR VARIATION TO HEIGHT OF BUILDINGS DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6(3) OF WOOLLAHRA LEP 2014

This Clause 4.6 variation relates to a proposal for alterations and additions to the existing dwelling on the subject site.

It is proposed to undertake the following alterations and additions to the existing dwelling:

- Reconfiguring the storage area and internal stairs on the Lower Ground Floor
- Extending the Ground Floor to the front to accommodate a laundry, kitchenette and larger floor area for the front bedroom and reconfiguring the floor layout of the Ground Floor
- Extending the front part of the First Floor to the northwest and reconfiguring the floor layout of the First Floor
- Removing the front part of the First Floor and constructing a new single garage at the north-western end of the site and a new dwelling entry at the First Floor
- Removing the existing swimming pool in the eastern part of the site and replacing it with a new swimming pool
- Constructing an outdoor WC, storage for pool filter and storage room in the front eastern corner of the site at Ground Level, within the existing under croft area beneath the existing garage
- New landscaping works to the private open space area in the eastern part of the site and around the perimeters of the dwelling
- Raising the level of the south-eastern part of the private open space to make the private open space area level
- Extending the external stairs on the north-western side of the Lower Ground Floor
- Constructing new external stairs leading from the pedestrian gate at the south-eastern end of the site to the private open space area

The proposal results in a non-compliance with clause 4.3 of the Woollahra Local Environmental Plan 2014 (**WLEP**) which relates to height of buildings. As such, this Clause 4.6 request has been prepared in accordance with

Suite 207 | 59 Great Buckingham Street | Redfern | NSW 2016 telephone: 02 9360 0989 | <u>www.a2p.com.au</u> Clause 4.6 of the WLEP, which applies to the subject site.

The request demonstrates that compliance with the development standard relating to budling height is unreasonable or unnecessary in the circumstances of the case and establishes that there are sufficient environmental planning grounds to justify contravening the development standard, satisfying clause 4.6(3) of the WLEP.

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 consistent with the objectives of the height of buildings development standard.

The nature of the exceedance to the development standard relating to height is set out below, followed by consideration of the relevant matters in clause 4.6 of the WLEP.

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.

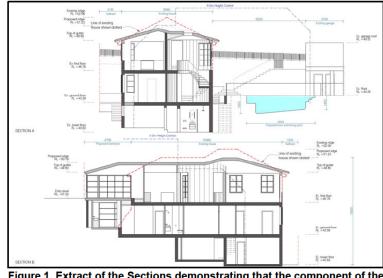
Clause 4.3 – Building Height

The Standard

Clause 4.3 of the WLEP and the associated map prescribe a maximum building height of 9.5 metres for this site. The proposal seeks to construct alterations and additions to the existing dwelling with a maximum height of



10.65 metres, providing a non-compliance with this control. The percentage variation is 12.1%.



Refer to the extract of the Section below showing the height non-compliance.

Figure 1. Extract of the Sections demonstrating that the component of the development above the height control is limited to the rear part of the dwelling; the remainder of the development complies with the building height standard

The objectives of Clause 4.3

The objectives of Clause 4.3 are 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.





Clause 4.6 - Exceptions to Development Standards

Clause 4.6 of the WLEP allows for exceptions to 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 WLEP 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 is satisfied the applicant has demonstrated that:
 - (a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard.



The matters required to be demonstrated under clause 4.6(3) are set out below as Points 1 and 2.

Clause 4.6(4) requires that Council keep a record of its assessment carried out under Clause 4.6(3).

1. Clause 4.6(3)(a) - Compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case:

These five ways were re-emphasised by the Court¹. Each 'test' offers a potential way of demonstrating that compliance is unnecessary or unreasonable in a particular circumstance². 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 with³.

Objective (a) to establish building heights that are consistent with the desired future character of the neighbourhood,

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 component of the development above the height control is limited to the rear part of the dwelling, due to the sloping topography of the site. The remainder of the dwelling complies with the building height standard. Refer to the extract of the Sections above.

The site and dwelling are set below street level. The proposed building height variation will therefore be indiscernible from the street and adjoining properties. Refer to the extract of the Front Elevation above. A reduction of the proposed building height would provide an indiscernible benefit to the streetscape and would reduce the amenity of the proposal.



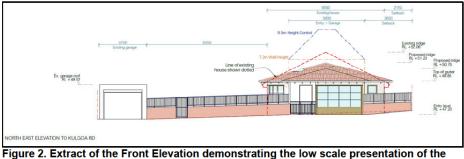
¹ Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386

² Mecone Pty Limited v Waverley Council [2015] NSWLEC 1312

³ 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

It is noted that the proposal sits below the maximum building height of the existing dwelling (11.4m). Refer to the extract of the Section above and the extract of the Front Elevation below.

The proposed development incorporates modulation and a varied palette of materials. The articulated building form minimises perceived bulk and scale impacts when viewed from the surrounds of the site.



dwelling to the streetscape

Objective (b) to establish a transition in scale between zones to protect local amenity,

Comment: Exceedance of the building height 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, as follows:

- <u>Overshadowing:</u> The site is oriented north-south with a northern frontage to Kulgoa Road. As demonstrated in the accompanying Shadow Diagrams, the proposal results in only some minimal additional overshadowing from 12pm to the private open space area of the subject site. The proposal does not result in any overshadowing to the adjoining properties. The proposal reduces overshadowing to the adjoining properties to the south at No.s 147 and 149 Bellevue Road due to the proposal reducing the bulk of the roof and lowering the ridgeline.
- <u>Views:</u> Due to the location, orientation and topography of the site and surrounding sites, the proposed building height non-compliance is unlikely to have unreasonable impact on existing views from the public domain or surrounding properties.
- <u>Privacy:</u> The proposed development has been designed and sited to ensure adequate visual and acoustic privacy between the subject dwelling 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. The proposal does not include any balconies or roof top terraces. The private open space area and swimming pool will be screened by fencing and landscaping to minimise potential acoustic privacy concerns.

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

Comment: Refer to comment above.

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

Comment: Refer to comment above.

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

Comment: The proposed height non-compliance will not result in adverse impacts to public views of the harbour and surrounding areas.

Compliance with the development standard is unreasonable and unnecessary as 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 and meets the objectives of the development standard.

2. Clause 4.6(3)(b) - There are sufficient environmental planning grounds to justify contravening the development standard:

The components proposed above the height control are:

Rear part of the dwelling

Refer to the extract of the Section below showing the height non-compliance.



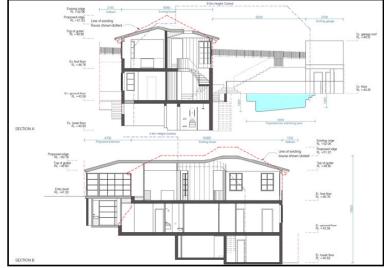


Figure 3. Extract of the Sections demonstrating that the component of the development above the height control is limited to the rear part of the dwelling; the remainder of the development complies with the building height standard

Given the consistency of the proposal against the zone objectives and height objectives (see **Point 4 below regarding both**), in my opinion there are sufficient environmental planning grounds to justify contravening the development standard⁴.

In addition to the consistency of the proposal against the height objectives (see **Point 2 above**), in my opinion there are sufficient environmental planning grounds to justify contravening the development standard⁵.

There are sufficient environmental planning grounds which demonstrate that the proposed height 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 height 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.

⁴ see SJD DB2 Pty Ltd v Woollahra Munipical Council [2020] NSWLEC 1112 at [90] ⁵ see SJD DB2 Pty Ltd v Woollahra Munipical Council [2020] NSWLEC 1112 at [90]



- The proposal will not result in unreasonable overshadowing of adjoining properties. The site is oriented north-south with a northern frontage to Kulgoa Road. As demonstrated in the accompanying Shadow Diagrams, the proposal results in only some minimal additional overshadowing from 12pm to the private open space area of the subject site. The proposal does not result in any overshadowing to the adjoining properties. The proposal reduces overshadowing to the adjoining properties to the south at No.s 147 and 149 Bellevue Road due to the proposal reducing the bulk of the roof and lowering the ridgeline.
- The proposal will provide a development, which has been designed to ensure that the visual and acoustic privacy of adjoining properties is maintained.
- 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 component of the development above the height control is limited to the rear part of the dwelling, due to the sloping topography of the site. The remainder of the dwelling complies with the building height standard. Refer to the extract of the Sections above.
- The site and dwelling are set below street level. The proposed building height variation will therefore be indiscernible from the street and adjoining properties. Refer to the extract of the Front Elevation above. A reduction of the proposed building height would provide an indiscernible benefit to the streetscape and would reduce the amenity of the proposal.
- It is noted that the proposal sits below the maximum building height of the existing dwelling (11.4m). Refer to the extracts of the Section and Front Elevation above.
- The proposed development incorporates modulation and a varied palette of materials. The articulated building form minimises perceived bulk and scale impacts when viewed from the surrounds of the site.
- The proposal provides a high level of internal amenity as demonstrated by compliance with the key amenity criteria within DCP, including side setbacks, building width, building length, solar access, parking and private open space. The excess building height thereby does not compromise the ability to meet or outperform the above criteria. This demonstrates that the site can accommodate the additional building height on the site.



The proposal will provide a suitable design and 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 and 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 height 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.

3. 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 proposal is consistent with the objects of Section 1.3 of the EP& A Act, 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 good design and amenity 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 height of buildings development standard under the WLEP, in which the development is proposed to be carried out.

⁶ Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 1097 at [42]





aSquare Planning Pty Ltd

Date: 23 May 2024





12 Kulgoa Road, Bellevue Hill

REQUEST FOR VARIATION TO FLOOR SPACE RATIO OF BUILDINGS DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6(3) OF WOOLLAHRA LEP 2014

This Clause 4.6 variation relates to a proposal for alterations and additions to the existing dwelling on the subject site.

It is proposed to undertake the following alterations and additions to the existing dwelling:

- Reconfiguring the storage area and internal stairs on the Lower Ground Floor
- Extending the Ground Floor to the front to accommodate a laundry, kitchenette and larger floor area for the front bedroom and reconfiguring the floor layout of the Ground Floor
- Extending the front part of the First Floor to the northwest and reconfiguring the floor layout of the First Floor
- Removing the front part of the First Floor and constructing a new single garage at the north-western end of the site and a new dwelling entry at the First Floor
- Removing the existing swimming pool in the eastern part of the site and replacing it with a new swimming pool
- Constructing an outdoor WC, storage for pool filter and storage room in the front eastern corner of the site at Ground Level, within the existing under croft area beneath the existing garage
- New landscaping works to the private open space area in the eastern part of the site and around the perimeters of the dwelling
- Raising the level of the south-eastern part of the private open space to make the private open space area level
- Extending the external stairs on the north-western side of the Lower Ground Floor
- Constructing new external stairs leading from the pedestrian gate at the south-eastern end of the site to the private open space area

The proposal results in a non-compliance with clause 4.4 of the Woollahra Local Environmental Plan 2014 (WLEP) which relates to floor space ratio

Suite 207 | 59 Great Buckingham Street | Redfern | NSW 2016 telephone: 02 9360 0989 | <u>www.a2p.com.au</u> (**FSR**). As such, this Clause 4.6 request has been prepared in accordance with Clause 4.6 of the WLEP 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 the case and establishes that there are sufficient environmental planning grounds to justify contravening the development standard, satisfying clause 4.6(3) of the WLEP.

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 consistent with the objectives of the FSR development standard.

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 WLEP.

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 435.7m².



Clause 4.4E of Woollahra LEP 2014 prescribe a maximum FSR of 0.5:1 (217.85m²) for a dwelling occupancy on a lot area of greater than 400m².

The proposal will result in an FSR of 0.668:1 (GFA: 291.4m²), providing a non-compliance with this control. The percentage variation is 33.76% (73.55m²).

The objectives of Clause 4.4

The objectives of Clause 4.4 are as follows:

- (1) The objectives of this clause are as follows:
 - (a) to ensure the bulk and scale of development is compatible with the desired future character of the area,
 - (b) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,
 - (c) to ensure development makes adequate provision for deep soil planting, tree canopy cover and private open space.

Clause 4.6 - Exceptions to Development Standards

Clause 4.6 of the WLEP 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 is satisfied the applicant has demonstrated that:
 - (a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard.

The matters required to be demonstrated under clause 4.6(3) are set out below as Points 1 and 2.

Clause 4.6(4) requires that Council keep a record of its assessment carried out under Clause 4.6(3).

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. 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;
- 4. 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.

¹ see Wehbe v Pittwater Council [2007] NSWLEC 827



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.

Objective (a) to ensure the bulk and scale of development is compatible with the desired future character of the area,

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 dwelling as proposed to be altered with the additional FSR is appropriate to its context and will not appear out of character when viewed in its context of other buildings in the vicinity.

The site and dwelling are set below street level. The proposed FSR variation will therefore be indiscernible from the street and adjoining 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 proposed development incorporates modulation and a varied palette of materials. The articulated building form minimises perceived bulk and scale impacts when viewed from the surrounds of the site.

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) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,

Comment: Exceedance of the FSR control will not create additional building

⁴ 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

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.

- <u>Overshadowing:</u> The site is oriented north-south with a northern frontage to Kulgoa Road. As demonstrated in the accompanying Shadow Diagrams, the proposal results in only some minimal additional overshadowing from 12pm to the private open space area of the subject site. The proposal does not result in any overshadowing to the adjoining properties. The proposal reduces overshadowing to the adjoining properties to the south at No.s 147 and 149 Bellevue Road due to the proposal reducing the bulk of the roof and lowering the ridgeline.
- <u>Views:</u> 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.
- <u>Privacy:</u> The proposed development has been designed and sited to ensure adequate visual and acoustic privacy between the subject dwelling 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. The proposal does not include any balconies or roof top terraces. The private open space area and swimming pool will be screened by fencing and landscaping to minimise potential acoustic privacy concerns.

Objective (c) to ensure development makes adequate provision for deep soil planting, tree canopy cover and private open space.

Comment: The proposed FSR is sited and designed to maintain the predominance of soft landscaped areas on the site. The proposal complies with the DCP overall site deep soil landscaping and tree canopy controls. It is noted that the proposal increases the amount of front deep soil planting area compared to that currently existing on the site.

Compliance with the development standard is unreasonable and unnecessary as the proposed building height and bulk is of an appropriate form and scale and is compatible with surrounding development and the desired future

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character for the locality and meets the objectives of the development standard.

2. Clause 4.6(3)(b) - There are sufficient environmental planning grounds to justify contravening the development standard:

The components proposed above the FSR control are:

• 73.55m² of GFA

In addition to the the consistency of the proposal against the FSR objectives (see **Point 2 above**), in my opinion there are sufficient environmental planning grounds to justify contravening the development standard⁵.

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 will not result in unreasonable overshadowing of adjoining properties. The site is oriented north-south with a northern frontage to Kulgoa Road. As demonstrated in the accompanying Shadow Diagrams, the proposal results in only some minimal additional overshadowing from 12pm to the private open space area of the subject site. The proposal does not result in any overshadowing to the adjoining properties. The proposal reduces overshadowing to the adjoining properties to the south at No.s 147 and 149 Bellevue Road due to the proposal reducing the bulk of the roof and lowering the ridgeline.
 - The proposal will provide a development, which has been designed to ensure that the visual and acoustic privacy of adjoining properties is maintained.
 - 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.

⁵ see SJD DB2 Pty Ltd v Woollahra Munipical Council [2020] NSWLEC 1112 at [90]



- The dwelling as proposed to be altered with the additional FSR is appropriate to its context and will not appear out of character when viewed in its context of other buildings in the vicinity.
- The site and dwelling are set below street level. The proposed FSR variation will therefore be indiscernible from the street and adjoining 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 proposed development incorporates modulation and a varied palette of materials. The articulated building form minimises perceived bulk and scale impacts when viewed from the surrounds of the site.
- The proposed FSR is sited and designed to maintain the predominance of soft landscaped areas on the site. The proposal complies with the DCP overall site deep soil landscaping and tree canopy controls. It is noted that the proposal increases the amount of front deep soil planting area compared to that currently existing on the site.
- Despite the FSR contravention, the proposal is not an overdevelopment of the site and achieves an appropriate correlation between maximum height and density.
- The proposal provides a high level of internal amenity as demonstrated by compliance with the key amenity criteria within DCP, including side setbacks, building width, building length, solar access, parking and private open space. The excess FSR thereby does not compromise the ability to meet or outperform the above criteria. This demonstrates that the site can accommodate the additional floor area on the site.

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

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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(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 proposal is consistent with the objects of Section 1.3 of the EP& A Act, 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 good design and amenity 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 that 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 is consistent with the objectives of the FSR development standard under the WLEP, in which the development is proposed to be carried out.

⁶ Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 1097 at [42] ⁷ Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 at [94(c)] and Randwick City Council v Micaul Holdings Pty Ltd at [34]





Consultant Planner aSquare Planning Pty Ltd

Date: 23 March 2024



Director aSquare Planning Pty Ltd

Updated: 1 July 2024



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21 August 2024

REFERRAL RESPONSE – DEVELOPMENT ENGINEERING

FILE NO:	Development Applications: 124/2024/1
ADDRESS:	12 Kulgoa Road BELLEVUE HILL 2023
PROPOSAL:	Alterations and additions to existing dwelling
FROM:	W Huynh
то:	W Ou

1. ISSUES

• Please see comments regarding impacts on Council infrastructure due to vehicular access and parking arrangement.

2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environment Effects, referenced AP1957, prepared by aSquare Planning, dated 01/07/2024.
- Architectural Plans, unreferenced-Rev 2, prepared by Cave Urban, dated 04/02/2024.
- Survey Plan, referenced 25430-Issue A, prepared by John R. Holt Surveyors, dated 21/03/2022.
- Stormwater Management Plan, 7-Rev 2, prepared by Cave Urban, dated 04/02/2024.
- RFI Response Letter, unreferenced, prepared by aSquare Planning, dated 03/05/2024.

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

No outstanding issues.

b. Flooding & Overland Flow comments

Not relevant

c. Impacts on Council Infrastructure comments

The submitted parking analysis uses lengths of 6 metres to represent a single on-street car parking space as opposed to 5.4 metres as stipulated in Chapter E1.10.6 of Council's DCP. Accordingly, the proposed vehicular crossing will result in the loss of one on-street car parking space.

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Further, the centreline of the proposed crossing is insufficiently aligned with the centreline of the proposed parking space due to proximity of existing street trees and the proposed width of 2.5 metres does not comply with the minimum width requirement of 3 metres pursuant to AS2890.1.

In light of the aforementioned and pursuant to the objectives of Part B3.6 of the Council's DCP to minimise the loss of on-street parking and to minimise visual and environmental impacts of driveways, the proposed vehicular crossing is not supported.

d. Traffic comments

Not relevant

e. Vehicle Access & Accommodation comments

The proposed parking arrangement will result in the loss of on-street parking which is not acceptable. Pursuant to Chapter E1.10.6, vehicular crossing must be located to minimise the loss of on-street parking. Further, only one driveway entry per property is permitted as per Chapter B3.6 of the Council's DCP.

f. Geotechnical, Hydrogeological and/or Structural comments

No outstanding issues.

4. **RECOMMENDATION**

Council's Development Engineer has determined that the proposal is unsatisfactory for the following reasons:

It is noted the submitted parking analysis uses lengths of 6 metres to represent a single on-street car parking space as opposed to 5.4 metres as stipulated in Chapter E1.10.6 of Council's DCP. Accordingly, the proposed vehicular crossing will result in the loss of one on-street car parking space.

Further, the centerline of the proposed crossing is insufficiently aligned with the centreline of the proposed parking space due to proximity of existing street trees and the proposed width of 2.5 metres does not comply with the minimum width requirement of 3 metres pursuant to AS2890.1.

In light of the aforementioned and pursuant to the objectives of Part B3.6 of the Council's DCP to minimise the loss of on-street parking and to minimise visual and environmental impacts of driveways, the proposed vehicular crossing is not supported.

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16 May 2024

REFERRAL RESPONSE – TREES AND LANDSCAPING

FILE NO:	Development Applications: 124/2024/1
ADDRESS:	12 Kulgoa Road BELLEVUE HILL 2023
PROPOSAL:	Alterations and additions to existing dwelling
FROM:	Andrew Simpson
то:	W Ou

1. ISSUES

• The proposed driveway between the two (2) street trees may impact on their health and stability.

2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environmental Effects, prepared by aSquared Planning, dated March 2024
- Survey Plan, drafted by John R Holt Surveyors Pty Ltd, dated 21 March 2022
- Architectural Drawings, drawn by Cave Urban, dated 4 February 2024
- Arboricultural Impact Assessment Report, written by Lee Hancock, dated 4 April 2024
- Landscape Plans, designed by Cave Urban, dated 4 February 2024

A site inspection was carried out on 23 May 2024.

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

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 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. SUMMARY

The proposal to construct the new driveway crossover is not supported.

5. COMMENTS

The following tree numbering is consistent with the submitted Arboricultural Impact Assessment prepared by Lee Hancock dated 4 April 2024.

Street Trees and New Driveway

Inspection of the site has identified three (3) *Tristaniopsis laurina* (Water Gums) located outside the site on Council land. The trees were noted in good health and condition. The trees are considered to be important community asset that should be retained and protected.

The trees are numbered 1, 2 and 3 in the applicants Arborist Report and have rated as having High Landscape Significance and High Retention Value.

The plans indicate a new driveway and crossover is proposed between trees 2 and 3 which is within the Tree Protection Zone (TPZ) and Structural Root Zone (SRZ) of both trees.

The TPZ is defined by the Australian Standard The Protection of Trees on Development Sites (AS 4970 -2009) as 'a specified area above and below ground and at a given distance from the trunk set aside for the protection of a tree's roots and crown to provide for the viability and stability of a tree to be retained where it is potentially subject to damage by development'.

The SRZ is the 'area around the base of the tree required for the tree's stability in the ground. The woody root growth and soil cohesion in this area are necessary to hold the tree up right' as defined by AS 4970 – 2009.

The details on the plans are limited and do not show any finished levels or detailed design for the driveway and crossover.

According to the applicants Arborist, *"the new driveway will be constructed at existing ground level including subbase, no excavations within the structural root zone tree protection zone of trees 2 and 3."* However, this would not be possible as levels will need to match the footpath and a section of kerb will need to be removed. The installation of the driveway will also need to be done in accordance with Council's public domain technical guidelines which will result in excavations within the TPZ and SRZ of the trees.

It is considered that insufficient assessment has been undertaken by the applicants Arborist to demonstrate that the trees will not be adversely impacted. The report has not provided any details of the percentage of encroachment into the TPZ of each tree. In addition, as the proposed driveway is within the SRZ of each tree, it is deemed a Major Encroachment as defined by the Australian Standards 'Protection of trees on development sites'.

As detailed in AS4970, if the proposed encroachment is greater than 10% of the TPZ or inside the SRZ, the project arborist must demonstrate that the trees would remain viable. This tree is highly

Page 2 of 3



likely to be adversely impacted during construction and support cannot be given for this element of the proposal.

6. RECOMMENDATIONS

Council's Tree and Landscape Officer has determined that the proposal is not satisfactory in its current form. Refusal of this application is recommended for the following reasons:

Andrew Simpson Tree Management Team Leader

Page 3 of 3

LOCAL PLANNING PANEL DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D2
FILE No.	DA96/2024/1
ADDRESS	30-36 Bay Street DOUBLE BAY
COUNCIL WARD	Double Bay
SITE AREA	767.2m ²
ZONING	E1 Local Centre
PROPOSAL	Addition of a new roof terrace associated with the top floor tenancy of an existing commercial building
TYPE OF CONSENT	Local development
COST OF WORKS	\$32,670.00
DATE LODGED	11/04/2024
APPLICANT	Bay Street JV Pty Limited
OWNER	Bay Street JV Pty Ltd
AUTHOR	Mr B McIntyre
TEAM LEADER	Mr T Wong
SUBMISSIONS	Eight (8) – Seven (7) by way of objections and one (1) letter of support
RECOMMENDATION	Refusal

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 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 such that refusal is justified;
- The site is not suitable for the proposed development; and
- The proposal is not in the public interest.

3. LOCALITY PLAN



Note: One letter of support received - no address provided

4. PROPOSAL

The proposal is for the addition of a new roof terrace associated with the top floor tenancy of the existing commercial building (being the 4th and the 5th floor, which are vertically connected by internal stairs).

The roof terrace is proposed to be used within the following hours:

- 7:00am and 10:00pm Monday to Saturday, and
- 8:00am and 10:00pm Sundays and public holidays.

5. ISSUES

5.1 Exceptions to Development Standards in Woollahra Local Environmental Plan 2014

Clause	Development Standard	Departure from Control	Conclusion
Part 4.3	Height of Buildings	2.58m or 14.25% departure from the 18.1m control	Unsatisfactory*

*A Clause 4.6 written request was submitted for the Height of buildings development standard under Part 4.3 of the Woollahra LEP 2014 but was found to be unsatisfactory

5.2 Primary Issues

Issue	Conclusion	Section
Non-compliance with the Height of Buildings development standard	Unsatisfactory. The application is recommended for refusal.	11.3 & 11.5
Use	Unsatisfactory. The application is recommended for refusal.	12.1.4

Issue	Conclusion	Section
Acoustic and visual privacy impacts	Unsatisfactory. The application is recommended for refusal.	12.1.4
Precedent	Unsatisfactory. The application is recommended for refusal.	12.1.4
Objectors concerns	The submissions are acknowledged. The proposed development is recommended for refusal.	Throughout the report

PROPERTY DETAILS AND REFERRALS

6. SITE AND LOCALITY

Physical features

The site is located on the south western corner of the intersection of Bay Street and Guilfoyle Avenue. The site is irregular in shape with a staggered rear boundary to the southwest. It has boundary dimensions of 24.615m to Bay Street on its eastern side, 23.215m to Guilfoyle Avenue on its northern side and 22.53m and 25.045m on its southern and western side boundary respectively. The total site area is 767.2m².

Topography

The site is relatively level.

Existing buildings and structures

Currently located on the site is a 6 storey contemporary commercial building with restaurants on the ground floor and commercial tenancies above. The development is highly visible from the public domain and is located at one of the prominent corners within the Double Bay Commercial Centre.

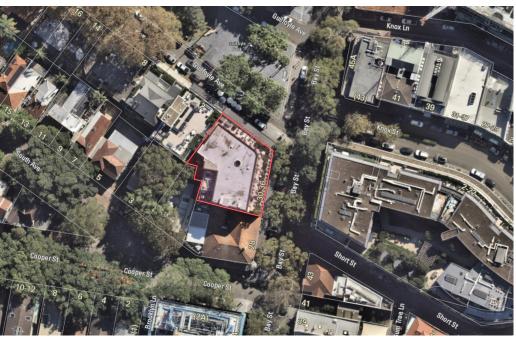
Surrounding Environment

The subject site is located within the central section of Bay Street with Guilfoyle Park located directly opposite the site to the north.

Immediately adjoining to the south of the site is the Royal Oak Hotel, to the northwest is a commercial building known as No.2 Guilfoyle Ave, and to the rear (west) are buildings which form part of a low-density residential precinct.

Across Guilfoyle Park to the north is a shop-top housing development. On the eastern side of Bay Street, diagonally opposite the Park to the north east, is a 2-storey mixed retail/commercial building. The Cosmopolitan Building, which is a shop top housing development, is located directly opposite the site to the east.

The surrounding development comprises a mixture of commercial, retail, hotel, office, residential and places of public entertainment uses.



Aerial view of the subject site



The subject site as viewed from the intersection of Bay Street and Knox Street



The subject site as viewed from Bay Street



View of the subject site from Guilfoyle Park, looking in a south-easterly direction



View of the subject site as viewed from the terrace of the upper level apartment of the Cosmopolitan building



Existing north-facing terrace (Guilfoyle Avenue) located on the 4th Floor level of the subject site



Existing east-facing terrace (Bay Street) located on the 4th Floor level of the subject site

7. RELEVANT PROPERTY HISTORY

Current use

Commercial/Retail Relevant Application History

DA 537/2021/1 for alterations and additions of a new roof terrace associated with the top floor tenancy of an existing commercial building was refused on 27 May 2022.

[Note: This refused roof terrace is identical to the proposed roof terrace under the current Development Application, refer to further discussion in Section 12.1.4 of this report]

Relevant Compliance History

Nil.

Pre-DA Nil.

Requests for Additional Information and Replacement Applications

14.05.2024 – An Unsatisfactory Development Application email was sent to the applicant identifying the following concerns raised by Council's Environmental Health Officer:

- 1. Plan of Management
- 2. Acoustic impact

A response to the above was provided on 28th May 2024 by the Applicant who submitted an Operational Noise Management Plan (**Attachment 5**).

Land and Environment Court Appeal(s)	
NII	

Nil.

8. REFERRALS

Referral	Summary of Referral Response	Attachment
Environmental Health	Unsatisfactory.	3

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 **1 May 2024 to 16 May 2024** in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. Submissions were received from the following parties:

Objections

- 1. Tom Pongrass (Chairman of the Owner's Corporation of the Cosmopolitan Apartments), 7F/2-22 Knox Street, Double Bay
- 2. Susan and Mark Cullen, 3B/2-22 Knox Street, Double Bay
- 3. Brett Brown on behalf of Mrs. Vera Boyarsky, 7A/2-22 Knox Street Double Bay
- 4. Reg Grinberg, 7C/2-22 Knox Street Double Bay
- 5. Knight Frank Town Planning on behalf of Mr Ezekiel Solomon (4 submissions), Level 5/2-22 Knox Street, Double Bay
- 6. Mrs Carmel MacDonald, 3A/2-22 Knox Street, Double Bay
- 7. Charles Curran, 6B/2-22 Knox Street, Double Bay

The submissions raised the following issues:

- Non-compliance with the height of buildings development standard
- CI 4.6 is not well founded
- Visual intrusion (effectively an additional floor)
- Precedent
- Exact same development was previously refused y the Woollahra LPP
- Visual and acoustic privacy impacts
- Light spill
- Nature of the proposed use entertainment/hospitality venue
- Overshadowing
- Acoustic report makes reference to background music
- Loss of views
- Potential for more onerous uses to be proposed under Exempt and Complying Development without development consent
- Hours of operation (inconsistent with standard business hours)
- Difficult to police the use of the roof terrace
- Proposed use and insufficient information with regards to the use of the terrace

Letter of Support

1. Michael Jarvin, no address provided

<u>Comment:</u> The submissions are acknowledged. The proposed development is recommended for refusal. The issues above are assessed, where necessary, under the relevant heads of consideration in the body of the report.

9.2 Statutory Declaration

The applicant has completed the statutory declaration dated 27 May 2024 declaring that the site notice was erected and maintained during the notification period in accordance with Schedule 1 of the Woollahra Community Participation Plan 2019.

10. STATE ENVIRONMENTAL PLANNING POLICIES

10.1. State Environmental Planning Policy (Resilience and 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).

On the basis, no further consideration is required under Chapter 2 of the Resilience and Hazards SEPP 2021.

10.2. 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 satisfies the relevant criteria prescribed by Chapter 6 – Water Catchments of the Biodiversity and Conservation SEPP 2021.

11. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

11.1 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:

• It does not protect amenity (visual and acoustic privacy of the surrounding residential area) as required in sub-clause (g).

The proposal <u>fails</u> to satisfy the aforementioned aim and is therefore listed as a reason for refusal.

11.2 Land Use Table

The proposal is permissible but is not consistent with the relevant objectives of the E1 Local Centre zone for the following reasons:

• The proposed roof terrace is of a scale and type that is not compatible with the amenity of the surrounding residential area, for reasons detailed throughout this report.

The proposal <u>fails</u> to satisfy the relevant objective and is therefore listed as a reason for refusal.

11.3 Part 4.3: Height of Buildings

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

	Approved	Proposed	Control	Complies
Maximum Building Height	19.96m (parapet) * 21.84m (lift overrun) *	20.68m (to the top of the terrace balustrade)	18.1m	No

*Approved non-compliance

The proposal does not comply with Part 4.3 of Woollahra LEP 2014 as detailed and assessed in Part 10.5 below.

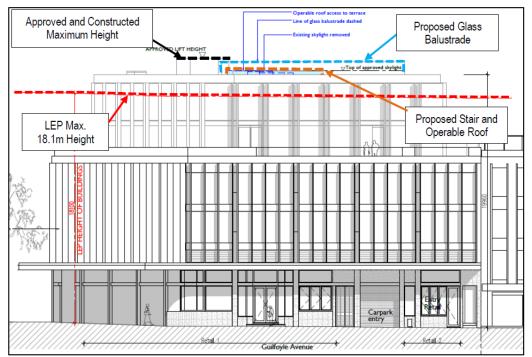
11.4 Part 4.4: Floor Space Ratio

The proposal results in no increase to the approved gross floor area and is therefore acceptable with regard to Part 4.4 of the Woollahra LEP 2014.

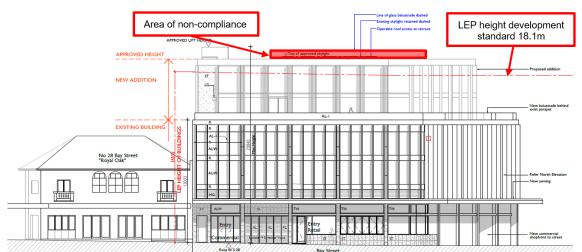
11.5 Part 4.6: Exceptions to Development Standards

Departure

The proposal exceeds the 18.1m maximum Height of Buildings statutory development standard under Clause 4.3 of the Woollahra LEP 2014. The proposed building height of 20.68m to the top of the terrace balustrade represents a 2.58m (14.25%) non-compliance with the development standard. The proposed works above the 18.1m development standard consists of the staircase to the roof terrace, the roof terrace, sliding operable roof and glass balustrading to the roof terrace.



North elevation showing the proposed works that exceed the height of buildings development standard (Source: SEE prepared by GSA Planning)



East elevation showing the proposed works that exceed the height of buildings development standard (Source: Modified extract from Architectural Plans by Lawton Hurley)

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.

Justification Requirements

Section 4.6(3) states that:

Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

- a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
- b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

Section 4.6(3) does not require the applicant to demonstrate those matters solely in the written request.

Applicant's Written Request

Section 35B of the *Environmental Planning and Assessment Regulation 2021* requires a development application for development that proposes to contravene a development standard to be accompanied by a document [the written request] setting out the grounds on which the applicant seeks to demonstrate the matters in clause 4.6(3) paragraphs (a) and (b).

The applicant has provided a written request (**Attachment 2**) in accordance with Section 35B of the *Environmental Planning and Assessment Regulation 2021*.

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.

Step 1: Are the planning instrument, development standard and proposed variation identified in the written request accurate?

In determining whether the information contained within the written request is accurate, the following questions have been considered:

- Is the provision proposed to be varied a development standard?
- Is the development standard proposed to be varied one that can be varied, and not excluded from the operation of section 4.6 by section 4.6(8)?
- Is the correct LEP or SEPP section (and objectives if relevant) referenced?
- Is the extent of the variation correctly identified?

Assessment:

Having regard to the definition of 'development standards' under the EP&A Act, Council is satisfied that the provision proposed to be varied is a development standard and is not excluded from the operation of Clause 4.6 by Clause 4.6(8).

The submitted Cl 4.6 written request (**Attachment 2**) has accurately referenced Clause 4.3 Height of Buildings and the associated objectives under the WLEP 2014. The extent of variation with Clause 4.3 has been accurately identified in the submitted written request.

Step 2: Section 4.6(3)(a): Is compliance unreasonable or unnecessary?

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 the 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.

Assessment:

The submitted Section 4.6 Written Request to Clause 4.3 Height of Buildings and the arguments provided are relevant to Test 1 – in that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The applicant's written request principally adopts the first method of the *Wehbe* tests to demonstrate that compliance is unreasonable or unnecessary in the circumstances.

The applicant's written request has failed to adequately demonstrate that all of the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Clause 4.3 – Height of Buildings

An assessment against the objectives applying to Part 4.3 (Height of Buildings) is provided below.

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

<u>Comment:</u> Acceptable – The proposal is consistent with the desired future character of the neighbourhood as the proposed terrace will not be visible from the public domain. In addition, the proposed balustrades to the roof terrace are transparent glass which would not significantly increase the bulk and scale of the development when viewed from adjoining properties. The proposal therefore achieves consistency with development on surrounding and adjacent properties.

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

<u>Comment:</u> Acceptable – The subject site is generally surrounded by properties zoned E1 Local Centre to the south, east and west. To the north of the site is Guilfoyle Park which is zoned RE1 Public Recreation zone but separated by the road carriageway. The western corner tip of the site touches upon land zoned R2 Low Density Residential. The proposal will maintain the scale of the existing building at this transitional location of multiple zones.

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

<u>Comment:</u> Acceptable – The proposal will not result in any additional unacceptable solar access impacts 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

<u>Comment:</u> Unacceptable – The proposed development will result in unacceptable adverse impacts on adjoining or nearby properties in terms of loss of acoustic and visual privacy arising from the proposed development, for reasons discussed throughout this report.

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

<u>Comment:</u> Acceptable – The proposal will not result in any loss of public views of the harbour and of surrounding areas.

For reasons discussed above, the proposal fails to satisfy Objective (d) applying to Part 4.3 (Height of Buildings).

Step 3: Section 4.6(3)(b) Are there sufficient environmental planning grounds to justify the contravention?

In *Initial Action* Preston CJ provided the following guidance (at paragraphs 23 and 24) concerning whether there will be sufficient environmental planning grounds to justify a contravention of 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.

24 The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". ... the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) 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. 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: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15].

Section 1.3 of the EPA Act reads as follows:

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.

Assessment:

To determine whether the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of the development standard, the following questions have been considered:

- What environmental planning grounds have been put forward to justify the variation?
- Are the environmental planning grounds specific to the proposed variation?
- Are there sufficient environmental planning grounds to justify the proposed variation to the development standard?

The applicant has provided the following environmental planning grounds to justify the variation:

"There are a number of environmental planning grounds that justify the additional height in this particular circumstance. In addition to compliance with the objectives of the zone and development standard; environmental planning grounds include stair access; consistency with the desired future character; and acceptable environmental impacts. These will now be addressed.

Stair Access

The proposed provision of a new stairwell which is above the height standard, provides access to the roof terrace of the building which provides additional communal open space in a location with improved views, compared to other areas of open space on the site. Lift access to the proposed terrace would require an increased lift overrun height, which would be less desirable and result in a more noticeable height non-compliance. The works to the stairwell do not protrude noticeably beyond the roof parapet and align with the height of the existing skylight.

Consistent in the Context (Desired Future Character)

This report demonstrates that the proposed additional height is compatible with desired future character the area. The desired future character of this area of Double Bay was discussed in the Judgement for SJD, as Clay AC notes at [68]:

The desired future character in my opinion must take into account the form of the buildings to the east [Nos. 16-18 & 20-26 Cross Street] 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 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 [Council] to the controls and what is desired in this part of Cross Street.

The scale and bulk of the additional height above the compliant built form is not incompatible with the character of the existing approved development on site, and surrounding approved and constructed built forms. This is also discussed in response to objective (a) on the previous page. Further, the materials and design of the roof terrace ensures minimal visibility in the streetscape.

Environmental Impacts

The proposed areas of height above the LEP standard have been designed to ensure solar access, views, and privacy to neighbours, particularly surrounding residential development, is maintained. Refer to the Noise Impact Assessment (separately submitted) for further details on acoustic amenity.

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)."

For reasons discussed throughout this report, the proposal will result in unacceptable adverse impacts on adjoining or nearby properties in terms of loss of acoustic and visual privacy arising from the proposed development.

Whilst the written request provides explanation of how the proposed development, and in particular the breach of the Height standard is reasonable and supportable in the circumstances, it is considered that insufficient environmental planning grounds have been provided to justify contravention of the Clause 4.3 Height of Buildings development standard (refer to detailed assessment in Section 12.1.4 of this report). It also fails to demonstrate that the proposal achieves Object (g) of Section 1.3 of the Act.

Accordingly, there are insufficient environmental planning grounds to justify the proposed variation to the Clause 4.3 Height of Buildings development standard of the Woollahra LEP 2014.

Conclusion

Council is not 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.

Accordingly, the departure from the development standard is not justified in this instance, and is listed as a <u>reason for refusal</u>.

11.6 Part 6.10: Development in local centres

Part 6.10 aims to ensure the scale and function of development in local centres is appropriate for the location, and to make certain development in local centres is compatible with the desired future character and amenity of surrounding residential areas.

Part 6.10(3) requires Council to consider the impact of the development on the amenity of any surrounding residential areas, and the desired future character of the local centre. Furthermore, Council must consider whether the development is consistent with the hierarchy of centres.

For reasons discussed throughout this report, the proposed roof terrace will result in adverse amenity impacts on adjoining residential properties.

The proposal is unacceptable with regard to Part 6.10 of Woollahra LEP 2014 and is listed as a reason for refusal.

12. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

12.1 Chapter D5: Double Bay Centre

Part D5.1.3 Objectives

The relevant objective of this part reads as follows:

O9 To encourage view sharing and individual privacy.

View loss

Concerns were raised by a resident of the Cosmopolitan (located at 2-22 Knox Street, Double Bay) with regards to possible view loss as a result of the proposed roof terrace.

It is noted that the balustrading proposed to the roof terrace is transparent glass and will not result in adverse impacts on the views of residents in this locality.

Individual privacy

As discussed throughout this report, the proposal fails to achieve Objective O9 which encourages individual privacy and is listed as a reason for refusal.

12.1.1 Part D5.3: Urban Structure

Part D5.3.2: Key Strategies for the Double Bay Centre

"The intention of this chapter is to strengthen and enrich the existing urban structure of Double Bay and to create a memorable character for the Double Bay Centre by incorporating the following:

Improve Double Bay's built form to provide appropriate definition to the public domain

- a) Provide direction and certainty of outcome in relation to built form to ensure:
 - a coherent street scale;
 - compatibility with existing urban fabric;
 - a variety of building types;
 - a high level of environmental amenity."

The proposal fails to achieve strategy a) which requires built form to ensure a high level of environmental amenity is achieved. The proposed works will result in unacceptable adverse visual and potential acoustic privacy impacts to residential development located in close proximity to the subject site, as discussed throughout this report.

The proposal therefore <u>fails</u> to achieve key strategy a) outlined in Part D5.3.2 of the Woollahra DCP 2015.

12.1.2 Part D5.4: Street Character

Part D5.4.5: Bay Street (Centre)

The proposal will not result in any significant changes to the approved building envelope. The proposal is contextually compatible and consistent in height and scale with development in this location. As such, the desired future character of the Double Bay Centre is achieved.

12.1.3 Part D5.5: Built Form Envelopes: Control Drawings

The proposal will maintain a consistent built form envelope presentation upon Bay Street and Guilfoyle Avenue. The proposed roof terrace will not be visible from the Bay Street or Guilfoyle Avenue frontages.

12.1.4 Part D5.6: Development Controls

Part D5.6.2: Use

The relevant objectives of this part read as follows:

O8 Encourage activities which do not have unacceptable noise <u>or other environmental impacts</u>.
 O9 Ensure that buildings are designed and constructed to minimise noise <u>and other impacts</u> on building occupants and adjoining properties.

The proposal retains the approved building's mix of commercial (at the upper floor levels) and retail uses (at the ground floor level). Concerns were raised by objectors with regards to the introduction of a new element and the "intended" use thereof. An assessment in this regard is provided below.

Assessment:

The proposal seeks to introduce a new roof terrace to the commercial tenancy (offices) which occupies the 4th and 5th levels of the building. It is noted that DA 537/2021/1 was refused by the Woollahra Local Planning Panel on 27 May 2022 for a roof terrace which is identical to the proposed roof terrace under consideration for the current Development Application.

The hours of operation proposed for the roof terrace are, Monday to Saturday - 7:00am to 10:00pm and **Sundays and public holidays - 8:00am to 10:00pm.** The hours of operation approved for the Commercial tenancies under DA 289/2019/1 are, Monday to Saturday - 7:00am to 10:00pm and **Sundays and public holidays - 7:00am to 8:00pm**.

The application under consideration makes no request for an extension of the hours of operation for the proposed Commercial tenancies.

Based on **Condition I.10(ii)** imposed under DA289/2019/1, the hours of operation of the commercial tenants extend to 10pm on weekdays and to 8pm during weekends and public holidays. These hours are considered appropriate only for indoor commercial offices. The use of the new outdoor open-air roof terrace in close proximity of nearby residential receivers up to 10pm will create unacceptable amenity impacts. These impacts would include acoustic and visual privacy and potential light spill from roof terrace lighting. In addition, the proposed hours of operation of the roof terrace are inconsistent with the hours of operation of the Commercial tenancies which have direct access to the roof terrace. Specifically, questions are raised around the intention with regards to the hours proposed on Sundays and Public holidays from 7am until 10pm, which are not considered to fall within normal working hours.

Currently the 4th and 5th level commercial tenancies (offices) of the development operate as a single entity and are linked by an internal staircase, which is now proposed to be extended vertically to provide access to the proposed new roof terrace. With the exception of the 4th and 5th level commercial tenancies, no other tenancies of the development appear to have direct access to the proposed roof terrace. However, extracts from the SEE prepared by GSA Planning advises that "... *The proposed development will involve a new roof terrace for the use of the commercial tenants within the building on the subject site; ...and ...The proposed roof terrace will be accessible for employees and tenants of the commercial building who hold access cards."* These statements raise further concerns with regards to the intention of the use as it is interpreted that all the tenants of the building could benefit from the use of the roof terrace even though direct access to the terrace is limited to the commercial tenancy at the 4th and 5th levels.

It is noted that the commercial tenancies at the 4th and 5th floor levels already incorporate two sizeable terrace areas. The 4th floor terrace measures 145m² whereas the 5th floor terrace is 29m², totalling a massive 174m² of outdoor area (See **Figures 1 and 2** under *Part D5.6.5.1* below). In addition, immediately to the north of the site is Guilfoyle Park, which provides further recreational space for occupants of the development. It is considered that adequate choices of open space, in decent sizes, are provided to the occupants of the commercial development. Therefore, the acceptability and necessity for the proposed new roof terrace is unwarranted in this instance. Furthermore, this also demonstrates the lack of planning grounds in support of the height breach as a result of the proposed works associated with the roof terrace.

The SEE also stated that "The terrace will be used in accordance with the recommendations of the Noise Impact Assessment (separately submitted) and any Council conditions of consent, to ensure acoustic amenity to the surrounding residential area is achieved." However, Council's Environmental Health Officer has concluded that the submitted Noise Impact Assessment (Attachment 4) prepared by Pulse White Noise Acoustics (dated 19 March 2024) and the subsequent Operational Noise Management Plan (Attachment 5) prepared by Pulse White Noise Acoustics (dated 27 May 2024) are unacceptable and that insufficient information has been provided to carry out an informed assessment of the proposal. Council's Environmental Health Officer has provided the following relevant commentary in this regard:

"Council's Environmental Health Officer has determined that the proposal is unsatisfactory for the following reasons:

⁶Environmental Health requires a Plan of Management which would provide guidelines and management practices for the use of rooftop. A Plan of Management ensures the operation of rooftop is well managed with regard to the amenity of neighbouring properties.

ACOUSTICS

The acoustic engineer is to provide clarification on the following:

- 1. An acoustic engineer shall install a tamper proof Noise Limiting Device to the sound equipment playing the background music on the roof top terrace, set to a defined level so that the cumulative noise from the background music and people occupying the space (assume worst case scenario of 40) does not exceed the project specific noise trigger levels.
- 2. At all times, no live music, amplified sound equipment or other form of entertainment, is permitted on the roof top terrace area. Only soft background music is permitted. The acoustic consultant is required to provide specification on the speaker location (for amplified music) and acceptable noise levels (for amplified music).'

The applicant provided an Operational Noise Management Plan prepared by Pulse White Noise Acoustics dated 27 May 2024 to Council for assessment. However, Environmental Health unit notes that the report does not address the points above. As such, Environmental Health determines that the information provided by the applicant is insufficient and therefore that the proposal is unsatisfactory."

The current proposal makes no attempt to reduce the size of the terrace or address the reasons for refusal of the Development Application refused by the Woollahra Local Planning Panel under DA537/2021/1. No reasonable justification has been provided that would alter the stance or recommendations previously forwarded by Council's Assessment Officer under the assessment report for DA537/2021/1.

Having considered the documentation submitted, the proposed hours of operation for the roof terrace, the previous refusal of the exact same proposal and the commentary provided by Council's Environmental Health Officer, it is considered that more than sufficient open space areas are already provided for the occupants of the commercial development and therefore the acceptability and necessity for the proposed new trafficable roof terrace is unwarranted in this instance. In addition, the proposed roof terrace is highly likely to result in unreasonable adverse acoustic and visual privacy impacts upon residential receivers in close proximity to the subject site.

Conclusion:

The proposal fails to satisfy Objectives O8 and O9 of Part D5.6.2 of the Woollahra DCP 2015 and is listed as a reason for refusal.

Part D5.6.3: Urban Character

The proposal will retain a consistent built form envelope presentation upon Bay Street and Guilfoyle Avenue, will not be visible from the Bay Street or Guilfoyle Avenue frontages and will continue to be consistent with existing building forms in this location.

In this regard, the proposal satisfies the relevant objective underpinning this control which states: "...Development should contribute to the desired future character of streetscapes with appropriate and consistent building forms."

Part D5.6.3.3: Building articulation

The proposal will maintain appropriate building articulation as of the original approval and will continue to contribute positively to the character of the street in this location.

In this regard, the proposed modifications satisfy the relevant objective underpinning this control which states: "...promote buildings of articulated design and massing ...that contribute to the character of the street..."

Part D5.6.3.4: Setbacks

The proposal will maintain the approved building setbacks from all boundaries of the site. The proposal will not be readily visible from the street frontages.

Part D5.6.3.5: Corner buildings

This site is identified as a corner building and the relevant objective states: "...Encourage building massing and articulation that creates strong corner buildings."

The proposed roof terrace will not be visible from the public domain. The proposal will maintain the approved building massing and articulation which continue to emphasise this strong corner building when viewed from the public domain.

The proposal satisfies the relevant criteria prescribed by this part.

Part D5.6.3.6: Architectural resolution

The proposal will maintain the architectural style of the approved building and satisfy the relevant criteria prescribed by this part.

Part D5.6.3.7: Roof design

The proposal satisfies the relevant criteria prescribed by this part.

Part D5.6.4: Relationship to public domain

The proposed new roof terrace will not be readily visible from the public domain and will continue the relationship to the public domain as of the original approval and satisfy the relevant criteria prescribed by this part.

Part D5.6.5: Amenity

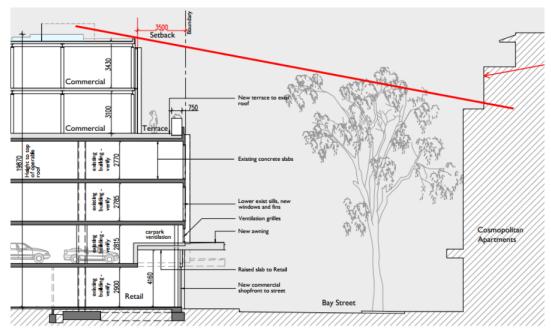
Part D5.6.5.1: Visual privacy

The relevant objectives of this part read as follows:

O1 Ensure development protects the privacy of adjacent residential neighbours. O2 Ensure residential apartments and private open spaces have adequate visual privacy.

The proposal introduces a new trafficable roof terrace which is accessed by an internal staircase from the 5th floor, which is currently occupied by offices.

Concerns were raised by the owners of the Cosmopolitan Building, in particular the west-facing units, with regards to possible visual privacy impacts on the living areas and private open space areas as a result of the proposed new roof terrace.



Section illustrating the sightlines from the proposed roof terrace to the living areas and private open space areas of the west-facing units located on the 4th and 5th levels of the Cosmopolitan Building located at 2-22 Knox (Source: Submission lodged by Ingham Planning Pty Limited)



View of the west-facing terrace to one of the Level 5 (6th storey) apartments of the Cosmopolitan Building in relation to the subject site



View of the subject site from one of the living rooms and window of the living room of one of the Level 5 (6th storey) apartments of the Cosmopolitan Building



View of the subject site from the dining room and window of the dining room of one of the Level 5 (6th storey) apartments of the Cosmopolitan Building



View of the subject site from one of the living rooms and window of the living room of one of the Level 5 (6th storey) apartments of the Cosmopolitan Building



View of the subject site from the west-facing terrace of one of the Level 5 (6th storey) apartments of the Cosmopolitan Building



View of the subject site from the west-facing terrace of one of the Level 5 (6th storey) apartments of the Cosmopolitan Building



View from the habitable windows of the principal bedroom (left), living area (right) and private open space areas of one of the Level 5 (6th storey) west-facing upper level apartments of the Cosmopolitan Building (Source: Objector)



View of the habitable windows and private open space areas of the west-facing units of the Cosmopolitan Building from the east-facing terrace of the 4th floor level of the commercial building on the subject site



View of the habitable windows and private open space areas of the west-facing units of the Cosmopolitan Building from the east-facing terrace of the 4th floor level of the commercial building on the subject site



View of the habitable windows and private open space areas of the west-facing units of the Cosmopolitan building from the east-facing terrace of the 4th floor level of the commercial building on the subject site

It is noted that the Chapter B3 of WDCP makes provision for separation distances between residential properties where roof terraces are involved but does not make provision for numerical controls with regards to site distances between residential and commercial properties. In this instance the visual privacy impacts on the residential properties, as a result of the proposed roof terrace, are assessed on merit.

Whilst it is acknowledged that the distance between the new roof terrace and the private open space and living areas of the apartments on the west-facing upper levels of the Cosmopolitan building located at 2-22 Knox Street is approximately 30m, it is considered that a maximum of forty (40) people potentially using a roof terrace up to 10pm everyday (including Sundays and Public holidays), as proposed, will result in unacceptable visual privacy impacts in this unique location and context.

As discussed throughout this report, the subject site already benefits from a substantial amount of trafficable terraces located at the 4th floor (145m²) and 5th floor (29m²), totalling 174m². These existing terraces provide direct and levelled access to the office area. (See **Figures 1 and 2** below)

It is considered that a further 102m² for a new roof terrace is far more than necessary and therefore the acceptability and necessity for the proposed new roof terrace is unwarranted in this instance.

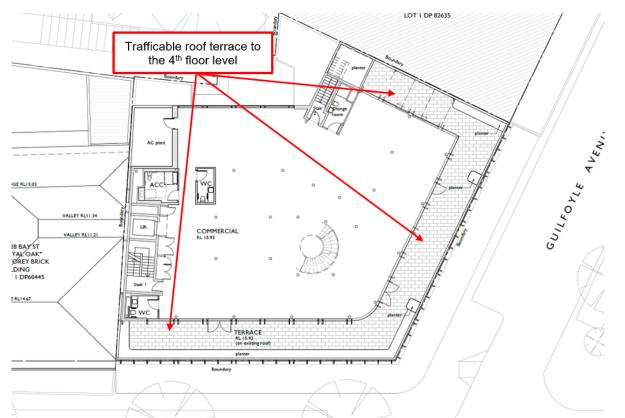


Figure 1: Floor plan of the 4th floor level showing the extent and location of the trafficable terrace to the commercial offices

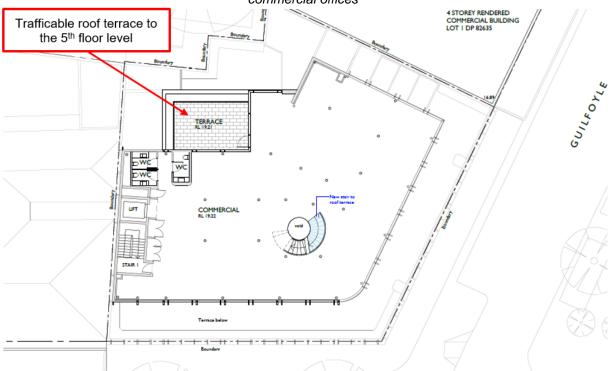


Figure 2: Floor plan of the 5th floor level showing the extent and location of the trafficable terrace to the commercial offices

A consideration of *Super Studio vs Waverley Council, (2014) NSWLEC 91*, where the following planning principle was established, is considered appropriate in the context of the proposed roof terrace [it is noted that the applicant also provided an assessment against the three (3) part test established by the planning principle *Super Studio vs Waverley Council, (2014) NSWLEC 91*]:

1. The first is that the acceptability of an impact depends not only on the extent of the impact but also on reasonableness of, and necessity for, the development that causes it. For example, the privacy impact of a second-storey side window in an area of two-storey buildings should be accorded a higher threshold of acceptability than the impact of a secondstorey balcony in a house that already has three other balconies.

As discussed throughout this report, the proposed roof terrace area is unreasonable and unnecessary. It is considered that more than sufficient private open space areas already exist for the occupants of the commercial development and therefore the acceptability and necessity for the proposed new trafficable roof terrace is unwarranted in this instance.

Additionally, the trafficable roof terrace area will result in unacceptable adverse privacy impacts, contrary to the Land and Environment Court consent orders.

The acceptability and necessity for the introduction of a new roof terrace, which, as stated in the submitted SEE, *"is intended for the enjoyment of surrounding views in a locality where existing views are filtered by existing development and landscaping*", is not considered sufficient planning grounds to justify support of the application whereby it is demonstrated that this would result in adverse acoustic and visual privacy impacts.

2. The second principle is that where proposed landscaping is the main safeguard against overlooking, it should be given minor weight. The effectiveness of landscaping as a privacy screen depends on continued maintenance, good climatic conditions and good luck. While it is theoretically possible for a council to compel an applicant to maintain landscaping to achieve the height and density proposed in an application, in practice this rarely happens.

Not applicable.

3. The third principle relates to the extent to which an approval for this application would be used as a precedent in favour of approving other applications for roof terraces.

The approval of the subject proposal will set an undesirable precedent for permitting new roof terraces within the Double Bay Centre precinct, of which the cumulative impacts would likely result in unacceptable visual and acoustic privacy impacts on residential development in the Double Bay Centre precinct.

In view of the above, the proposed roof terrace fails to satisfy the planning principle established in *Super Studio vs Waverley Council, (2014) NSWLEC.*

Conclusion:

Given the commentary above, the proposal fails to satisfy Objectives O1 and O2 of this part and is is listed as a reason for refusal.

Part D5.6.5.2 Acoustic privacy

An extract from the preamble of this part of the DCP states that "Acoustic privacy is an important consideration in relation to the residential component of the centre, and neighbours adjacent to the centre, because it is a major determinant of amenity."

The relevant objectives and control of this part read as follows:

O1 Ensure adequate acoustic privacy to residential apartments and private open spaces in the centre.

O2 Protect the acoustic privacy of residential neighbours adjacent to the centre.

C1 Building siting and layout, particularly with regard to the location of courtyards, terraces and balconies and the like, should minimise the transmission of noise to other buildings and private open space on the site and on adjacent land.

Concerns were raised with regards to acoustic privacy impacts by the owners of residential properties in close proximity to the proposed roof terrace, particularly from residents of the Cosmopolitan located opposite the subject site at 2-22 Knox Street.

The SEE prepared by GSA Planning states that *"The terrace will be used in accordance with the recommendations of the Noise Impact Assessment (separately submitted) and any Council conditions of consent, to ensure acoustic amenity to the surrounding residential area is achieved."* However, Council's Environmental Health Officer has concluded that the submitted Noise Impact Assessment (**Attachment 4**) prepared by Pulse White Noise Acoustics (dated 19 March 2024) and subsequent Operational Noise Management Plan (**Attachment 5**) prepared by Pulse White Noise Acoustics (dated 27 May 2024) are unacceptable and that insufficient information has been provided to carry out an informed assessment of the proposal. Council's Environmental Health Officer has provided the following relevant commentary in this regard:

"Council's Environmental Health Officer has determined that the proposal is unsatisfactory for the following reasons:

⁶Environmental Health requires a Plan of Management which would provide guidelines and management practices for the use of rooftop. A Plan of Management ensures the operation of rooftop is well managed with regard to the amenity of neighbouring properties.

ACOUSTICS

The acoustic engineer is to provide clarification on the following:

- 1. An acoustic engineer shall install a tamper proof Noise Limiting Device to the sound equipment playing the background music on the roof top terrace, set to a defined level so that the cumulative noise from the background music and people occupying the space (assume worst case scenario of 40) does not exceed the project specific noise trigger levels.
- 2. At all times, no live music, amplified sound equipment or other form of entertainment, is permitted on the roof top terrace area. Only soft background music is permitted. The acoustic consultant is required to provide specification on the speaker location (for amplified music) and acceptable noise levels (for amplified music).'

The applicant provided an Operational Noise Management Plan prepared by Pulse White Noise Acoustics dated 27 May 2024 to Council for assessment. However, Environmental Health unit notes that the report does not address the points above. As such, Environmental Health determines that the information provided by the applicant is insufficient and therefore that the proposal is unsatisfactory."

In addition, one of the objections included the submission of a Peer Review Report prepared by Rodney Stevens Acoustics (Ref. R240430R1 dated 30 May 2024) which makes the following conclusion:

"RSA has conducted a review of acoustic report number 210525 - 30-36 Bay Street, Double Bay-Roof Top Terrace Noise Impact-R2 revision 0 dated 19 March 2024 prepared by Pulse White Noise Acoustics. The review looks into the methodology and noise control measures in the report and can confirm, the calculations and assumptions do not satisfy the NPfI requirements. A more detailed noise assessment using the correct methodology as per NPfI requirements must be prepared to determine if the proposed rooftop terrace complies with noise criteria requirements."

The hours of operation of the proposed roof terrace in the recommendations of the Noise Impact Assessment would go beyond those hours approved under DA 289/2019/1, particularly for Sunday and Public Holiday evening hours 8:00pm – 10:00pm. **Condition I.10** of the original consent reads as follows:

"I.10 Hours of operation

The new retail premises and commercial premises are restricted to the following hours of operation:

- 7.00 am to 10.00 pm Monday to Saturday and
- 7.00 am to 8.00 pm on a Sunday or a public holiday."

As discussed in Section 12.1.4 under Part D5.6.2 above, the above approved hours are considered appropriate only for indoor commercial offices. The use of the new outdoor open-air roof terrace in close proximity of nearby residential receivers up to 10pm will create unacceptable amenity impacts.

Without a proper plan of management, the proposal fails to demonstrate that the recommendations of the Noise Impact Assessment can be fully implemented and enforced by the building management.

Having considered the documentation submitted, the proposed hours of operation for the roof terrace, the previous refusal of the exact same proposal and the commentary provided by Council's Environmental Health Officer, it is considered that the proposed roof terrace would result in unreasonable adverse acoustic privacy impacts upon residential receivers in close proximity to the subject site. In addition, more than sufficient open space areas are already provided for the occupants of the commercial development and therefore the acceptability and necessity for the proposed new trafficable roof terrace is unwarranted in this instance.

Conclusion:

The proposal fails to satisfy the relevant Objectives O1 and O2 and Control C1 of this part, and is listed as a reason for refusal.

Part D5.6.6: Solar access and natural ventilation

The proposal will not result in any unacceptable additional impacts to adjoining residential properties with regards to solar access.

The proposal satisfies the relevant criteria prescribed by this part.

12.2 Chapter E5: Waste Management

The applicant has not provided a SWMMP with the development application.

If the application were recommended for approval, relevant conditions of consent could be imposed in order to ensure compliance with Chapter E5 of the Woollahra DCP 2015.

13. SECTION 7.12 CONTRIBUTION PLAN 2011

The proposed development is recommended for refusal and accordingly Section 7.12 contributions and relevant fees are not applied. Notwithstanding this, should development consent be granted, no contributions pursuant to Section 7.12 given the cost of the proposed development is less than \$100,000.

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. If the application were recommended for approval, this requirement could be addressed by Council's standard condition.

15. THE LIKELY IMPACTS OF THE PROPOSAL

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

16. THE SUITABILITY OF THE SITE

The site is unsuitable for the proposed development.

17. THE PUBLIC INTEREST

The proposal is not considered to be in the public interest.

18. CONCLUSION

The proposal is unacceptable against the relevant considerations under Section 4.15.

19. DISCLOSURE STATEMENTS

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

20. 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 matters required to be addressed under Clause 4.6(4) of the Woollahra Local Environmental Plan 2014 have been demonstrated and that consent may be granted to the development application, which contravenes the Height of Buildings development standards under Clause 4.3 of the Woollahra LEP 2014.

AND

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, refuse development consent to Development Application No. 96/2024/1 for the addition of a new roof terrace associated with the top floor tenancy of an existing commercial building on land at 30-36 Bay Street Double Bay, for the following reasons:

1. Woollahra Local Environmental Plan 2014, Part 1 – Clause 1.2 Aims of Plan

The proposal is inconsistent with the aims in Part 1.2(2)(g) because it does not protect the amenity of nearby residential receivers.

2. Woollahra Local Environmental Plan, Part 2, Land Use Table

The proposal is inconsistent with the relevant objective (the 5th bullet point) of the E1 Local Centre zone because the proposed new roof terrace is of a scale and type that is not compatible with the amenity of the surrounding residential area.

3. Woollahra Local Environmental Plan 2014, Part 4 – Clause 4.3 Height of Buildings

The proposal does not comply with the Height of Buildings development standard prescribed in Clause 4.3 of the Woollahra Local Environmental Plan 2014. The proposed new roof terrace will result in unacceptable loss of privacy of nearby residential dwellings, failing to achieve consistency with the relevant Objective (d) prescribed in Clause 4.3(1) of the Woollahra Local Environmental Plan 2014.

4. Woollahra Local Environmental Plan 2014, Part 4 – Clause 4.6 Exceptions to Development Standards

The consent authority is of the opinion that the submitted written requests <u>fail</u> to justify the contravention of the *Height of buildings* development standards under Clause 4.3 in accordance with Clause 4.6(3)(a) and 4.6(3)(b). The submitted written request has not adequately addressed the matters required to be demonstrated by sub-clause (3) in that:

- strict compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- there are sufficient environmental planning grounds to justify contravening the development standards;
- the proposed development is consistent with the objectives of the Height of buildings development standard.

5. Woollahra Local Environmental Plan 2014, Part 6 – Clause 6.10 Development in local centres

The proposal is inconsistent with relevant Objective (b) of Clause 6.10(1) of the Woollahra Local Environmental Plan 2014 because the proposed new roof terrace is not compatible with the amenity of the surrounding residential area.

6. Woollahra Development Control Plan 2015, Chapter D5: Double Bay Centre

a) Part D5.6.2: Use

The proposal fails to achieve consistency with Objectives O8 and O9 of Part D5.6.2 of the Woollahra DCP 2015 in that the proposed design, location and use of the proposed new roof terrace will result in adverse amenity impacts on adjoining properties. The acceptability and necessity for the proposed new trafficable roof terrace is unwarranted.

b) Part D5.6.5: Amenity

i) Part D5.6.5.1: Visual Privacy

The proposal fails to achieve Objectives O1 and O2 of Part D5.6.5.1 of the Woollahra DCP 2015 in that the proposed new roof terrace will result adverse visual privacy impacts on residential properties in close proximity to the subject site.

ii) Part D5.6.5.2: Acoustic Privacy

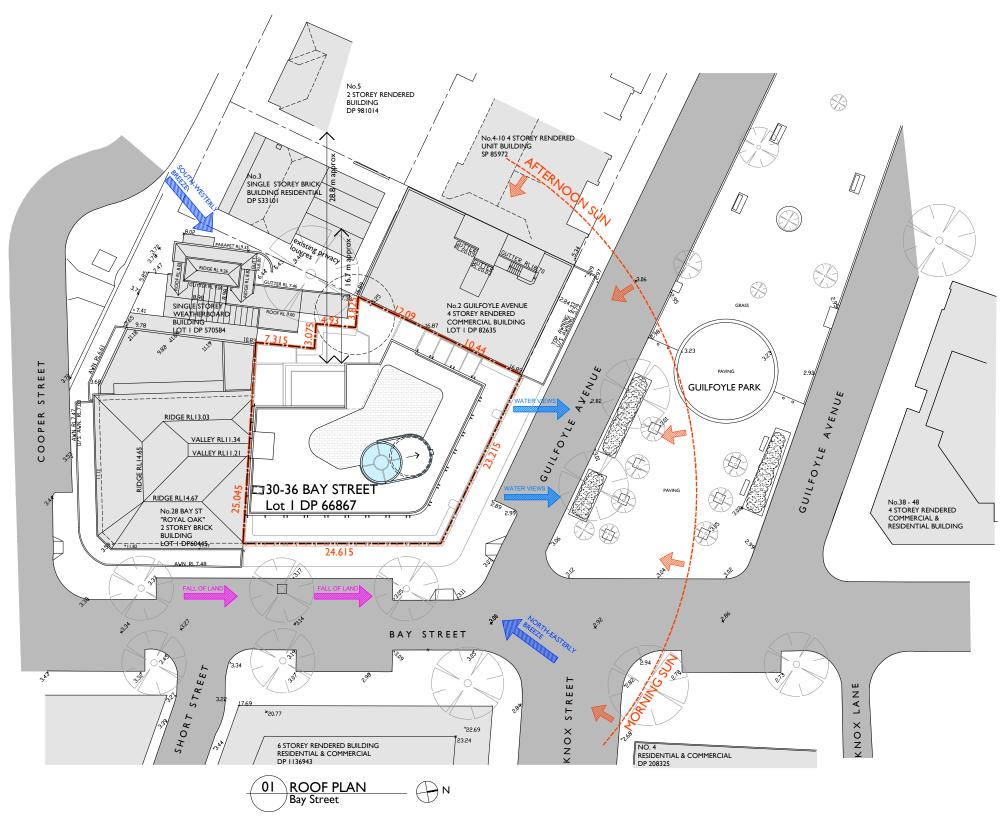
The proposal fails to achieve Objectives O1 and O2 and compliance with Control C1 of Part D5.6.5.2 of the Woollahra DCP 2015 in that the proposed new roof terrace will result adverse acoustic privacy impacts on residential properties in close proximity to the subject site.

7. Public Interest

The proposal is not in the public interest.

Attachments

- 1. Plans, Elevations and Sections \underline{J}
- 2. Clause 4.6 Written Request Height <u>J</u>
- 3. Referral Response Environmental Health 😃 🛣
- 4. Noise Impact Assessment by Pulse White Noise Acoustics dated 19 March 2024 (Applicants submission) 1
- 5. Operational Noise Management Plan by Pulse White Noise Acoustics dated 27 May 2024 (Applicants submission) <u>J</u>



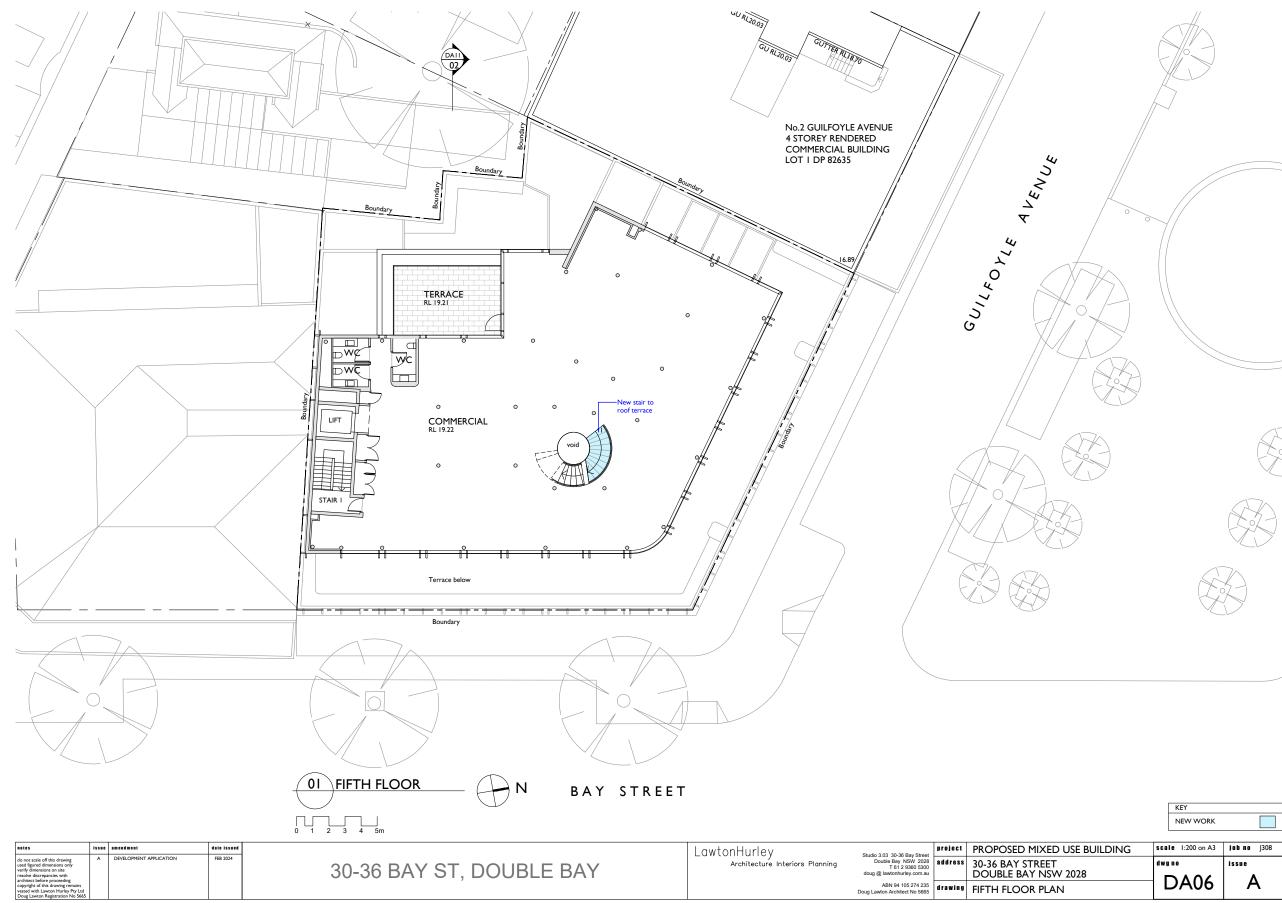
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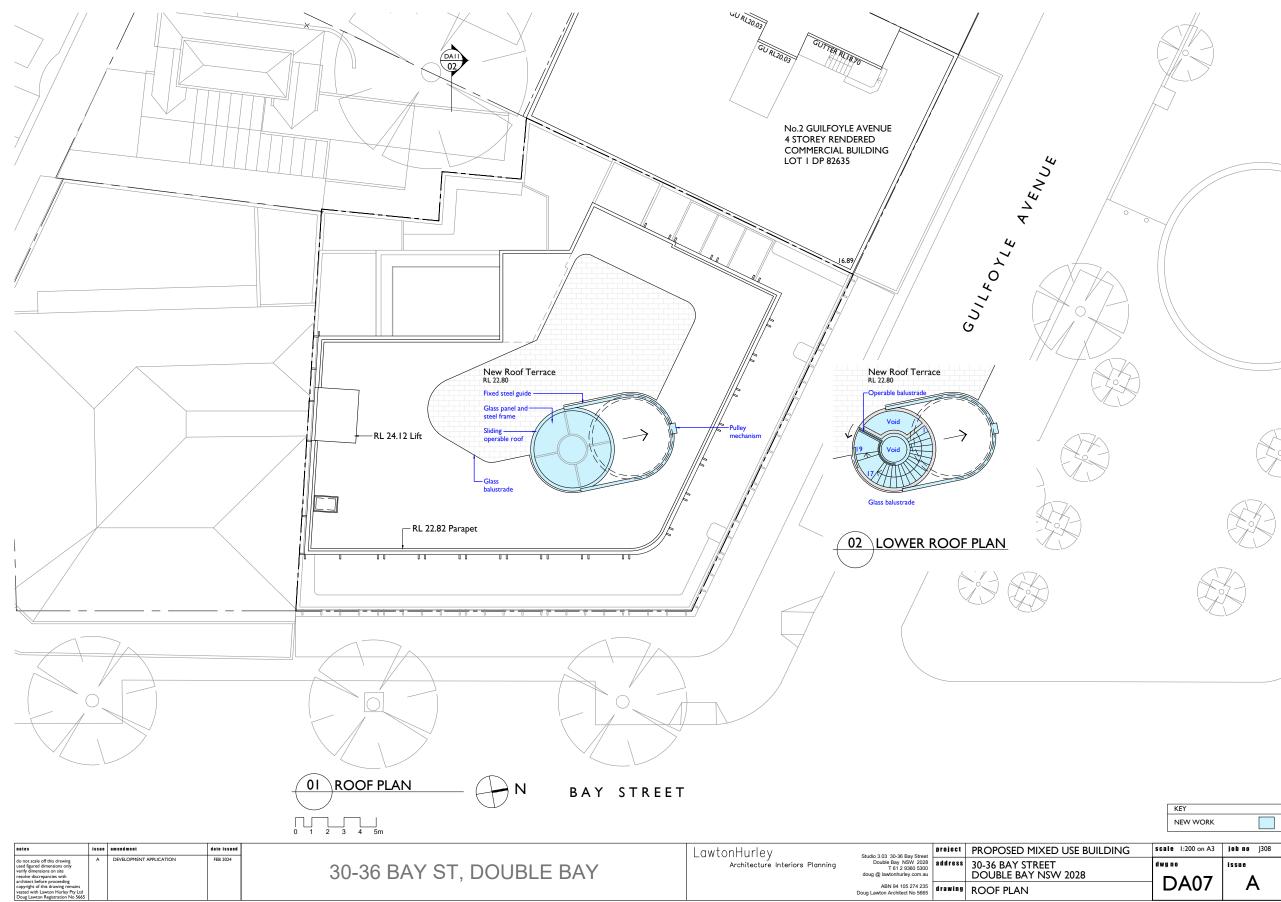
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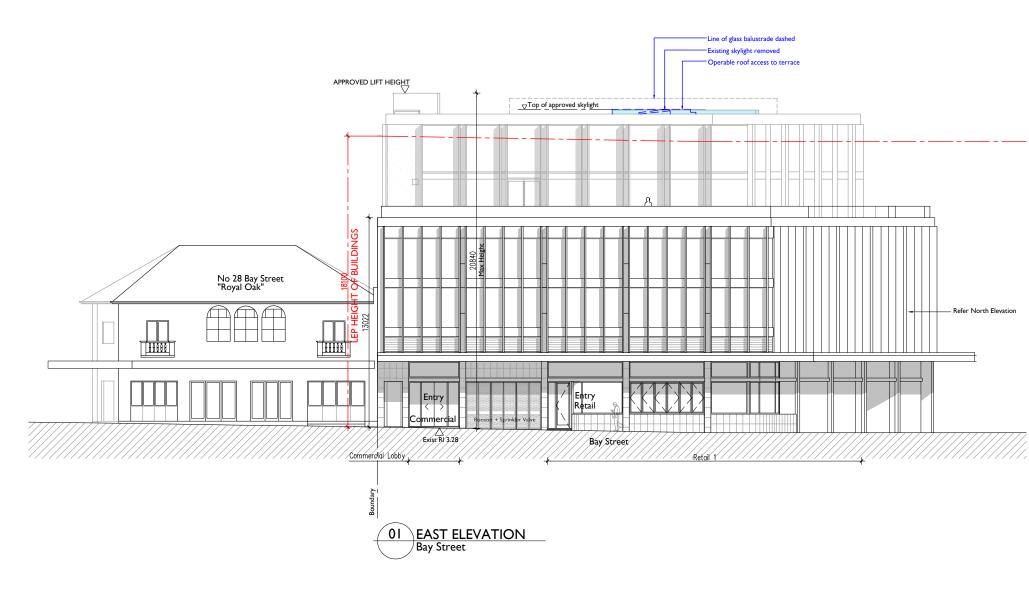




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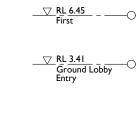


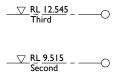
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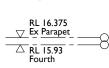
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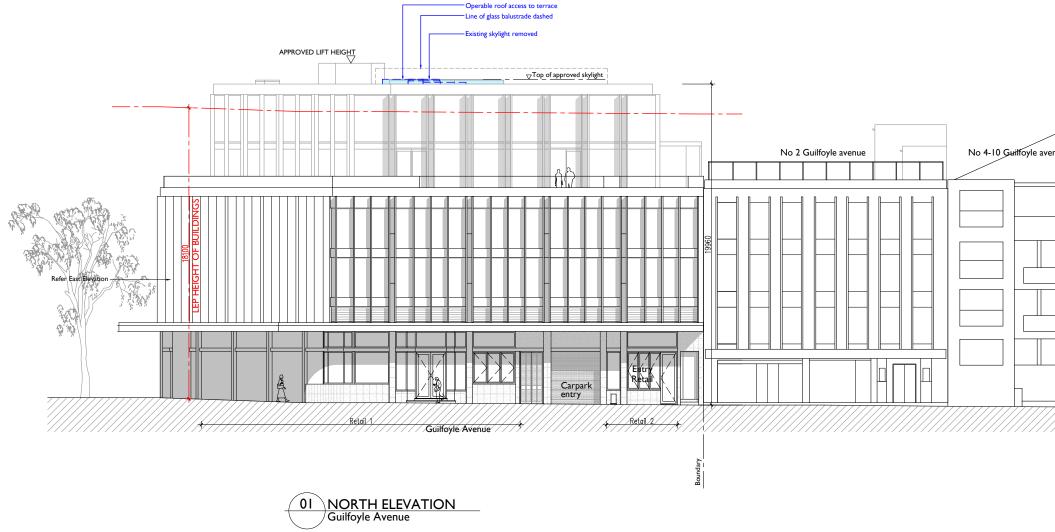






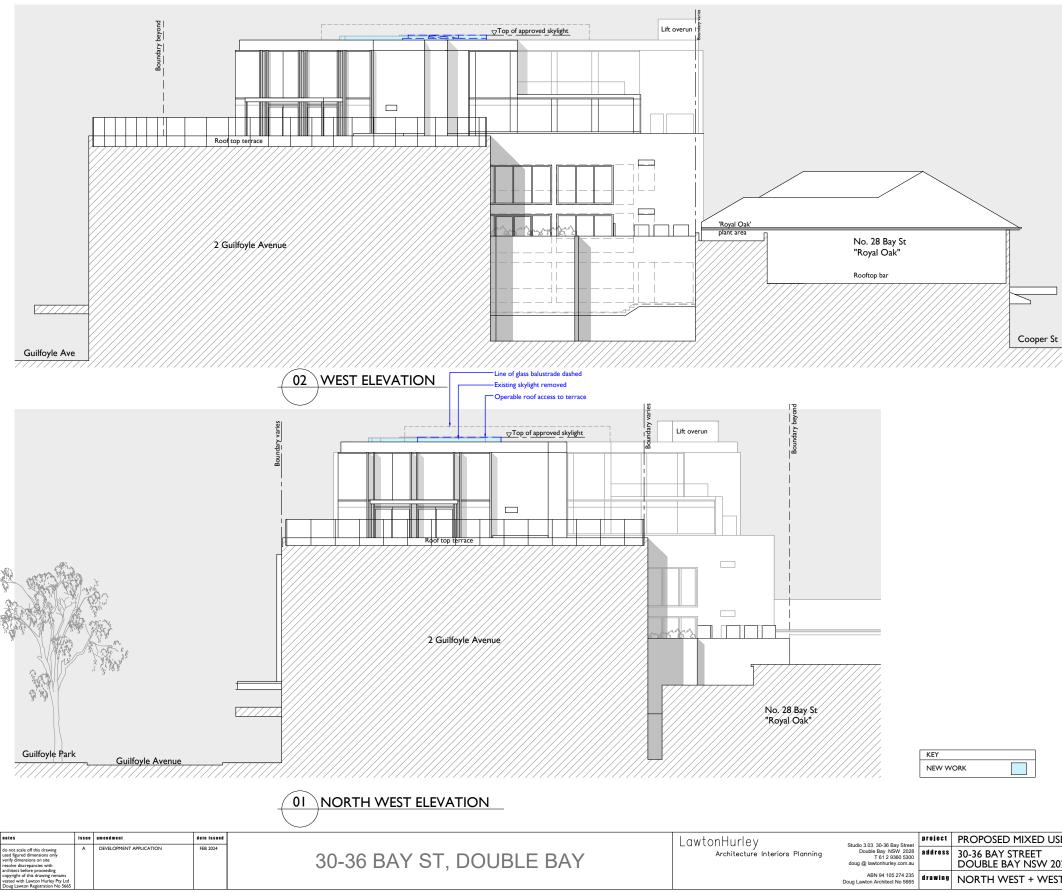


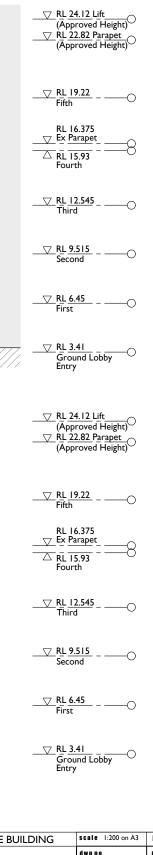




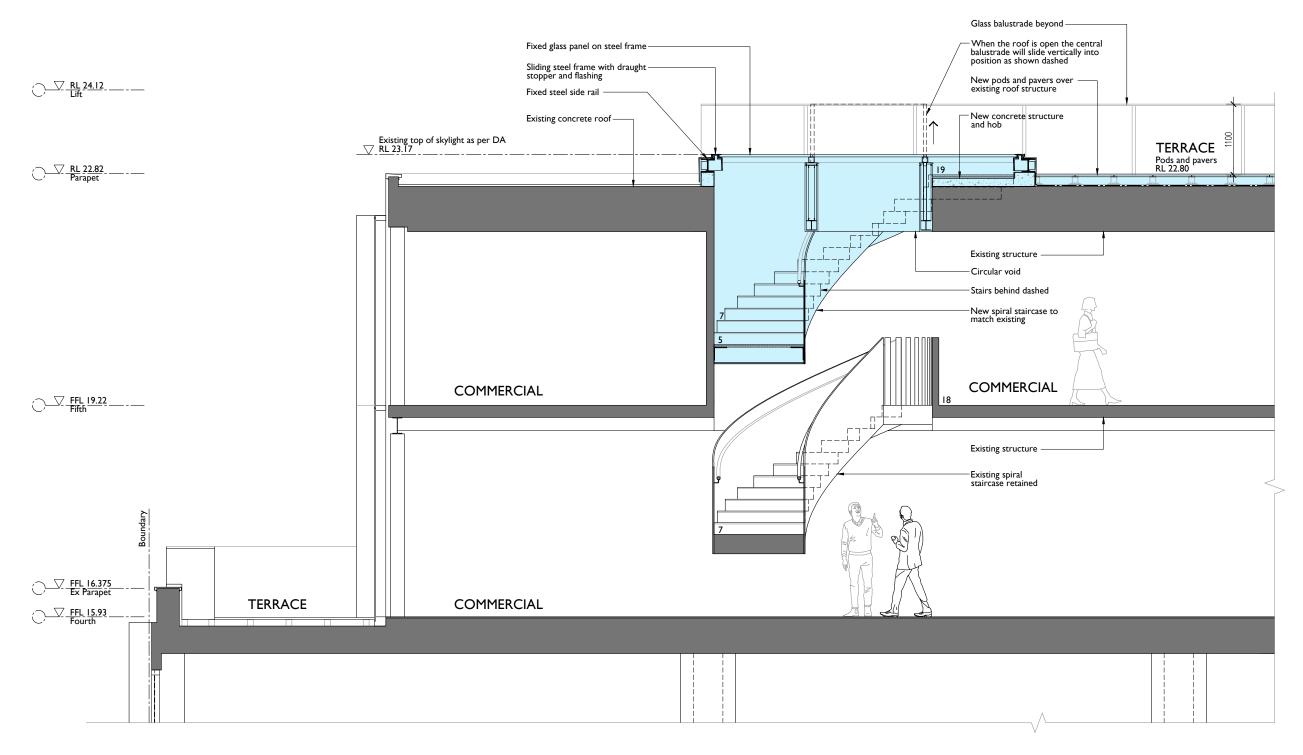
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WOOLLAHRA LEP 2014 Clause 4.6 Exceptions to Development Standards – Height of Buildings

Proposed Alterations and Additions including a New Roof Terrace at

No. 30-36 Bay Street, Double Bay

Prepared for: Fortis Development Group Level 5, 30-36 Bay Street Double Bay NSW 2028

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. 19138 March 2024





WOOLLAHRA LOCAL ENVIRONMENTAL PLAN (LEP) 2014 CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

- SITE ADDRESS: No. 30-36 Bay Street, Double Bay
- PROPOSAL: Proposed Alterations and Additions including a New Roof Terrace
- 1. (i) Name of the applicable planning instrument which specifies the development standard:

Woollahra Local Environmental Plan (LEP) 2014

(ii) The land is zoned:

E1 Local Centre. The objectives of the E1 Zone are as stated:

- To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.
- To encourage investment in local commercial development that generates employment opportunities and economic growth.
- To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- To provide for development of a scale and type that is compatible with the amenity of the surrounding residential area.
- To ensure development is of a height and scale that achieves the desired future character of the local centre.
- To encourage development that is compatible with the local centre's position in the centres hierarchy.
- To ensure development provides diverse and active ground floor uses to contribute to vibrant and functional streets and public spaces.
- To maximise public transport patronage and encourage walking and cycling.
- 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.

(iii) The number of the relevant clause therein:

Clause 4.3 - Height of Buildings. Clause 4.3 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.

Clause 4.6 Exceptions to Development Standards – Height of Buildings No. 30-36 Bay Street, Double Bay - Job No. 19138

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

(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 battleaxe 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.

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.

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 Map which indicates a maximum 18.1m 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 proposed works include works to an existing stairwell to provide access to a new roof terrace, at the recently approved and constructed commercial building at No. 30-36 Bay Street. The proposed works are above the LEP height standard, with a maximum height ranging from 19.87 metres at the top of the stair, to 20.68 metres at the top of the terrace balustrade. This results in a departure of 1.77m - 2.58m from the standard (9.78% - 14.25%). The non-compliance is in-part a result of the existing building which is 19.96m tall at the top of the roof parapet, with a maximum height of 20.84m at the top of the lift overrun. The proposed stairwell and roof above will not exceed the maximum height of the existing skylight, and the glass balustrade to the terrace is below the height of the lift overrun.

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.

Clause 4.6 Exceptions to Development Standards – Height of Buildings No. 30-36 Bay Street, Double Bay - Job No. 19138

Flexibility is sought in the application of the Height of Buildings development standard to the proposed development in the circumstance of this particular case. The proposed new roof terrace and associated works to the stair are at or below the maximum approved heights of other rooftop elements on the recently constructed building. Given the minor works above the roof parapet, and the proposed balustrade being glass, the works will not be readily discernible or add to the perceived height, bulk and scale of the development when viewed from the surrounding streets and nearby development.

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 these 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 a number of the five tests established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant tests will be considered below.

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;

Despite the proposed development's non-compliance with the applicable height development standard, 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 height standard are explained below.

Clause 4.6 Exceptions to Development Standards – Height of Buildings No. 30-36 Bay Street, Double Bay - Job No. 19138

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

The proposal's height is consistent with the built form in the Double Bay Centre area. In *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 [63], which related to a development on the southern side of Cross Street, 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 recent approvals in the vicinity and notionally the priorities of the LEP. The 'neighbourhood' can be defined as the broader Double Bay Centre (E1 Zone), or the more confined 'precincts' within the Woollahra DCP 2015. The site would fall into the Bay Street Centre precinct in this regard.

Council or the Court has supported a number of DAs in the Double Bay Centre breaching the height standard as a result of a new roof terrace to an existing or approved development. This includes the following, which inform the desired future character of Double Bay:

- On 31 January 2022, a Development Application (DA No. 34/2022) was approved by the Local Planning Panel for alterations and addition to the development for a new pergola on the existing roof terrace at No. 2 Guilfoyle Avenue, Double Bay, directly adjoining the subject site. The approval will see the addition of a significant pergola structure, in relation to the roof terrace, exceeding the maximum building height at 16.75 metres. This approval is particularly relevant given it is within the same precinct (Bay Street Centre) and general visual catchment as the subject site. We note that construction has not commenced in relation to the roof terrace pergola approval.
- On 4 February 2022, a Development Application (DA No. 452/2020) was approved by the Land and Environment Court for partial demolition of existing structure and construction of a shop top housing development at No. 10 Cross Street, Double Bay. This resulted in an approved six storey shop top housing with a roof terrace at a maximum height of 20.6 metres, on a site with a height standard of 14.7m.
- On 26 May 2022, a Development Application (DA No. 355/2019) was approved by Land and Environment Court for demolition of existing structures and construction of a new five storey shop top housing with ground floor retail and residential parking at No. 14 Cross Street, Double Bay. This resulted in an approved five storey shop top housing with a roof terrace at a maximum height of 17.97 metres, on a site with a height standard of 14.7 metres.
- On 10 August 2022, a Section 4.55 Modification (DA No. 321/2020/2) was approved by the Sydney Eastern City Planning Panel for internal and external modifications to the approved shop top housing development with basement parking at Nos. 19-27 Cross Street, Double Bay. This resulted in an approved built form with a maximum height of 22.05 metres, on a site with a height standard of 14.7 metres.

These developments also have a lower applicable height standard under the LEP compared to the subject site (14.7m, as opposed to the subject site's 18.1m standard). This results in a larger percentage of height departure compared to the proposal. Accordingly, in our opinion, roof terraces with elements above the height standard are characteristic of the Bay Street Centre area and Double Bay Centre more broadly through the various approvals, and the proposal will therefore be in character with the character of the area.

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

The proposed areas of additional height will be consistent with that of other elements on the existing building's rooftop. The minor areas above the height standard will not be readily discernible from surrounding development given the location away from the building edge to Bay Street and Guilfoyle Avenue and the recessive materials proposed. The rooftop terrace has been designed with consideration of surrounding residential development and will operate in accordance with recommendations in the Noise Impact Assessment (separately submitted) to maintain privacy to neighbours.

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

The proposed areas above the height standard are centrally located and have been designed to maintain existing levels of solar access to neighbouring buildings and open space. This will minimise any loss of solar access to existing building and open space in the vicinity.

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

The proposed areas of additional height will minimise impacts on solar access and visual intrusion. The use of clear glass balustrade surrounding the roof terrace will ensure potential views across the site are retained. The roof terrace has been designed and located to minimise sightlines to neighbouring development, and will operate in accordance with the recommendation in the Noise Impact Assessment (separately submitted) to maintain acoustic privacy to neighbours.

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

The proposed additional height above the standard is unlikely to impact potential distant public views across the site of the harbour and surrounding areas, given the works at roof level do not exceed the maximum heights of existing rooftop elements breaching the height standard.

Accordingly, although the proposal will exceed the height standard, this is unlikely to have any significant adverse impacts as the design is generally contained within a compliant building envelope.

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 additional height in this particular circumstance. In addition to compliance with the objectives of the zone and development standard; environmental planning grounds include stair access; consistency with the desired future character; and acceptable environmental impacts. These will now be addressed.

Stair Access

The proposed provision of a new stairwell which is above the height standard, provides access to the roof terrace of the building which provides additional communal open space in a location with improved views, compared to other areas of open space on the site. Lift access to the proposed terrace would require an increased lift overrun height, which would be less desirable and result in a more noticeable height non-compliance. The works to the stairwell do not protrude noticeably beyond the roof parapet and align with the height of the existing skylight.

Clause 4.6 Exceptions to Development Standards – Height of Buildings No. 30-36 Bay Street, Double Bay - Job No. 19138

Consistent in the Context (Desired Future Character)

This report demonstrates that the proposed additional height is compatible with desired future character the area. The desired future character of this area of Double Bay was discussed in the Judgement for SJD, as Clay AC notes at [68]:

The desired future character in my opinion must take into account the form of the buildings to the east [Nos. 16-18 & 20-26 Cross Street] 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 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 [Council] to the controls and what is desired in this part of Cross Street.

The scale and bulk of the additional height above the compliant built form is not incompatible with the character of the existing approved development on site, and surrounding approved and constructed built forms. This is also discussed in response to objective (a) on the previous page. Further, the materials and design of the roof terrace ensures minimal visibility in the streetscape.

Environmental Impacts

The proposed areas of height above the LEP standard have been designed to ensure solar access, views, and privacy to neighbours, particularly surrounding residential development, is maintained. Refer to the Noise Impact Assessment (separately submitted) for further details on acoustic amenity.

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).

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 objectives of the E1 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. 30-36 Bay Street, Double Bay - Job No. 19138

	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	18.1m				
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 <i>Wehbe</i> .	5.1	 The proposal satisfies Test 1 of <i>Wehbe</i>: 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 proposed area of additional height will not be readily discernible from the street and surrounding development, and is consistent in the context. The additional height will maintain existing levels of privacy, solar access and views from neighbouring residential development; and The additional height is the result of an existing approved non-compliance. 	YES			
26-27	2 nd 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. NOTE: Public interest no longer a consideration under Clause 4.6(4)	6	The proposed development is consistent with the objectives of the height standard as addressed under Test 1 of <i>Wehbe</i> . The proposal is also consistent with the objectives of the B2 Zone.	YES			
28-29	Second Precondition to Enlivening the Power –	7	As the relevant matters for consideration under Clause 4.6 have	YES			

Clause 4.6 Exceptions to Development Standards – Height of Buildings No. 30-36 Bay Street, Double Bay - Job No. 19138

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
Court has the power to grant development consent, subject to being satisfied of the relevant	consent.
matters under Clause 4.6. NOTE: This is no longer a consideration under Clause 4.6(4)	

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Clause 4.6 Exceptions to Development Standards – Height of Buildings No. 30-36 Bay Street, Double Bay - Job No. 19138



7 June 2024

REFERRAL RESPONSE – ENVIRONMENTAL HEALTH

FILE NO:	Development Applications: 96/2024/1
ADDRESS:	30-36 Bay Street DOUBLE BAY 2028
PROPOSAL:	Addition of a new roof terrace associated with the top floor tenancy of an existing commercial building
FROM:	K Pakhomova
TO:	Mr B McIntyre

1. ISSUES

Noise

2. DOCUMENTION

I refer to the following documents received for this report:

 Operational Noise Management Plan, referenced 210525-30-36 Bay Street, Double Bay – Operational Noise Management Plan – R0, prepared by PWNA, dated 27 May 2024.

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

Addition of a new roof terrace associated with the top floor tenancy of an existing commercial building

5. ASSESSMENT

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

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6. RECOMMENDATION

Council's Environmental Health Officer has determined that the proposal is unsatisfactory for the following reasons:

On 8 May 2024, Council's Authorised Officer Kristina Pakhomova requested further information regarding the application:

⁶Environmental Health requires a Plan of Management which would provide guidelines and management practices for the use of rooftop. A Plan of Management ensures the operation of rooftop is well managed with regard to the amenity of neighbouring properties.

ACOUSTICS

The acoustic engineer is to provide clarification on the following:

- 1. An acoustic engineer shall install a tamper proof Noise Limiting Device to the sound equipment playing the background music on the roof top terrace, set to a defined level so that the cumulative noise from the background music and people occupying the space (assume worst case scenario of 40) does not exceed the project specific noise trigger levels.
- 2. At all times, no live music, amplified sound equipment or other form of entertainment, is permitted on the roof top terrace area. Only soft background music is permitted. The acoustic consultant is required to provide specification on the speaker location (for amplified music) and acceptable noise levels (for amplified music).'

The applicant provided an Operational Noise Management Plan prepared by Pulse White Noise Acoustics dated 27 May 2024 to Council for assessment. However, Environmental Health unit notes that the report does not address the points above. As such, Environmental Health determines that the information provided by the applicant is insufficient and therefore that the proposal is unsatisfactory.

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30-36 Bay Street, Double Bay

Roof Top Terrace Noise Impact Assessment

Fortis Development Group

Report number: 210525-30-36 Bay Street, Double Bay-Roof Top Terrace Noise Impact-R2 Date: 19 March 2024 Version: For Information

> PULSE WHITE NOISE ACOUSTICS Level 5, 73 Walker Street, North Sydney NSW 2060 P 1800 4 PULSE (1800 478 573) E info@pwna.com.au pwna.com.au ABN 95 642 886 306



DOCUMENT CONTROL

Project Name Project Number			30-36 Bay Street, Double Bay 210525				
Client:			Fortis Dev	velopment Group			
Revision	Description	Reference		Date	Prepared	Checked	Authorised
Revision 0	Description For Information	Reference 210525-30-36 Bay S Double Bay-Roof To Terrace Noise Impa	ор	Date 10 November 2021	Prepared Ben White	Checked Matt Furlong	Authorised Ben White

PREPARED BY:

Pulse White Noise Acoustics Pty Ltd ABN 95 642 886 306 Level 5, 73 Walker Street, North Sydney, 2060 1800 4 PULSE

Terrace Noise Impact-R2

This report has been prepared by Pulse White Noise Acoustics Pty Ltd with all reasonable skill, care and diligence, and taking account of the timescale and resources allocated to it by agreement with the Client. Information reported herein is based on the interpretation of data collected, which has been accepted in good faith as being accurate and valid.

This report is for the exclusive use of Fortis Development Group No warranties or guarantees are expressed or should be inferred by any third parties. This report may not be relied upon by other parties without written consent from Pulse White Noise Acoustics.

This report remains the property of Pulse White Noise Acoustics Pty Ltd until paid for in full by the client, Fortis Development Group.

Pulse White Noise Acoustics disclaims any responsibility to the Client and others in respect of any matters outside the agreed scope of the work.

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1 INTRODUCTION

Pulse White Noise Acoustics Consultancy Pty Ltd (Pulse White Noise Acoustics) has been engaged to undertake an acoustic assessment for the proposed use of the roof top terrace area associated with the retail and commercial development located at 30-36 Bay Street, Double Bay.

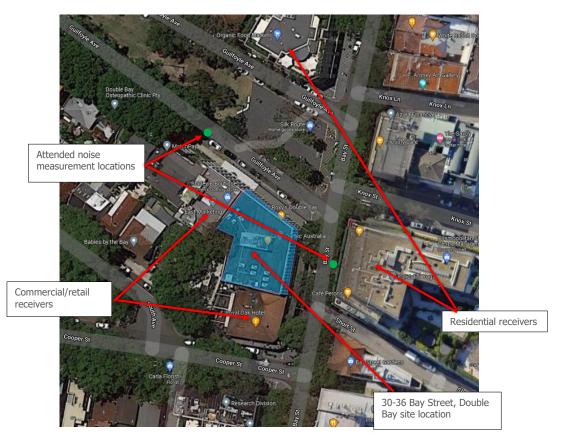
This assessment includes the acoustic investigation into the potential for noise impacts from the use of the proposed new roof terrace to be located on the project on surrounding receivers to the site.

2 PROJECT DETAILS

The proposed development is located at 30-36 Bay Street, Double Bay. The surrounding receivers to the site include existing residential and commercial properties as detailed in Figure 1 below.

The site location is detailed in Figure 1 below.

Figure 1 Site location and Noise Measurement Locations



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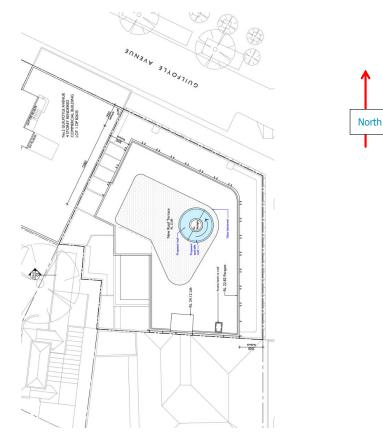
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2.1 Project Description

The proposed development located at 30-36 Bay Street, Double Bay incudes a mixed-use retail and commercial building. The building includes a five story building including a roof top with a new roof terrace.

The proposed new roof top terrace is detailed in the figure below and within the Lawton Hurley Architectural drawings with job number J308.

Figure 2 Proposed Roof Top Terrace



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3 EXISTING ACOUSTIC ENVIRONMENT

The 30-36 Bay, Street Double Bay site is located with a typically residential area of Woollahra Council and is classified as a Suburban residential area as defined by the NSW EPA *Noise Policy for Industry*. The exiting noise levels at the site are predominantly as a result from traffic noise within the vicinity of the site on surrounding roadways including Bay Street to the east of the site and Guilfoyle Avenue to the north.

Environmental noise constantly varies in level with time. Therefore, it is necessary to measure noise in terms of quantifiable time periods with statistical descriptors. Typically environmental noise is measured over 15 minute periods and relevant statistical descriptors of the fluctuating noise are determined to quantify the measured level.

Noise (or sound) consists of minute fluctuations in atmospheric pressure capable of detection by human hearing. Noise levels are expressed in terms of decibels, abbreviated as dB or dBA, the "A" indicating that the noise levels have been frequency weighted to approximate the characteristics of normal human hearing. Because noise is measured using a logarithmic scale, 'normal' linear arithmetic does not apply, e.g. adding two sound sources of equal values result in an increase of 3 dB (i.e. 60 dBA plus 60 dBA results in 63 dBA). A change of 1 dB or 2 dB in the sound level is difficult for most people to detect, whilst a 3 dB - 5 dB change corresponds to a small but noticeable change in loudness. A 10 dB change roughly corresponds to a doubling or halving in loudness.

The most relevant environmental noise descriptors are the LAeq, LA1, LA10 and LA90 noise levels. The LAeq noise level represents the "equivalent energy average noise level". This parameter is derived by integrating the noise level measured over the measurement period. It represents the level that the fluctuating noise with the same acoustic energy would be if it were constant over the measured time period.

The LA1, LA10 and LA90 levels are the levels exceeded for 1%, 10% and 90% of the sample period. These levels can be considered as the maximum noise level, the average repeatable maximum and average repeatable minimum noise levels, respectively.

Specific acoustic terminology is used in this assessment report. An explanation of common acoustic terms is included in Appendix A.

3.1 Noise Survey Results

As part of this assessment an acoustic survey has been undertaken at the site which include short term attended measurements. The details of the noise survey conducted at the site are detailed in this section of the report.

Instrumentation used for the noise survey comprised a Rion NL-42 sound level meter / analysers (serial number 00409024 fitted with a microphone windshield. Calibration of the logger was checked prior to and following the measurements. Drift in calibration did not exceed ± 0.5 dBA. All equipment carried appropriate and current NATA (or manufacturer) calibration certificates.

The attended and unattended noise locations were selected to obtain suitable noise levels for the assessment of background noise levels ($L_{90(t)}$) as well as the ambient noise levels ($Leq_{(t)}$).

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Attended noise level measurements were undertaken at the site on the 27^{th} October 2021 during the afternoon period of 4pm to 5pm and the evening period of 9.30pm to 10.30pm. The results of the attended noise level measurements are detailed in the table below.

Table 1 Measured ambient noise levels in accordance with the NSW NPI

Measurement Location	Time of measurement	Measured L _{Aeq, 15min} dB(A)	Measured L _{A90, 15min} dB(A)	Comments
Bay Street	4.00pm to 4.15pm	62	43	Noise levels resulting from natural noise
	4.20pm to 4.35pm	63	44	 sources and traffic noise from roadways within vicinity of the
	9.30pm to 9.45pm	60	41	site including Bay Street and Guilfoyle
Guilfoyle Avenue	4.40pm to 4.55pm	60	43	Avenue
	5.00pm to 5.15pm	60	42	
	9.50pm to 10.05pm	60	40	

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4 EXTERNAL NOISE EMISSION ASSESSMENT

This section of the report details the relevant noise level criteria for noise emissions generated on the site once completed.

The relevant authority which provides the required noise level criteria for noise levels generated on the site includes the NSW Environmental Protection Authority's (EPA) Noise Policy for Industry (NPI) and the Woollahra Council DCP.

This section contains noise criteria on the operational criteria, construction criteria and vibration criteria.

4.1 NSW Noise Policy for Industry

In NSW, the control of noise emissions is the responsibility of Local Government and the NSW Environment Protection Authority (NSW EPA). In October 2017, the NSW EPA released the *Noise Policy for Industry* (NSW NPI). The purpose of the policy is to ensure that noise impacts associated with particular industrial developments are evaluated and managed in a consistent and transparent manner. The policy aims to ensure that noise is kept to acceptable levels in balance with the social and economic value of industry in NSW.

The NSW NPI criteria for industrial noise sources have two components:

- Controlling the intrusive noise impacts for residential receivers in the short-term; and
- Maintaining noise level amenity of particular land uses for residents and sensitive receivers in other land uses.

The project noise trigger level is derived from the more stringent value out of the project intrusiveness noise level and the project amenity noise level.

4.1.1 Intrusive Noise Impacts (Residential Receivers)

The NSW NPI states that the noise from any single source should not intrude greatly above the prevailing background noise level. Industrial noises are generally considered acceptable if the equivalent continuous (energy-average) A-weighted level of noise from the source (LAeq), measured over a 15 minute period, does not exceed the background noise level measured in the absence of the source by more than 5 dB(A). This is often termed the Intrusiveness Criterion.

The 'Rating Background Level' (RBL) is the background noise level to be used for assessment purposes and is determined by the methods given in the NSW NPI. Using the rating background noise level approach results in the intrusiveness criterion being met for 90% of the time. Adjustments are to be applied to the level of noise produced by the source that is received at the assessment point where the noise source contains annoying characteristics such as tonality or impulsiveness.

4.1.2 Protecting Noise Amenity (All Receivers)

To limit continuing increases in noise levels, the maximum ambient noise level within an area from industrial noise sources should not normally exceed the acceptable noise levels specified in Table 2.2 of the NSW NPI. That is, the ambient LAeq noise level should not exceed the level appropriate for the particular locality and land use. This is often termed the 'Background Creep' or Amenity Criterion.

The amenity assessment is based on noise criteria specified for a particular land use and corresponding sensitivity to noise. The cumulative effect of noise from industrial sources needs to be considered in assessing the impact. These criteria relate only to other continuous industrial-type noise and do not include road, rail or community noise. If the existing (measured) industrial-type noise level approaches the criterion value, then the NSW NPI sets maximum noise emission levels from new sources with the objective of ensuring that the cumulative levels do not significantly exceed the criterion.

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4.1.3 Area Classification

The NSW NPI characterises the "Suburban Residential" as an area that has local traffic with characteristically intermittent traffic flows or with some limited commerce or industry. This area often has the following characteristic: evening ambient noise levels defined by the natural environment and human activity.

For the considered receptors in the rural area, the recommended amenity noise level is shown in Table 2 below. When the existing noise level from industrial noise sources is close to the recommended "Amenity Noise Level" (ANL) given above, noise from the new source must be controlled to preserve the amenity of the area in line with the requirements of the NSW NPI.

Type of Receiver	Indicative Noise Amenity Area	Time of Day ¹	Recommended Amenity Noise Level (LAeq, period) ²	
Residence	Suburban	Day	55	
		Evening	45	
		Night	40	
Note 1: For Monday to Saturday, Daytime 7:00 am – 6:00 pm; Evening 6:00 pm – 10:00 pm; Night-time 10:00 pm – 7:00 am. On Sundays and Public Holidays, Daytime 8:00 am – 6:00 pm; Evening 6:00 pm – 10:00 pm; Night-time 10:00 pm – 8:00 am				
Note 2: The L _{Acq} is the energy average sound level. It is defined as the steady sound level that contains the same a of acoustical energy as a given time-varying sound.				

4.2 Woollahra Council DCP Requirements

The Woollahra Municipal Council DCP includes in Section B3.7.3 *Site Facilities* the following requirements for the operation of mechanical services on a site:

Noise emissions from mechanical plant equipment must not exceed the background noise levels when measured at the boundary of the development site.

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4.2.1 Project Trigger Noise Levels

The intrusive and amenity criteria for industrial noise emissions derived from the measured data are presented in Table 3. The amenity and intrusive criterion are nominated for the purpose of determining the operational noise limits for noise sources associated with the development which can potentially affect noise sensitive receivers.

For each assessment period, the project trigger noise levels are the lower (i.e. the more stringent) of the amenity or intrusive criteria. The project trigger noise levels are shown in bold text in Table 3.

Table 3	External	noise la	aval	critoria	in	accordance	with	the NSW NPI
I able 5	External	noise R	evei	criteria		accordance	WILLI	THE NOW MPT

Location	Time of Day	Project Amenity Noise Level, LAeq, period ¹ (dBA)	Representative Background Noise level LA90, 15 min (RBL) ² (dBA)	Measured LAeq, period Noise Level (dBA)	Intrusive LAeq, 15 min Criterion for New Sources (dBA) ³	Amenity LAeq, 15 min Criterion for New Sources (dBA) ^{3, 4}
Residential	Day	50	43	60	48	53
Receivers (Suburban)	Evening	40	42	60	47	43
(Suburball)	Night	35	40	60	45	38

Note 1: Project Amenity Noise Levels corresponding to "suburban" areas, equivalent to the Recommended Amenity Noise Levels minus 5 dBA

Note 2: Laso Background Noise or Rating Background Level, including Laso Background Noise or Rating Background Level based on the assumed minimum rating of the EPA NPfI.

Note 3: Project Noise Trigger Levels are shown in bold

Note 4: According to Section 2.2 of the NSW NPI, the LAeq, 15 minutes is equal to the LAeq, period + 3 dB

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5 NOISE IMPACT ASSESSMENT

This section of the report details the assessment of potential noise generated as part of the proposed new roof top terrace proposed for the roof of the development.

The proposed development includes a new roof top terrace on the roof of the building, the proposed roof top terrace is included in the figure below.



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The proposed communal area includes an outdoor area for the use of the commercial tenancies located within the development. The roof top terrace includes an open area which includes setbacks from the edge of the building, as detailed in the figure above.

The potentially affected residential receives includes the residential dwellings located to the east of the site and opposite on Bay Street, see figure 1 above.

For the purpose of this assessment, we have assumed the following noise levels:

• Single person talking – 69dB(A) Sound Power Level.

Predicted noise levels associated with the communal areas is addressed in the table below. The predictions below have been determined based on the following assumptions:

- Use of the external roof top terrace will include periods of 7:00am-10:00pm Monday to Saturday and 8:00am-10:00pm on Sundays and Public Holidays.
- The use of the roof top terrace will include the playing of background music is only and will not include playing of music for entertainment or the like.
- External communal area will have no more than 40 people utilising the space at any one time with an
 assumption that one in two are speaking in conversation.

Predicted noise levels from the use of the proposed external roof top terrace will comply with the requirements included in Table 3 above.

Noise levels predicted from the use of the external communal area are provided below.

Table 4 Predicted Noise Level from the use of the Roof Top Terrace

Receiver ¹	Assessment Point on Receiver Property	Predicted Noise Level L _{Aeq(15-min)} (dBA)	Criteria ² L _{Aeq(15-min)} (dBA)	Compliance?	
Residential	Boundary of the existing	41	48	Yes, including	
Receivers Opposite on Bay Street	external balcony on the top level of the building	ling	(Daytime)	management controls included in this section of the report.	
	opposite on Bay Street		43		
			(Evening Time)		
Note 1: Refer to Figure 1 for detailed receiver location. Note 2: For Monday to Saturday, Daytime 7:00 am – 6:00 pm; Evening 6:00 pm – 10:00 pm. On Sundays and Public Holidays, Daytime 8:00 am – 6:00 pm; Evening 6:00 pm – 10:00 pm.					

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5.1 Roof Top Terrace Controls

From our assessment shown above, use of the proposed roof top terrace will be acoustically acceptable at the surrounding residential receivers providing the following management controls are included in the operation of the space.

- External roof top terrace area is only to be used during the daytime and evening times of :
 - Monday to Saturday, Daytime 7:00 am 6:00 pm; Evening 6:00 pm 10:00 pm.
 - $_{\odot}$ $\,$ Sundays and Public Holidays, Daytime 8:00 am 6:00 pm; Evening 6:00 pm 10:00 pm
- At any one time the maximum number of people permitted in the external area is no more than 40 people.
- Use of the external area is permitted for individual use and communal activities, however excessive noise associated with parties is not permitted.
- Amplified music, other than background noise levels, are not permitted in the external area at any time.
- Signs must be installed within the communal areas outlining the recommendations above.

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6 CONCLUSION

Pulse White Noise Acoustics Consultancy Pty Ltd (Pulse White Noise Acoustics) has been engaged to undertake the Noise Impact Assessment of the proposed roof top terrace to be located as part of the 30-36 Bay Street, Double Bay development.

An assessment of the potential for noise impact resulting from the use of the roof top terrace has been undertaken and the recommended mitigations to ensure noise emissions at the surrounding receivers, including the residential receivers located opposite on Bay Street, are presented in this report.



Ben White Director

Pulse White Noise Acoustics

Pulse White Noise Acoustics Pty Ltd

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7 APPENDIX A: ACOUSTIC TERMINOLOGY

The following is a brief description of the acoustic terminology used in this report.

Sound power level	The total sound er	nitted by a source
Sound pressure level	The amount of sou	ind at a specified point
Decibel [dB]	The measurement	unit of sound
A Weighted decibels [dB(A])	represent how hu frequencies in the ear is most sensit which the human	s a frequency filter applied to measured noise levels to mans hear sounds. The A-weighting filter emphasises speech range (between 1kHz and 4 kHz) which the human ive to, and places less emphasis on low frequencies at ear is not so sensitive. When an overall sound level is A- essed in units of dB(A).
Decibel scale	of the response of level corresponds t sound pressure le	s logarithmic in order to produce a better representation f the human ear. A 3 dB increase in the sound pressure to a doubling in the sound energy. A 10 dB increase in the evel corresponds to a perceived doubling in volume. el levels of common sounds are as follows:
	0dB(A)	Threshold of human hearing
	30dB(A)	A quiet country park
	40dB(A)	Whisper in a library
	50dB(A)	Open office space
	70dB(A)	Inside a car on a freeway
	80dB(A) 90dB(A)	Outboard motor Heavy truck pass-by
	100dB(A)	Jackhammer/Subway train
	110 dB(A)	Rock Concert
	115dB(A)	Limit of sound permitted in industry
	120dB(A)	747 take off at 250 metres
Frequency [f]	corresponds to the	e of the cycle measured in Hertz (Hz). The frequency e pitch of the sound. A high frequency corresponds to a d and a low frequency to a low pitched sound.
Ambient sound	The all-encompass near and far.	ing sound at a point composed of sound from all sources
Equivalent continuous sound level [L _{eq}]		d level which, when occurring over the same period of in the receiver experiencing the same amount of sound
Reverberation		sound in a space after the source of that sound has been rberation time is the time taken for a reverberant sound y 60 dB)
Air-borne sound	The sound emitted speech, television	d directly from a source into the surrounding air, such as or music
Impact sound	The sound emitted and slamming cup	l from force of one object hitting another such as footfalls boards.
Air-borne sound isolation	The reduction of a	irborne sound between two rooms.
Sound Reduction Index [R] (Sound Transmission Loss)	The ratio the soun partition.	d incident on a partition to the sound transmitted by the
Weighted sound reduction index [R _w]		resentation of the air-borne sound insulation of a partition R values for each frequency measured in a laboratory
Level difference [D]	The difference in s	ound pressure level between two rooms.

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Normalised level difference [D _n]	The difference in sound pressure level between two rooms normalised for the absorption area of the receiving room.
Standardised level difference [DnT]	The difference in sound pressure level between two rooms normalised for the reverberation time of the receiving room.
Weighted standardised level difference [D _{nT,w}]	A single figure representation of the air-borne sound insulation of a partition based upon the level difference. Generally used to present the performance of a partition when measured in situ on site.
C _{tr}	A value added to an R_{w} or $D_{nT,w}$ value to account for variations in the spectrum.
Impact sound isolation	The resistance of a floor or wall to transmit impact sound.
Impact sound pressure level [L _i]	The sound pressure level in the receiving room produced by impacts subjected to the adjacent floor or wall by a tapping machine.
Normalised impact sound pressure level [L _n]	The impact sound pressure level normalised for the absorption area of the receiving room.
Weighted normalised impact sound pressure level [L _{n,w}]	A single figure representation of the impact sound insulation of a floor or wall based upon the impact sound pressure level measured in a laboratory.
Weighted standardised impact sound pressure level [L'nT,w]	A single figure representation of the impact sound insulation of a floor or wall based upon the impact sound pressure level measured in situ on site.
CI	A value added to an L_{nW} or $L^\prime_{nT,w}$ value to account for variations in the spectrum.
Energy Equivalent Sound Pressure Level [L _{A,eq,T}]	$^{\mbox{\sc h}}\mbox{\sc h}$ weighted, energy averaged sound pressure level over the measurement period T.
Percentile Sound Pressure Level [L _{Ax,T}]	$^{\mbox{`A'}}$ weighted, sound pressure that is exceeded for percentile x of the measurement period T.

*Definitions of a number of terms have been adapted from Australian Standard AS1633:1985 "Acoustics – Glossary of terms and related symbols"

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30-36 Bay Street, Double Bay Operational Noise Management Plan

Fortis Development Group

Report Reference: 210525-30-36 Bay St, Double Bay - Operational Noise Management Plan-R0 Date: 27 May 2024 Revision: R0 Project Number: 210525

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 ABN 95 642 886 306



DOCUMENT CONTROL

Project Name:	30-36 Bay Street, Double Bay
Project Number:	210525
Report Reference: 210525-30-36 Bay St, Double Bay - Operational Noise Management Plan-R0	
Client:	Fortis Development Group

Revision	Description	Reference	Date	Prepared	Checked	Authorised
0	For Information	210525-30-36 Bay St, Double Bay - Operational Noise Management Plan-R0	27/05/24	Ben White	Matthew Furlong	Ben White

PREPARED BY:

Pulse White Noise Acoustics Pty Ltd ABN: 95 642 886 306 Address: Suite 601, Level 6, 32 Miller Street, North Sydney, 2060 Phone: 1800 4 PULSE

> This report has been prepared by Pulse White Noise Acoustics Pty Ltd with all reasonable skill, care and diligence, and taking account of the timescale and resources allocated to it by agreement with Fortis Development Group.

Information reported herein is based on the interpretation of data collected, which has been accepted in good faith as being accurate and valid.

This report is for the exclusive use of Fortis Development Group No warranties or guarantees are expressed or should be inferred by any third parties. This report may not be relied upon by other parties without written consent from Pulse White Noise Acoustics.

This report remains the property of Pulse White Noise Acoustics Pty Ltd until paid for in full by the client, Fortis Development Group.

Pulse White Noise Acoustics disclaims any responsibility to the Client and others in respect of any matters outside the agreed scope of the work.

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1.1	SITE DETAILS	3
2	OPERATIONAL DETAILS	4
2.1	Operational Management Procedures	4

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1 INTRODUCTION

The purpose of this Operational Noise Management Plan is to establish operational requirement for the rooftop terrace of the 30-36 Bay Street, Double Bay project.

A copy of this Operational Noise Management Plan shall be available on site at all times and immediately produced for inspection, upon request by Police or Council Officers as well as included in the agreements for the occupants of the building.

1.1 SITE DETAILS

The project is located at 30-36 Bay Street, Double Bay within Woollahra Municipal Council area.

This Operational Noise Management Plan includes the rooftop terrace area of the project.

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2 OPERATIONAL DETAILS

The operation of the rooftop terrace is required to be operated in accordance with all requirements of the projects Conditions of Consent and this Operational Noise Management Plan.

2.1 Operational Management Procedures

The use of the rooftop terrace is required to include the following:

- External roof top terrace area is only to be used during the daytime and evening times of :
 - Monday to Saturday, Daytime 7:00 am 6:00 pm; Evening 6:00 pm 10:00 pm.
 - Sundays and Public Holidays, Daytime 8:00 am − 6:00 pm; Evening 6:00 pm − 10:00 pm
- Use of the external area is permitted for individual use and communal activities, however excessive noise associated with parties is not permitted.
- Amplified music, other than background noise levels, are not permitted in the external area at any time.
- At all times, no live music, amplified sound equipment or other form of entertainment, is permitted on the roof top terrace area. Only soft background music is permitted playing at a maximum noise level of 65 dB(A) SPL @ 2m from each speaker.
- Any speakers to be located on the terrace are to face way from the residential receivers and include noise levels of no greater than 65 dB(A) SPL @ 2m from each speaker.
- Signs must be installed within the communal areas outlining the recommendations above.

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LOCAL PLANNING PANEL DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D3
FILE No.	DA202/2024/1
ADDRESS	40 Latimer Road BELLEVUE HILL
COUNCIL WARD	Bellevue Hill
SITE AREA	837.5m ²
ZONING	R2 Low Density Residential
PROPOSAL	Alterations and additions to an existing dual-occupancy and its conversion into a single dwelling house; landscaping and siteworks.
TYPE OF CONSENT	Local development
COST OF WORKS	\$743,600.00
DATE LODGED	07/06/2024
APPLICANT	MHN Design Union Pty Ltd
OWNER	Mr J D & Mrs M K Carnegie
AUTHOR	Mr K Qi
TEAM LEADER	Mr M Moratelli
SUBMISSIONS	Zero (0)
RECOMMENDATION	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:

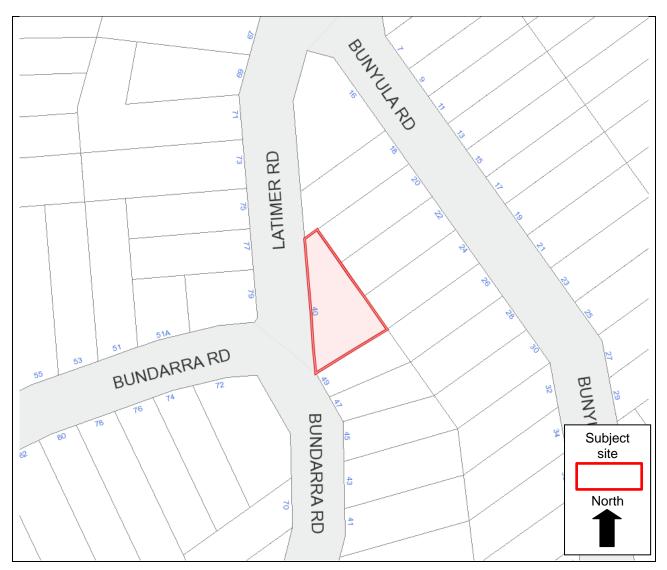
- Departure from development standards
 - (a) Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% (floor space ratio for dwelling house in Zone R2)

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; and
- The proposal is in the public interest.

3. LOCALITY PLAN



4. PROPOSAL

The updated architectural drawings were received on 21 and 26 August 2024 which comprise the correction of errors and provision of additional details.

The proposal involves the alterations and additions to an existing dual-occupancy and its conversion into a single dwelling house, and landscaping and siteworks. Specifically, the proposal comprises the following internal works:

- Lower ground floor
 - Modified northern external walls and reconfiguration of the internal walls to accommodate a rumpus, kitchenette, two bedrooms, two bathrooms, laundry, storage room, plant room, and internal lift and access stairs; and
 - Proposed fenestration works.
- Ground floor
 - Modified western external walls and proposed entrance from Latimer Road;
 - Proposed reconfiguration of the internal walls to accommodate open planned living, dining and kitchen area, pantry, TV room, powder room, two bedrooms of which contain robe and ensuite, laundry chute, and internal lift and access stairs; and
 - Proposed fenestration works.

- First floor
 - Proposed southern external wall extension and reconfiguration of the internal walls to accommodate open planned lounge and dining area, master bedroom which contains a walk-in-robe and ensuite, study, gallery, powder room, laundry chute, and internal lift and access stairs; and
 - Proposed fenestration works.
- Roof
 - o Proposed skylights; and
 - Lift overrun.

Additionally, the proposal comprises the following external works:

- Proposed finish to the lower ground terrace and pool surrounds;
- Proposed turntable and associated wall reconfiguration to the ground floor carpark;
- Modification of the existing first floor carport to a garage;
- Proposed entrance and entry steps from Latimer Road;
- Proposed driveway splay;
- Repair of front, rear and southern boundary fences and replacement of existing northern boundary fence; and
- Site and landscape works.

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 for	0.65:1(126.25m ²) or 30% departure from the	Satisfactory
	dwelling house in Zone R2	0.5:1(418.75m ²) control	

5.2 Primary Issues

None.

PROPERTY DETAILS AND REFERRALS

6. SITE AND LOCALITY

Physical features

The subject site is also known as LOT 19, SEC B and DP 9724.

The site is an irregular shaped allotment and comprises the following boundary lengths:

- 50.34m front boundary to Latimer Road near its junction with Bundarra Road.
- 5.6m northern side boundary adjoining 18 Bunyula Road, Bellevue Hill.
- 45.72m rear side boundary adjoining 20, 22 and 24 Bunyula Road, Bellevue Hill.
- 31.435m southern side boundary adjoining 49 Bundarra Road, Bellevue Hill.
- The site has an area of 837.5m².

Topography

The site slopes down approximately 7.51m from the west towards the east along the southern side boundary and 3.86m from the south towards the north along the street boundary.

Existing buildings and structures

The site contains a three-storey building that comprises two flats with a flat roof, and it has a one-to-two storey presentation to the street. There is a carport to the south of the site along the front boundary servicing the top unit, and a driveway that leads to a carport servicing the lower unit. The two units are stacked and pedestrian access is via two separate walkways.

Surrounding Environment

The site is located in the Bellevue Hill North Residential Precinct. The immediate streetscape comprises detached dwelling houses, with some dual occupancy and residential flat buildings. Most of the surrounding developments along the western side of Latimer Road are elevated from the street level whilst those along the eastern side are sited lower.





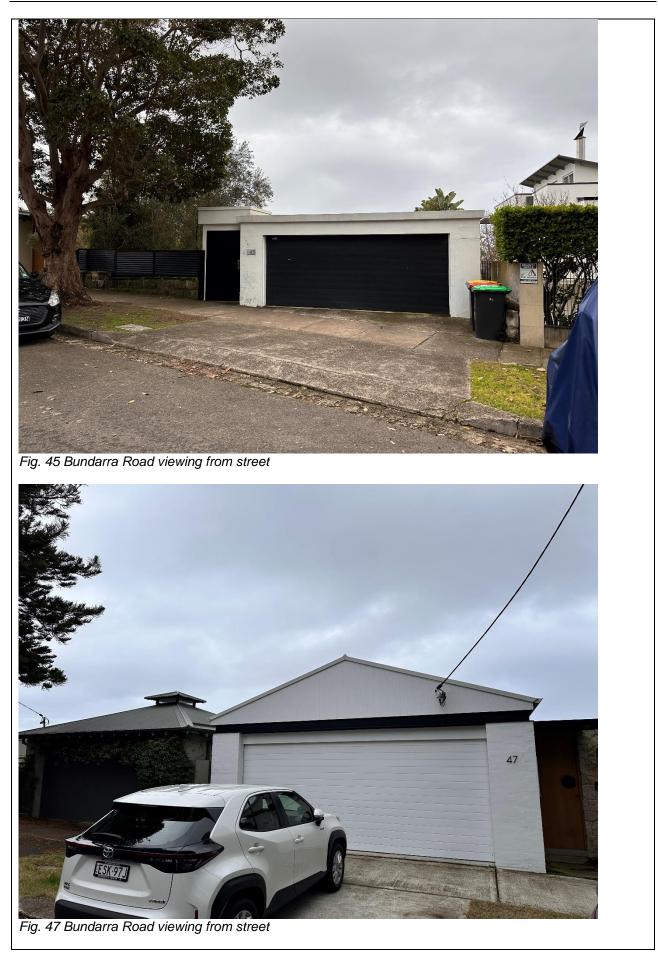






Fig. 72 Bundarra Road viewing from street







7. RELEVANT PROPERTY HISTORY

Current use
Dual occupancies
Relevant Application History
N/A
Relevant Compliance History
N/A
Requests for Additional Information and Replacement Applications
A Stop the Clock Letter dated 21 June 2024 was issued and requested the following:
Survey
Demolition report
This information was received by 23 July 2024.
Updated architectural drawings were requested on 14 August to provide additional details and were received on 21 and 26 August 2024.

8. **REFERRALS**

Referral	Summary of Referral Response	Attachment
Trees and Landscaping	Satisfactory, subject to conditions	3
Heritage	Satisfactory, subject to conditions	4

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 26 June 2024 to 11 July 2024 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. No submission was received.

9.2 Replacement Application

The updated drawings noted in Section 4 were not formally re-notified/re-advertised to surrounding residents under Schedule 1 of the Woollahra Community Participation Plan 2019 because they will have no greater impacts than those previously notified and advertised.

9.3 Statutory Declaration

The applicant has completed the statutory declaration dated 16 July 2024 declaring that the site notice for DA202/2024/1 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

SEPP (Sustainable Buildings) 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 by standard condition.

11. SEPP (BIODIVERSITY AND CONSERVATION) 2021

11.1 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.

12. 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 is therefore satisfactory with regard to the relevant provisions of the planning instrument.

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.

In the absence of any information indicating the potential contamination of the site, 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.

13. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

13.1 Part 1.2: Aims of Plan

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

13.2 Land Use Table

The proposal is defined as works associated with a dwelling house and is permitted and is consistent with the objectives of the R2 Low Density Residential zone.

13.3 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	9.53m	9.01m	9.5m	Yes

Note: This assessment varies from that provided by the applicant in terms of calculating the proposed maximum building height of the development.

The existing maximum building height is measured as 9.53m from the top of the existing skylight to the ground level, whilst the proposed maximum building height is measured as 9.01m from the top of the photovoltaic system to the existing ground level, which complies with the 9.5m height limit. The proposal therefore complies with the maximum building height prescribed by Part 4.3 of Woollahra LEP 2014 and it is acceptable with regard to the relevant objectives under Part 4.3(1) of Woollahra LEP 2014.

13.4 Part 4.4E: Exceptions to floor space ratio—dwelling houses, dual occupancies and semi-detached dwellings in Zones R2 and R3

Part 4.4E limits development to a maximum floor space ratio of 0.5:1 for a dwelling house with a site area of 837.5m².

Site Area: 837.5m ²	Existing	Proposed	Control	Complies
Floor Space Ratio	0.67:1	0.65:1	0.5:1	No
	(564m²)	(545m²)	(418.75m ²)	

The proposal has a non-compliant floor space ratio of 0.65:1. Therefore, it does not comply with Part 4.4E(3) of Woollahra LEP 2014, which is assessed in **Part 13.5** in detail.

13.5 Part 4.6: Exceptions to Development Standards

Departure

With a floor space ratio of 0.65:1, the proposal involves a 30% non-compliance with the 0.5:1 floor space ratio for dwelling house in Zone R2 statutory control under section 4.4E of the Woollahra LEP 2014, as detailed in **Section 13.4**.

Purpose

Section 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 section 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.

Justification Requirements

Section 4.6(3) states that:

Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

- a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
- b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

Section 4.6(3) does not require the applicant to demonstrate those matters solely in the written request.

Applicant's Written Request

Section 35B of the *Environmental Planning and Assessment Regulation 2021* requires a development application for development that proposes to contravene a development standard to be accompanied by a document [the written request] setting out the grounds on which the applicant seeks to demonstrate the matters in section 4.6(3) paragraphs (a) and (b).

The applicant has provided a written request in accordance with Section 35B of the *Environmental Planning and Assessment Regulation 2021*, which is attached at **Attachment 2**.

Council's Assessment

Section 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 section 4.6(3). This is set out below.

Step 1: Are the planning instrument, development standard and proposed variation identified in the written request accurate?

In determining whether the information contained within the written request is accurate, the following questions have been considered:

- Is the provision proposed to be varied a development standard?
- Is the development standard proposed to be varied one that can be varied, and not excluded from the operation of section 4.6 by section 4.6(8)?
- Is the correct LEP or SEPP section (and objectives if relevant) referenced?
- Is the extent of the variation correctly identified?

Assessment:

Having regard to the definition of *development standards* under the EP&A Act, Council is satisfied that the provision proposed to be varied is a development standard, and it is not excluded from the operation of Clause 4.6 by Clause 4.6(8).

The submitted Clause 4.6 written request has correctly referenced the clause and associated objectives of floor space ratio for dwelling house in Zone R2 under Part 4.4E of the WLEP 2014. The extent of variation with Clause 4.4E has been identified in the submitted written request.

Step 2: Section 4.6(3)(a): Is compliance unreasonable or unnecessary?

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.

Assessment:

To determine whether the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances, the following questions have been considered:

- Has the applicant adopted one or more of the Wehbe tests to demonstrate that compliance is unreasonable or unnecessary in the circumstances?
- Has the applicant used another method to justify that the variation is unreasonable or unnecessary?
- Are the arguments put forward by the applicant, to demonstrate compliance is unreasonable or unnecessary in the circumstances, supported and why?

The applicant's written request adopted the first method of the *Wehbe* tests to demonstrate that compliance is unreasonable or unnecessary in the circumstances.

The objectives of the development standard are achieved notwithstanding non-compliance with the standard. An assessment against the objectives of the subject development standard is provided below:

The objectives underlying Clause 4.4E – floor space ratio for dwelling house in Zone R2

(a) to ensure the bulk and scale of development is compatible with the desired future character of the area,

Overall, the proposal reduces the existing non-compliant floor space ratio. The additional floor area is mainly located at the existing southern recessed terrace of the first floor that is already enclosed on three sides. The proposal is sensitively located in such a way that it does not exacerbate the overall bulk and scale of the proposal as viewed from surrounding properties and the streetscape and is considered compatible with the desired future character of the area.

(b) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,

The proposal does not have any significant adverse environmental and amenity impacts on the adjoining properties and public domain.

(c) to ensure development makes adequate provision for deep soil planting, tree canopy cover and private open space.

The proposal would improve the landscaping outcome whilst maintaining suitable provision for private open spaces.

It is considered that the applicant's written request has adequately demonstrated that the objectives of the floor space ratio for dwelling house in Zone R2 development standard are achieved and that the non-compliance satisfies the unreasonable or unnecessary tests established by the Court in *Wehbe* on the basis that the existing building already contravenes the development standard.

Step 3: Section 4.6(3)(b) Are there sufficient environmental planning grounds to justify the contravention?

In *Initial Action* Preston CJ provided the following guidance (at paragraphs 23 and 24) concerning whether there will be sufficient environmental planning grounds to justify a contravention of 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.
- 24 The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". ... the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) 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. 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: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15].

Section 1.3 of the EPA Act reads as follows:

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.

Assessment:

To determine whether the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of the development standard, the following questions have been considered:

• What environmental planning grounds have been put forward to justify the variation?

- Are the environmental planning grounds specific to the proposed variation?
- Are there sufficient environmental planning grounds to justify the proposed variation to the development standard?

It is important to acknowledge that the proposal reduces the existing gross floor area by 19m². The subject development is contextually compatible and consistent with the desired future character of the area.

The applicant's written request, which supports the proposed non-compliance with the floor space ratio for dwelling house in Zone R2 development standard, has adequately demonstrated that the proposed development satisfies objective (g) and (h) 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).

Conclusion

Council is 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.

13.6 Part 5.10: Heritage Conservation

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

The subject site is not a listed heritage item and is not located within a Heritage Conservation Area. In comments dated 16 August 2024, Council's Heritage Officer reviewed the proposal and made the following 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 is recommended.

Therefore, subject to the conditions of consent, the proposal is acceptable with regard to the Part 5.10 of the Woollahra LEP 2014.

13.7 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

The subject site is not located in a flood planning area and is acceptable with regard to Part 5.21 of Woollahra LEP 2014.

13.8 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.

13.9 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 does not involve any significant excavation. Development Engineer has no objections to the proposal, subject to the conditions of consent. Therefore, the proposal is acceptable with regard to Part 6.2 of the Woollahra LEP 2014.

13.10Part 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.

Part 6.9(3) requires Council to consider whether the development incorporates planning and design measures to enable the retention and planting of trees to minimise the urban heat island effect, and will avoid, minimise or mitigate adverse impacts on the existing tree canopy.

Council's Tree Officer has no objections to the proposed tree canopy cover, subject to the conditions of consent. Therefore, the proposal is acceptable with regard to Part 6.2 of the Woollahra LEP 2014.

14. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

14.1 Chapter B1: Bellevue Hill North Residential Precinct

The proposal satisfies the precinct objectives outlined in Part B1.1.3 of the Woollahra DCP 2015.

The following extract from the Desired Future Character of Part B1.8.2 of the Woollahra DCP 2015 states:

The Bellevue Hill North precinct is an established residential area with a rich mixture of architectural styles and forms. Development is to be compatible with the existing built fabric, subdivision pattern and other prevailing characteristics in the street, such as setbacks and roof forms.

On sloping sites, development should step down the site to maintain views, protect the privacy and solar access of adjoining and adjacent properties, and minimise cut and fill. The design of roofs and fences should also facilitate view sharing opportunities, and carports and other parking structures must not to dominate the streetscape.

There are pockets of Inter-War flat buildings along Drumalbyn Road that contribute to the precinct character, and the retention of these buildings is encouraged. Alterations and additions to the Inter-War flat buildings are to retain the character of the original building through appropriate use of materials, and should not significantly alter significant and traditional building elements visible from the street.

Development is to retain views of the harbour from public spaces and provide for view sharing from private properties. Development adjacent to the heritage conservation areas must also suitably respond to the significance of the HCA.

The relevant streetscape character and key elements of the precinct are:

Development respects and enhances the existing elements of the neighbourhood character that contribute to the precinct including:

- 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 relevant desired future character objectives are:

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.

The immediate streetscape comprises developments which exhibit traditional and contemporary designs and residential flat buildings. Most of the developments on the western side of Latimer Road in the locality are elevated from the street level whilst those along the eastern side are sited lower. It is considered that there is no obvious prevailing streetscape character and the immediate streetscape comprises a rich mixture of architectural styles.

The proposal is sensitively located in such a way that it does not exacerbate the overall bulk and scale of the proposal as viewed from surrounding properties and the streetscape. Notably, the additional floor areas are either compatible with the dwelling or not readily visible from the streetscape. The proposal is considered to be compatible with the desired future character of the area.

The proposal meets the streetscape character and key elements of the precinct and desired future character objectives of the Bellevue Hill North precinct, as noted in Part B1.8.2 of the Woollahra DCP 2015.

14.2 Chapter B3: General Development Controls

14.2.1 Part B3.2: Building Envelope

Part 3.2.2: Front Setback

C2 The building has a maximum unarticulated width of 6m to the street frontage. O4 To ensure that buildings are well articulated and positively contribute to the streetscape.

• Although the proposal comprises walls that measure over 6m in length facing Latimer Road, the proposed front façade is considered to be well articulated. It is compatible with the locality and positively contributes to the streetscape. Therefore, the underlying objective O4 is upheld.

In general, the proposal would not alter the existing footprint and the proposed works do not protrude beyond the existing setbacks of the dwelling. Any works associated with the fenestration works within the setbacks or protrusions into the inclined plane are generally upheld.

Conclusion

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

14.2.2 Part B3.4: Excavation

The proposal does not involve any bulk excavation works. Therefore the proposal is acceptable with regard to the excavation controls in Part B3.4 of the Woollahra DCP 2015.

14.2.3 Part B3.5: Built Form and Context

Part B3.5.1: Streetscape and Local Character

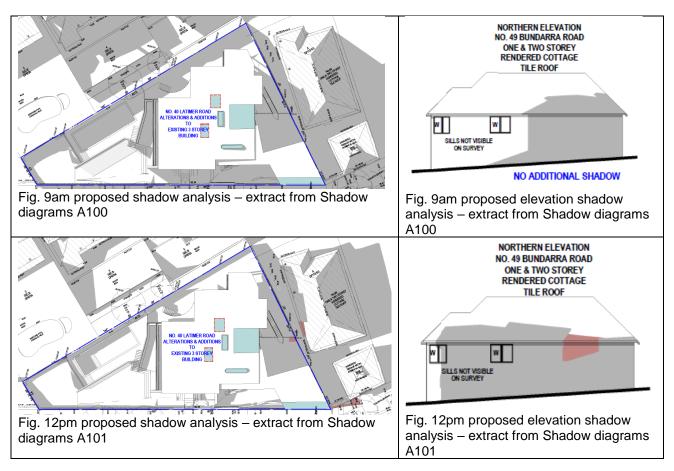
In general, as discussed under Part B1, the proposal provides a satisfactory response to the desired future character provisions of the Bellevue Hill North precinct. The proposal is considered a suitable development along the street and within the locality.

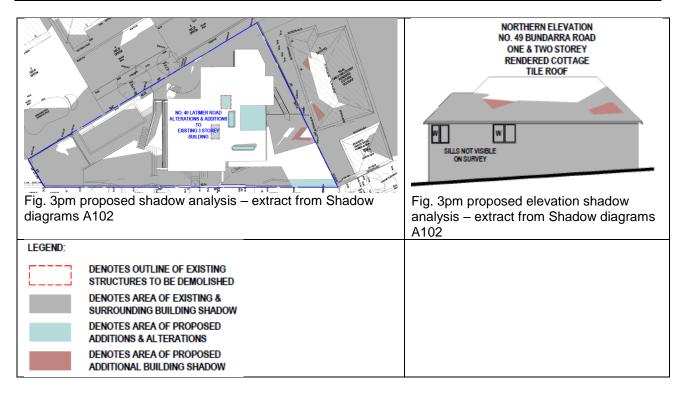
Part B3.5.2: Overshadowing

- 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.

O1 To minimise overshadowing to neighbouring properties.





 The amount of existing shadows cast on the neighbouring property at 49 Bundarra Road to the south of the subject site are non-compliant with C1. This existing non-compliance is influenced by the orientation and configuration of the subject and neighbouring sites. Notwithstanding this, the additional shadows as a result of the proposed works would not result in any additional shadows to private open spaces or north facing windows of upper level habitable rooms of neighbouring properties on June 21, therefore it is considered acceptable having regard to C1(a) and (b) and the underlying objective O1.

Part B3.5.3: Public and private views

No public and private views were identified during this assessment that would be significantly impacted by the proposal.

Part B3.5.4: Acoustic and Visual Privacy

C4 New windows in habitable rooms are designed to prevent a direct sightline to the habitable room windows or private open space of an adjacent dwelling within 9m. This may be achieved by options including, but not limited to (in order of preference):

- a) Window location—primary windows to habitable rooms are located and designed to provide an outlook to the front and rear setbacks, not the side boundaries.
- b) Layout and separation—offsetting windows from the windows/private open spaces of the adjoining dwelling to limit views between the windows/private open space.
- c) Architectural design solutions and devices—redirecting and limiting sightlines using deep sills with planter boxes, fixed horizontal or vertical louvres, or other screening devices set off the windows internally or externally.
- d) Glazed opening windows—using windows with translucent glazing to a height of 1.5m above floor level and fitted with a winder mechanism to control the maximum angle of the opening to limit views.
- e) Glazed fixed windows or high sills—using fixed windows with translucent glazing in any part of the window below 1.5m above floor level, or window sill heights of 1.5m above floor level.

C5 Windows to bathrooms and toilet areas have translucent glazing where these have a direct view to, and from, habitable rooms and private open space on adjoining and adjacent properties.

C7 Private open spaces and the trafficable area of roof terraces (at or below the second storey) (refer to Figure 19) are to be suitably located and screened to prevent direct views to neighbouring:

- a) habitable rooms (including bedrooms) within 9m; and
- b) private open space within 9m.
 - Whilst the proposal does involve new windows that would obtain sightlines to the private open space of properties to east, these windows replace existing windows which are in a similar configuration and location. Given this, and as the proposal seeks to replace the existing dual-occupancy with a single dwelling, the degree of overlooking would be similar if not reduced when compared to the existing situation.

Part B3.5.5: Internal amenity

C3 The area of unobstructed window openings should be equal to at least 20% of the room floor area for habitable rooms, (- ground floor bedroom 4 16%,

O1 To encourage high levels of internal amenity through the provision of direct natural light and direct natural ventilation.

O2 To encourage buildings that are designed to maximise natural light provision in habitable rooms.

• The unobstructed opening of the ground floor bedroom 4 is calculated as 16% of the room floor area, therefore it is non-compliant with C3. Notwithstanding this, the proposal achieves a high level of internal amenity by providing an open planned living area and habitable rooms with direct access to natural light and ventilation, and the non-compliance with C3 is considered minor. Therefore, O1 and O2 upheld.

Conclusion

The proposal is acceptable with regard to the built form and context controls in Part B3.5 of the Woollahra DCP 2015.

14.2.4 Part B3.6: On-Site Parking

C1 On-site parking is designed and located so that it:

- a) is located within the building envelope;
- b) does not dominate the street frontage; and
- c) preserves trees and vegetation of landscape value.

C2 Notwithstanding C1, parking structures are permitted outside the building envelope but only where:

- a) there is rear access (via a lane or street); or
- b) the site is located on sloping land where:
 - the rise or fall measured to a distance of 7m from the street frontage is greater than 1 in 3 (refer to Figure 19A); and
 - the car parking structure is incorporated into a podium or street wall; and
 - the car parking structure is not more than 40m² in area.
- c) the existing streetscape in the immediate vicinity of the site is characterised by parking structures forward of the building line and
 - For separate structures, the roof form, materials and detailing complement the principal building
 - Garage doors are designed to complement the building design and any important character elements within the street.

C3 Parking structures outside the building envelope are only permitted when:

- a) minimum deep soil landscaped area and private open space requirements are met, as set out in Section 3.7.1 Landscaped areas and private open space; and
- b) solar, access and privacy requirements within the site, and to the neighbouring properties, are met as set out in Section 3.5.2 Overshadowing and Section 3.5.4

C4 For car parking structures facing the street frontage— the maximum car parking structures width is no greater than 40% of the site frontage width or 6m, whichever is the lesser.

C7 For car parking structures located in the front setback, the maximum height of the structure is 2.7m above the footpath level. If the existing height of the retaining/street wall or the two adjoining car parking structures is higher than 2.7m, that greater height may be permitted (refer to Figure 19B).

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.

O3 To allow, in certain circumstances, parking structures outside the building envelope.

O8 To ensure that on-site parking does not detract from the streetscape character and amenity.

- The proposed garage of the first floor level is located within the front and southern side setbacks and is outside of the building envelope. Also, the proposal aims to provide a new turntable to the existing ground floor carpark. Given the characteristics of the site and the general prevalence of car parking fronting the streetscape (including the existing configuration at the subject site), the locations of parking are deemed suitable and consistent with the general development outcome. In addition, the proposal maintains suitable provision for deep soil landscaped areas, and the proposed garage does not have any significant adverse impact on the private open space of the subject site and amenity of neighbouring properties. Therefore, C1, C2 and C3 are upheld.
- The width of the proposed garage structure is measured as 7.53m. In addition, the height of the garage is measured as more than 2.7m above the footpath level. Notwithstanding this, it would not have any significant adverse impacts upon the streetscape, the subject site and the neighbouring properties. Therefore, the underlying objectives O1, O2, O3 and O8 are upheld.

Conclusion

The proposal is acceptable with regard to the parking controls in Part B3.6 of the Woollahra DCP 2015.

14.2.5 Part B3.7: External Areas

Site Area: 837.5m ²	Existing	Proposed	Control	Complies
C2 B3.7.1 Overall Deep Soil	25.19%	25.31%	35%	No
Landscaping	(211m²)	(212m ²)	(293.13m ²)	NO
C3 B3.7.1 Deep Soil Landscaping	45.07%	41.96%	40%	Yes
- Front setback (286m ²)	(128.9m ²)	(120m ²)	(114.4m ²)	res

Note. This assessment varies from that provided by the applicant in terms of calculating the deep soil landscaped area in the front setback.

Part B3.7.1: Landscaped Areas and Private Open Space

- C1 Tree canopy area is at least:
- a) 35% of the site area for dwelling houses, dual occupancies, semi-detached development and attached dwellings, with the exception of the Wolseley Road area, or
- b) 30% of the site area for residential development other than dwelling houses, dual occupancies, semi-detached development and attached dwellings, or
- c) 25% of the site area for all residential development in the Wolseley Road area (Figure 22)

And at least half of the total tree canopy area on the site is contributed by canopy tree/s.

Council may consider a variation to this control where:

- a) Council is satisfied that a canopy tree will have a moderate, severe or devastating impact on views when assessed in accordance with the Tenacity Land and Environment Court Planning Principle. (Note: This control will prevail over view sharing objectives and controls where view impacts are negligible or minor when assessed in accordance with the Tenacity Land and Environment Court Planning Principle).
- b) The applicant has demonstrated that the deep soil landscaped area on the subject site is unable to achieve the minimum tree canopy area from canopy trees due to the site conditions such as geology, topography, configuration or built form. (Note: The applicant must satisfy Council that a skilful design has been considered to achieve the development potential and amenity and reduce the impact on deep soil landscaped area).

C2 35% of the site area is deep soil landscaped area with the exception of the Wolseley Road area (Figure 22) where 30% of the site area is deep soil landscaped area. Refer Figure 21 for the calculation of deep soil landscaped area.

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.

• In comments dated 04 July 2024, Council's Tree Officer reviewed the proposal and made the following comments:

Chapter B3.7 Landscape area and private open space of the WMC DCP outlines under Control 1 that 35% canopy cover is to be provided within sites for dwelling houses, dual occupancy, semi-detached development and attached dwellings.

The submitted plans indicate that the proposal will provide 93.39m² canopy cover which equates to 11.15%. An additional 199.10m² is required in order for the DCP controls to be satisfied.

However, due to the existing building, paved areas and swimming pool occupying a large portion of the site, incorporating additional tree planting to achieve the DCP requirements is not possible.

Therefore, the non-compliance with the DCP canopy cover controls is accepted for this particular DA.

The proposal is therefore acceptable with regard to C1.

• The proposal is not compliant with C2 whilst remaining compliant with C3. Notwithstanding this, the proposal would increase the overall deep soil landscaped area by 1m², therefore the underlying objectives O1 and O2 are upheld.

Part B3.7.2: Fences

- C4 The height of front fences does not exceed: (-upheld)
 - a) 1.2m if solid; or
 - b) 1.5m if 50% transparent or open;
- The proposal aims to remove the low metal balustrade and repair the existing fence at its existing height along the front boundary. In addition, the height of the open driveway gate is measured higher than 1.5m above the ground level, whilst the solid entry gate and associated walls are measured higher than 1.2m above the ground level. In this instance, as recommended in **Condition D.1**, the height of the driveway gate is to be a maximum height of 1.5m measured from the ground level, and the heights of the solid entry gate and associated walls are to be a maximum height of 1.2m measured from the ground level. The height may be averaged and regularly stepped.
- C9 The rear and side fences:
 - a) are located behind the building front setback; and
 - b) do not exceed 1.8m on level sites, or 1.8m as measured from the low side where there is a difference in level either side of the boundary.
- The proposal aims to repair the existing rear and southern boundary fences and replace the northern boundary fence at the existing height, and it is considered acceptable.

Part B3.7.3: Site facilities

C1 Lockable mail boxes are provided close to the street and are integrated with front fences or building entries.

• **Condition D.1** is recommended to design a lockable mail box that is well integrated with front building entry.

C7 Mechanical plant equipment (including lift overruns and air conditioners) must be located internally within the principal building in a suitably designed plant room or the like.

C8 Mechanical plant equipment (including lift overruns and air conditioners) must be wholly contained within the permissible building envelope and must not be located externally or on the roof unless Council is satisfied that it:

- a) cannot be reasonably located elsewhere; and
- b) is thoughtfully located, sized, enclosed, concealed and integrated into the building design (including when viewed from above) and roof form so it:
 - *i. is not visible from the streetscape or public domain;*
 - *ii. is consistent with the overall building design, roof form and materials;*
 - iii. is visually discreet and unobtrusive when viewed from adjoining properties; and
 - iv. minimises acoustic impacts to adjoining properties.

Note: Noise emissions from mechanical plant equipment must not exceed the background noise levels when measured at the boundary of the development site. The provisions of the Protection of the Environment Operations Act 1997 apply.

• The proposed lift overrun is located externally and reasonably integrated into the building design, and it would not have any significant adverse impacts on the streetscape and neighbouring properties.

C10 New fireplaces burn non-solid fuels, e.g. gas or electricity.

• **Condition D.1** is recommended to ensure the proposed fireplace burns non-solid fuels.

14.3 Chapter E1: Parking and Access

	Existing	Proposed	Control	Complies
E1.4.2 Max Number of Car Parking Spaces – Dwelling house	2 Spaces	2 Spaces	2 Spaces	Yes

Parking for residential uses is calculated using the generation rates specified in E1.4.2. The proposal accommodates 2 car spaces which is compliant.

The proposal is acceptable with regard to the objectives and controls in Chapter E1 of the Woollahra DCP 2015.

14.4 Chapter E2: Stormwater and Flood Risk Management

The proposal is acceptable with regard to the objectives and controls in Chapter E2 of the Woollahra DCP 2015 subject to the recommended conditions of consent.

14.5 Chapter E3: Tree Management

Council's Trees and Landscaping Officer has determined that the development proposal is satisfactory in terms of tree preservation and landscaping, subject to compliance with standard conditions of consent.

14.6 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.

Although the applicant has provided a SWMMP, it is considered unsatisfactory. Given the extensive scope of demolition and construction works, it is necessary in this instance, as detailed in **Condition D.10**.

15. APPLICABLE ACTS/REGULATIONS

15.1 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.

15.2 Swimming Pools Act 1992

The Swimming Pools Act 1992, requires swimming pools to be surrounded by a childresistant 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.

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, as the consent authority, is satisfied that the written request from the applicant under Clause 4.6 of the Woollahra Local Environmental Plan 2014 to the floor space ratio for dwelling house in Zone R2 development standard under Clause 4.4E 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.

AND

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, grant development consent to Development Application No. 202/2024/1 for alterations and additions to an existing dual-occupancy and its conversion into a single dwelling house, landscaping and siteworks on land at 40 Latimer Road Bellevue Hill, subject to the following conditions:

ALL DEVELOPMENT TYPES

A. GENERAL CONDITIONS

Α. ΄	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.
A. 2	2.	applies to the development. Definitions
~ . 4	c .	
		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.
		<i>Approved Plans</i> mean the plans endorsed by Council referenced by this consent as amended by conditions of this consent.
		<i>Local native plants</i> 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 <i>Act</i> , 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.				
	<i>Site work</i> 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 <i>site</i> of any machine, article, material, or thing, or the occupation of the <i>site</i> 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	
	DA 02 (Rev C)	Roof Plan & Site Analysis	MHN Design Union	26 Aug 2024	
	DA 03 (Rev C)	Lower Ground Floor Plan		Ū	
	DA 04 (Rev C)	Ground Floor Plan	7		
	DA 05 (Rev C)	First Floor Plan			
	DA 06 (Rev C)	Sections A & B			
	DA 07 (Rev C)	West & North Elevation	7		
	DA 08 (Rev C)	East & South Elevation			
	A1749927	1749927 BASIX Certificate NSW Department of Planning & Environment	31 May 2024		
Sh	Sheet 1 to 4	Landscape Plans	Paul Bangay	07 May 2024	
	2024/019	Arboricultural Impact Assessment Report	George Palmer	Jun 2024	
	section 4.17(1) Condition Reas	s. nd supporting documentation (g) of the Act modifying or an on: To ensure all parties a mentation that applies to th	nending the development. The aware of the approved	•	
4.	Ancillary Aspec	cts of Development (sect	on 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 obligation to protect and preserve public infrastructure from damage or affect their liability for any 				
	This condition	does not affect the Principal (Contractor's or any sub-cont	ractors obligatior	
	This condition to protect and damage that or	does not affect the Principal (preserve public infrastructure ccurs.	Contractor's or any sub-cont from damage or affect their	ractors obligation liability for any	
	This condition to protect and damage that of Condition Reas	does not affect the Principal (preserve public infrastructure	Contractor's or any sub-cont from damage or affect their re aware of works require	ractors obligatior liability for any	
5.	This condition to protect and damage that of Condition Reas	does not affect the Principal (preserve public infrastructure ccurs. on: To ensure all parties a d to ensure payment for w	Contractor's or any sub-cont from damage or affect their re aware of works require	ractors obligation liability for any	
5.	 This condition to protect and damage that or Condition Reas infrastructure an No Underpinnin This developme boundaries of the 	does not affect the Principal (preserve public infrastructure ccurs. on: To ensure all parties a d to ensure payment for w	Contractor's or any sub-cont from damage or affect their re aware of works require orks.	ractors obligation liability for any ed to public	

acc	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)		/ing trees must be retained:					
Trees on private land:							
	Council Ref No	Species	Lo	ocation			ension tres)
	6	Backhousia citriodora	Re	ear Yard			10 x 5
	• Trees	on Council land:					
	Council Ref No	Species		Location	Dimensi (metres)		Tree value
	1	Cupaniopsis anacardioides		Street tree	8 x 6		\$5000
Cer	tificate plar		bear	Street tree	8 x 6		\$5000 Instruction
	tree/s requ tificate plar	uired to be retained must app	bear		een on the	e Cor	
Cer	tree/s requ tificate plar The follow	uired to be retained must app ns. ring trees may be removed:	bear	coloured gre	een on the	e Cor	nstruction
Cer	tree/s requirificate plan The follow	uired to be retained must app ns. ring trees may be removed:	bear	coloured gre	een on the	e Cor	mension
Cer	tree/s requirificate plan The follow Council Ref No 3 4	uired to be retained must app ns. ring trees may be removed: Species <i>Gordonia axillaris*</i> <i>Camellia sasanqua*</i>	bear	coloured gre	een on the	e Cor	mension netres) 3 x 2 4 x 2
Cer	tree/s requirificate plan The follow Council Ref No 3 4 5	uired to be retained must app ns. ing trees may be removed: Species Gordonia axillaris* Camellia sasanqua* Schefflera actinophylla*	bear	coloured gre Locatio Rear Ya Rear Ya Rear Ya	een on the	e Cor	mension netres) 3 x 2 4 x 2 6 x 4
Cer	tree/s requirificate plan The follow Council Ref No 3 4 5 9	uired to be retained must app ns. ing trees may be removed: Species Gordonia axillaris* Camellia sasanqua* Schefflera actinophylla* Cupaniopsis anacardioides*	bear (coloured gre Locatio Rear Ya Rear Ya Rear Ya Rear Ya	een on the	e Cor	mension netres) 3 x 2 4 x 2 6 x 4 4 x 2
Cer	tree/s requirificate plan The follow Council Ref No 3 4 5 9 10	uired to be retained must app ns. ing trees may be removed: Species Gordonia axillaris* Camellia sasanqua* Schefflera actinophylla* Cupaniopsis anacardioides* Nerium oleander*		coloured gre Locatio Rear Ya Rear Ya Rear Ya Rear Ya Rear Ya	een on the	e Cor	mension netres) 3 x 2 4 x 2 6 x 4 4 x 2 3 x 2
Cer	tree/s requirificate plan The follow Council Ref No 3 4 5 9	uired to be retained must app ns. ing trees may be removed: Species Gordonia axillaris* Camellia sasanqua* Schefflera actinophylla* Cupaniopsis anacardioides*		coloured gre Locatio Rear Ya Rear Ya Rear Ya Rear Ya	een on the	e Cor	mension netres) 3 x 2 4 x 2 6 x 4 4 x 2
Cer b) The	tree/s requiring the follow Council Ref No	uired to be retained must app ns. ing trees may be removed: Species Gordonia axillaris* Camellia sasanqua* Schefflera actinophylla* Cupaniopsis anacardioides* Nerium oleander* Cotoneaster glaucophyllus*		coloured gre Locatio Rear Ya Rear Ya Rear Ya Rear Ya Rear Ya Rear Ya	een on the on ard ard ard ard ard ard ard	e Cor	mension netres) 3×2 4×2 6×4 4×2 3×2 2×2

DEMOLITION WORK

B. BEFORE DEMOLITION WORK COMMENCES

В.	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 certificateBefore 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.			
В.	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	\$22,200	No	T115			
Tree Damage Security Deposit – making good any damage caused to any public tree	\$10,000	No	T114			
INSPECTION FEES under section 608 of the Local Government A	Act 1993					
Public Tree Management Inspection Fee	\$231.30	No	T95			
Security Deposit Administration Fee	\$225.00	No	T16			
TOTAL SECURITY AND FEES	\$32,656.30		•			

How must the payments be made?

Payments must be made by:

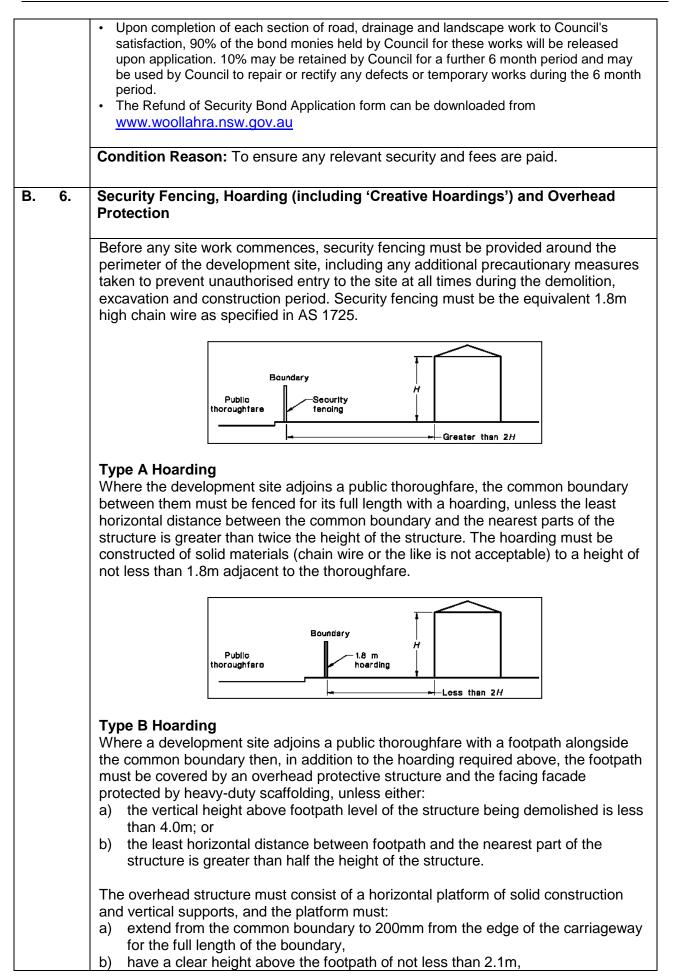
- cash deposit with Council,
- credit card payment with Council, or
- bank cheque made payable to Woollahra Municipal Council.

The payment of a security may be made by a bank guarantee where:

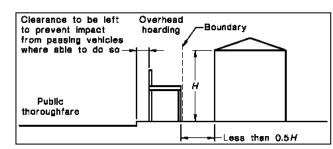
- the guarantee is by an Australian bank for the amount of the total outstanding contribution,
- the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever 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.



- 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 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:
 - 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 affixe 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. 7	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:
	 Frection 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.
В.	8.	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.
В.	9.	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.

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		 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.
В.	10.	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.
В.	11.	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.
В.	12.	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

B. 13.	 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. Establishment Tree Protection Measures within the Tree Protection Zones 			
D . 10.	(TPZ)			
	trees to be retained in ac	rior to any site works, tree protection measures must be established around all ees to be retained in accordance with Section 4 of the Australian Standard rotection of Trees on Development Sites (AS 4970).		
		es must be calculated in accordance with Section 3 of the ection of Trees on Development Sites (AS 4970).		
	measures, must be prepa protection measures mus	agement Plan, which clearly details the tree protection ared before the issue of a construction certificate. The tree at comply with the following requirements;		
		st be installed around the trunks of the following trees:		
	Council Ref No	Species		
	1	Cupaniopsis anacardioides		
	1	Cupaniopsis anacardioides		
	6	Backhousia citriodora		
	Trunk protection must consist of a padding material such as hessian or thick carpet underlay wrapped around the trunk. Hardwood planks (50mm x100mm o similar) must be placed over the padding and around the trunk of the tree at 150mm centres. The planks must be secured with 8 gauge wire at 300mm spacing. Trunk protection must extend a minimum height of 2 metres or to the maximum possible length permitted by the first branches.			
	 b) Signs identifying the Tree Protection Zone area must be erected on each side the protection fence indicating the existence of a TPZ area. Signage must be visible from within the development site. c) 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. 			
		vithin the TPZ area for pedestrian and machinery ly be permitted with the approval of the site arborist or his consent.		
	associated with thes subsequent site pers	must be made aware of all tree protection requirements e conditions of consent by the project arborist. Any sonnel and contractors to the site must be made aware of all rements by the site foreman.		

		f) 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)
В.	14.	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:
		 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
		 bite construction access, temporary crossings and movement condors 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; i) 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.
		Condition Reason To ensure the Construction Management Plan incorporates measures for the protection of existing trees. Standard Condition B.28 (Autotext 28B)
В.	15.	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 non- compliance.
		 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 a inspectio	arboricultural n and	Compliance docume	ntation and photos must include
		supervisi			
		Prior to ar	ny site works	 the principal contract of tree protection me relation to feasibility may arise. Project A removal under DA c The project arborist installation of tree principal contract 	old pre construction site meeting with ctor to discuss methods and importance easures and resolve any issues in r of tree protection requirements that arborist to mark all trees approved for consent. must install or supervise the rotection fencing, trunk protection, nd traffic height control beam.
			is and complia alifications.	nce documentation m	ust be made by an arborist with AQF
				st be made when requi nitoring/supervisory wo	ired by the site arborist and/or site ork.
		measures implement	and construct	ion techniques relevan	ification that all tree protection It to this consent have been
В.	16.	Permissik	le work withi	n Tree Protection Zo	nes
		Prior to an Zone:	y site works, t	he following works are	permissible within the Tree Protection
		Council Ref No	Species	Radius from Centre of Trunk (Metres)	Approved works
		6	Backhousia citriodora	4m	Construction of new terrace and pathways. Landscape upgrade works
			t arborist mus th the above o	•	cation of compliance to the Principal
		Protection			ch are permissible within the Tree
В.	17.	Recording Alteration		nt or Contributory Bu	uildings Prior to any Demolition or
		archival re	cord of the bu	•	any Construction Certificate, a full elements to be altered is to be age officer.
		Consultan	ts Directory by	the NSW Office of En	eritage consultant listed on the ovironment and Heritage, or by a a working knowledge of archival

	accordance with 'Th Heritage Items Usin Department of Plan There must be one	ne Heritage Information S Ig Film or Digital Capture ning Heritage Branch.	n of the building, landscape or item in Series: Photographic Recording of 2006' published by the former NSW aphic report. The following table graphic records.
	Material	Minimum Requirement	Repository
	Digital Materials	1 copy of photographic report including images	Woollahra Council – Report and images (digital)
	The photographic a include the following		submitted in a digital format and is to
	 landscape elemproperties and b) Floorplans of th c) Coloured photo each eleva each struct 	nents including their relat directional details of pho ne internal layout and dire ographs of: ation, ture and landscape featu	ectional details of photographs taken. re,
			ignificant architectural detailing, and each street and laneway or public space.
	<pre>'Photographic Rec https://www.enviro</pre>	ording of Heritage Items us nment.nsw.gov.au/-/media/	Heritage website for the free publication ing Film or Digital Capture' available at OEH/Corporate- ling-of-heritage-items-using-film-or-digital-
	Condition Reason elements are record	•	ributory building and landscape
B. 18.	Archaeological Fe	atures – Unexpected Fi	ndings
		ered, work must cease in	on reasonably suspects archaeological mediately in the affected area(s) and
	Site work may reconits delegate.	mmence at a time confirr	ned in writing by the Heritage Council or
			he Heritage Act 1977 may be required (s) based on the nature of the discovery.
	evidence of past hArchaeological fea cultural landscapeDuring an archaeo	uman activity. Itures include buildings, wo s and shipwrecks. Iogical excavation the term	NSW Heritage Manual: Any physical ks, relics, structures, foundations, deposits, 'feature' may be used in a specific sense to r or an artefact (for example, a post hole).
	Condition Reason	: To protect archaeologic	al features.

В.	19.	Skeletal Remains
		While site work is being carried out, if any skeletal remains suspected of being human are found, work must cease immediately and no further disturbance of the site must occur. The following must be notified: a) NSW Police, and
		b) The person who is the authority for the protection of Aboriginal objects under the National Parks and Wildlife Act 1974, section 85.
		Details of the remains and their precise location are to be provided.
		Site work may recommence at a time confirmed in writing by the NSW Police and the person who is the authority for the protection of Aboriginal objects under the National Parks and Wildlife Act 1974, section 85.
		Condition Reason: To ensure the appropriate management of skeletal remains.
В.	20.	Aboriginal Objects – Unexpected Findings
		While site work is being carried out, if unexpected Aboriginal objects or bones are found, 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
		Land Council (LALC) on (02) 9311 4282 as soon as practicable and provide
		available details of the objects or remains and their location.
		e) Notify the person who is the authority for the protection of Aboriginal objects
		under the National Parks and Wildlife Act 1974, section 85.
		f) Not recommence any work at the particular location unless authorised in writing
		by the police (in the case of human remains) and the person who is the authority
		for the protection of Aboriginal objects under the National Parks and Wildlife Act
		1974, section 85. Additional assessment and approval under 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.
		Notes:
		• The Definition of Aboriginal object, as per the National Parks & Wildlife Act 1974, is 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.
		Condition Reason: To protect Aboriginal objects
В.	21.	Aboriginal Heritage Due Diligence Responsibilities
		While site work is being carried out, 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.
		Condition Reason: To protect Aboriginal heritage.

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 De	evelopment (section	4.17(1)(g) d	of the Act
	Before the issue of any construction construction certificate plans and s Principal Certifier under clause 7 of Regulations, must detail the follow	specification, required of the Development C	to be subm	nitted to the
	 a) In order to comply with control the height of the open driveware measured from the ground level associated walls are to be a niground level. The height may b) In order to comply with control the proposal is to include a log building entry. c) In order to comply with C10 or proposed fireplace is to burn in the proposed for the propo	ay gate is to be a max vel, and the heights of naximum height of 1.2 be averaged and reg of C1 of Part B3.7.3 of ckable mail box that is f Part B3.7.3 of the W	timum heigh f the solid ei 2m measure ularly stepp the Woollal s well integr	nt of 1.5m ntry gate and ed from the ed. hra DCP 2015, ated with front
	 Notes: a) Clause 20 of the Development Ce issue of any construction certificate is satisfied that the condition has b b) Clause 19 of the Development Ce issue of any construction certificate Condition Reason: To require de provided to address specific issues 4.15 of the Act. 	e subject to this condition been complied with. rtification and Fire Safer e that is inconsistent with sign changes and/or the	on unless the ty Regulation th this conse further infor	Principal Certifier as prohibits the nt. mation to be
D. 2.	Payment of Long Service Levy			
	Before the issue of any construction of the following levy must be provide	s) for the payment		
	Description	Amount	Indexed	Council Fee Code
	LONG SERVICE LEVY under Building and Construction Ind	lustry Long Service Pay	ments Act 19	986
	Long Service Levy www.longservice.nsw.gov.au/bci/le vy/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.
	Condition Reason: To ensure any relevant levy is paid.
D. 3.	BASIX Commitments
	Before the issue of any construction certificate, BASIX Certificate No.A1749927 must be submitted to the Principal Certifier with any application for a construction certificate.
	All commitments in the BASIX Certificate must be shown on the construction certificate plans and specifications prior to the issue of any construction certificate.
	 Notes: Where there is any proposed change in the BASIX commitments the Applicant must submit a new BASIX Certificate to the Principal Certifier and Council. If any proposed change in the BASIX commitments are inconsistent with development consent (see: clauses 19 and 20 of the Development Certification and Fire Safety Regulation) the Applicant will be required to submit an amended development application to Council under section 4.55 of the Act. Clause 19(1)(a) of the Development Certification and Fire Safety Regulation 2021 provides: a certifier must not issue a construction certificate for building work unless: the relevant building work plans and specifications include the matters required by a relevant BASIX certificate, if any.
	Condition Reason: To ensure all commitments in the BASIX Certificate are incorporated into the development.
D. 4.	Waste Storage – Single Dwelling
	 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 storage area for 1 x 120 litre general wastes bin, one x 240 litre green waste bin, two x recycling crates behind the building line or within non-habitable areas of the dwelling. b) A path for wheeling bins between the waste and recycling storage area and the collection point free of steps and kerbs and having a maximum grade of 1:8.
	Condition Reason: To ensure a waste and recycling storage area is provided.

 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 sedimer control plan must comply with: a) "Do it Right On Site, Soil and Water Management for the Construction Industra and the accompanying factsheets published by the Southern Sydney Regiona 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 lis 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
 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 lis 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
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 The International Erosion Control Association – Australasia www.austieca.com.au lis 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 a Accredited Certifier may be satisfied as to this matter.
Condition Reason: To prevent potential water pollution and dust nuisance.
D. 6. 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. 7. Professional Engineering Details
Before the issue of any construction certificate, the construction certificate plans a 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.	8.	Swimming and Spa Pools – Child Resistant Barriers
		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 demonstrate compliance (by showing the proposed location of all child-resistant barriers and the resuscitation sign) with the provisions of the Swimming Pools Act 1992 and the Building Code of Australia.
		Approval is not granted for the modification of any boundary fencing beyond what is authorised by the stamped approved plans, as modified by any condition of consent or what is permitted to be carried out as 'exempt development' under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.
		 Notes: 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.
		Condition Reason: To ensure child-resistant swimming and spa pool barriers are provided.
D.	9.	Swimming and Spa Pools – Backwash
		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 the connection of backwash to Sydney Waters sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2.
		Notes:
		 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.
		• 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.
		Condition Reason: To ensure swimming and spa pool backwash is connected to Sydney Waters sewer.
D.	10.	Submission of a Site Waste Minimisation and Management Plan
		Before the issue of any construction certificate, a Site Waste Minimisation and Management Plan, prepared in accordance with Woollahra Development Control Plan 2015 Chapter E5 – Waste Management, is to be submitted to Council for approval.

		 Notes: The site waste minimisation and management is not listed under clause 73 of the Development Certification and Fire Safety Regulation as a matter that a Principal Certifier may certify. Hence, the Site Waste Minimisation and Management Plan must be referred to Council for its approval prior to the issue of any construction certificate for such works. 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. Condition Reason: To ensure that the Waste Minimisation and Management Plan is assessed and approved by Council.
D.	11.	Engineer Certification
		Before the issue of any construction certificate, engineer certification must be submitted to the Principal Certifier confirming that the structural design does not incorporate any temporary or permanent underpinning works or ground anchors, bolts, etc. which encroach outside the boundaries of the subject property. 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.
		Condition Reason: To ensure certification is provided that demonstrates all structural works are located within the boundaries of the site and do not include underpinning works to any structures on adjoining properties.
D.	12.	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

	 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. 13.	Salvage
	Stone, brick, joinery and decorative architectural elements to be demolished, which include windows and doors, chimney pieces, timber flooring and ceiling roses must be catalogued, labelled, 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.
	Condition Reason:
	To promote the use of ecologically sustainable building materials in accordance with O2 of Clause E6.1.4 Woollahra DCP 2015 and to enable the conservation of other heritage buildings in accordance with the Woollahra LEP 2014, Clause 5.10 Heritage Conservation, 1(a), (b).

D. 14.	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. c) 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)
D. 15.	Electric vehicle circuitry and electric vehicle charging point requirements
	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 an accurate electrical plan of all off-street car parking spaces, prepared by a suitably qualified person, which includes details and specifications to illustrate how the off-street car parking spaces will be constructed with the capacity to install at a minimum, a 'Level 2' (single phase, 7Kw power) electric vehicle charger point.

D. 16. 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 gualified 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 • 1% of the cost More than \$200,000 • 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

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"
	 Provide a 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,
	 Protection, 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
	 Section 257 of the Protection of the Environment Operations Act 1997 provides inter and 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) 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.
	broak waann overy near.
	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
	 Compliance with these nours 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 <u>www.epa.nsw.gov.au/noise/nglg.htm</u>
	Condition Reason: To mitigate the impact of work upon the amenity of the
	neighbourhood.
F. 5.	Public Footpaths – Safety, Access and Maintenance
F. J.	Fublic Fublipatits - Salety, Access and Manitenance
	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.
	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. 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 outron 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 • erect a structure or carry out a work in, on or over a public road, or • connect a road (whether public or private) to a classified road, or • Dupmy water into a public road from any land adjoining the road, or • connect a road (whether public or private) to aclassified road, or • Dupmy water into a public proval of the Council including: • Part C Management of waste: • Jor fee or reward, transport act over or under a public place) Place awaste in a public place • Disca awaste		
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 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 autority. Section 68 of the Local Government Act 1993 provides that a person may carry out certain activities only with the prior approval of the Council including: Part C Management of waste: For fee or reward, transport waste over or under a public place Place wastes in a public place 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 C		 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:
 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 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 road by means of a lift, hoist or tackle projecting over the footway b) Place waste is a public place c) Place a waste storage container in a public place. Part E Public roads:		all relevant parts of this set of standards.
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:		 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.
While site work is being carried out, the following monitoring, measures and controls must be maintained:		during building works.
 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. 6.	 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

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:				
		 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. 1	4.	Swimming and Spa Pools – Temporary Child Resistant Barriers and other Matters
		While site work is being carried out, 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.
		 Notes: This condition does not prevent Council from issuing an order under 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.
		Condition Reason: To ensure access to swimming pools is effectively restricted to maintain child safety.
F. 1	5.	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. 16.	 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.	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
		 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 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 <u>www.safework.nsw.gov.au/law-and-policy/legislation-and-codes/codes-of-practice</u> 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.
		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.	Tree Preservation
		While site work is being carried out, all persons must comply with Chapter E.3 – <i>Tree Management</i> 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.
		varied by this consent. The DCP applies to any tree with a height greater than 5
		 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.
		 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
		 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
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		 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.

F. 23.	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: 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 non-compliance, 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
	Supervision • 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 pavers and retaining wall within 4 metres from Tree No 6. The condition of exposed roots must be managed and documented. • The project arborist must supervise the installation of the terrace area and stairs within 4 metres of Tree No.6, 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.
	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.	24.	Replacem	ent/Supplementary tre	es whic	h must be p	lanted	
	While site work is being carried out, any replacement or supplementary tree grown in accordance with Tree stock for landscape use (AS 2303). The rep tree/s must be planted in deep soil landscaped area and maintained in a he vigorous condition. If the replacement tree is found to be faulty, damaged, of dead before it attains a size whereby it becomes a prescribed tree in accord with Chapter E.3 of Council's Development Control Plan, it must be replace another of the same species, which complies with the approved Landscape						e replacement a healthy and ged, dying or accordance placed with
			t arborist must documer	•			
			Reason: To ensure the dition F.46 (Autotext 46F)	e provisio	on of appropri	ate replaceme	ent planting.
F.	25.	Level cha	nges in the vicinity of t	trees			
			work is being carried ou n the trunks of the follow		•	ust occur withi	n the specified
		Council Ref No	Species		Location	Radius from o trunk (metres	
		1	Cupaniopsis anacardioid	es	Street tree	4.5	im
		2	Cupaniopsis anacardioid	es	Street tree	4.5	m
			t arborist must documer Reason: To ensure lev	•			
			xisting trees.Standard Cond		•	, ,	·
F.	26.	Hand exca	avation within tree root	t zones			
		existing for	work is being carried ou otings and approved exc unks of the following tree	avation	undertaken v	vithin the speci	
		Council Ref No	Species	Locatio	on	Radius fro trunk (met	m centre of res)
		6	Backhousia citriodora	ŀ	Rear Yard		4m
		must be us	d tools such as mattocks sed. Roots with a diamet damaged unless appro	ter equa	I to or in exce	ss of 50mm m	ust not be
		along the h must be co	Il excavation is permitted hand excavated perimete overed with mulch or a g from drying out.	er line is	completed. E	Exposed roots	to be retained
		"Pruning o	ining must be undertake f Amenity Trees" and ca n of Australian Qualifica	rried out	by a qualifie	d Arborist (min	imum

		The project	ct arborist must documer	nt compliance with the at	pove condition.			
		Condition Reason: To ensure demolition and excavation works would not adversely impact upon the health of existing trees. Standard Condition F.50 (Autotext 50F)						
F.	27.	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)			
		6	Backhousia citriodora	Rear Yard	4m			
		diameter e possible a consultatio from any r beam is to to bridge a The project	equal to or in excess of 5 rea must be excavated v on with the project engine oot equal to or in excess be placed a minimum of all tree roots with a diame of arborist must documer of Reason: To ensure the	piers must be located so form is severed or dama which allows construction eer the piers must be off s of 50mm to accommod f 100mm above ground eter equal to or in excess ant compliance with the all e proposed footings woul andard Condition F.51 (Autotext §	aged. The smallest n of the pier. In set a minimum 100mm ate future growth. The level and is to be designed s of 50mm. pove condition.			
F.	28.		-	and pits in the vicinity				
г.	20.	Installatio	n of storniwater pipes	and pits in the vicinity	ortrees			
		pipes and		t, excavation for the insta radius from the trunks of	allation of stormwater the following trees must			
		Council Ref No	Species	Location	Radius from centre of trunk (metres)			
		6	Backhousia citriodora	Rear Yard	4m			
		stormwate excavated 50mm brid that no roc The projec	er pipes and pits must no trench. Pipes must be g dging across excavated to ots equal to or greater th ot arborist must documer	guided under any roots e renches. Stormwater pit en 50mm diameter are s nt compliance with the al	n in situ bridging across the qual to or greater than s must be positioned so severed.			
		adversely	impact upon the health (dition F.52 (Autotext 52F)	e installation of the storm of existing trees.	water works would not			

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.			
		Matters		
		 Before the issue of any occupation certificate, and 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 continuous 20P of the second se		
		 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 under section 22D of the Swimming Pools Act 1992 or an appropriate occupation certificate authorising use of the swimming pool. 		
		 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: Swimming pool safety - Water recirculation systems. 		
		Backwash must be discharged to the sewer in compliance with AS/NZS 3500.		
		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.		
		Notes:		
		NSW Health guidelines and fact sheets are available at <u>www.health.nsw.gov.au</u>		
		Condition Reason: To ensure that the swimming pool maintains public safety and to manage the amenity impacts of swimming pools.		
G.	4.	Swimming Pool Fencing		
		Before the issue of any occupation certificate, swimming pool fencing is to be constructed in accordance with AS1926: Australian Standard Swimming Pool Safety Part 1 – Safety Barriers for Swimming Pools.		
		Notes:Pools commenced or completed after May 2013 must meet the BCA and AS1926.		
		Condition Reason: To ensure swimming pool safety.		
G.	5.	Fulfilment of BASIX Commitments – Clause 44 of the Development Certification and Fire Safety Regulation		
		Before the issue of any occupation certificate, all BASIX commitments must be effected in accordance with the BASIX certificate No.A1749927.		
		 Notes: Clause 44 of the Development Certification and Fire Safety Regulation applies to an occupation certificate if a relevant BASIX certificate requires a certifier to monitor fulfilment of a commitment listed in the certificate in relation to a building. The certifier must not issue an occupation certificate for the building unless the commitment has been fulfilled. 		
		Condition Reason: To ensure that sustainable building commitments, to reduce water and energy consumption, are fulfilled prior to the occupation.		

 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.
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)
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)
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. b) Recommended actions to improve site conditions and rectification of non-compliance. 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 Level 5 qualifications.	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. 10.	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. b) Recommended actions to improve site conditions and rectification of non-compliance. 								
	 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:								
	Stage of arboricultural inspection and supervision	Compliance documentation and photos must include							
	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 remediation. 							
	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 foremar for ongoing monitoring/supervisory work.								
	Condition Reason: To entechniques relevant to this Standard Condition G.35 (Autotext 3	•							

G. 11. Certification of Electric Vehicle Charging System

Before the issue of any occupation certificate, 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 D.15** must be submitted to the satisfaction of the Principal Certifier.

Condition Reason: To ensure the certification of the electric vehicle charging system.

H. OCCUPATION AND ONGOING USE

Н.	1.	Maintenance of BASIX Commitments							
		During the occupation and ongoing use, all BASIX commitments must be maintained in accordance with the BASIX Certificate No.A1749927.							
		This condition affects successors in title with the intent that environmental sustainability measures must be maintained for the life of development under this consent.							
		Condition Reason: To ensure the approved environmental sustainability measures are maintained for the life of development.							
Н.	2.	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)							
H.	3.	Swimming and Spa Pools – Maintenance							
		During the occupation and ongoing use, swimming and spa pools must be							
		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 Swimming pool safety - Water recirculation and filtration systems, 							

d) with backwash being discharged to the sewer in compliance with AS/NZS 3500, 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.
N	otes:
•	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.
•	The NSW Health public swimming pools and spa pools guidelines are available at www.health.nsw.gov.au
C	ondition Reason: To ensure public health and safety.

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

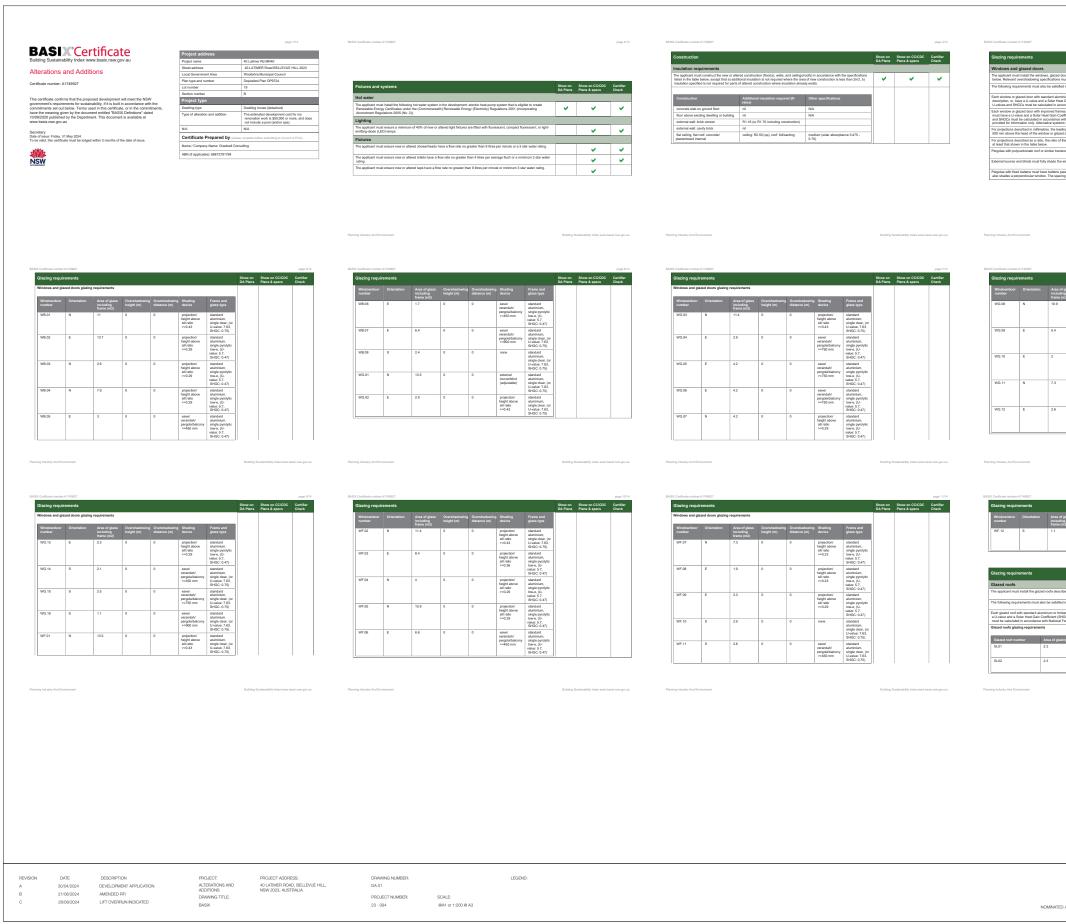
M. BEFORE ISSUE OF A STRATA CERTIFICATE

Nil.

Attachments

- 1. Plans, sections, elevations, survey and shadow diagrams $\frac{1}{2}$
- 2. Clause 4.6 variation request Floor space ratio 😃 🖀
- 3. Trees and Landscaping Referral Response <u>U</u>
- 4. Heritage Referral Response 🕂 🛣





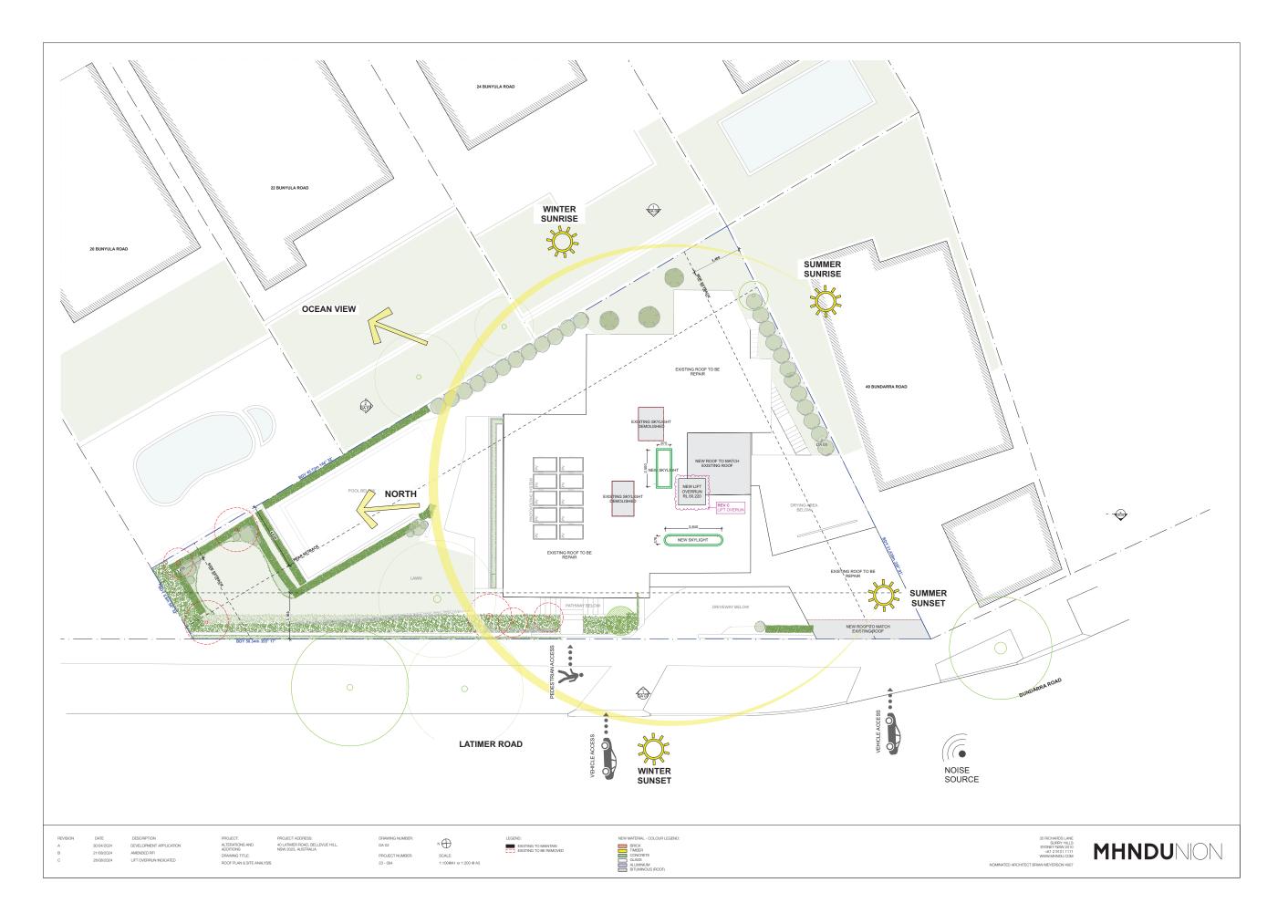
			paga 4/1
	Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
	-		
oors and shading devices, in accordance with the specifications listed in the table rust be satisfied for each window and glazed door.	~	~	~
d in relation to each window and glazed door:		 	~
nium or timber frames and single clear or toned glass may either match the t Gain Coefficient (SHGC) no greater than that listed in the table below. Total system ordance with National Fenestration Rating Council (NFRC) conditions.		~	~
as, or pyrolytic low-e glass, or clearlair gapiclear glazing, or tonediair gapiclear glazing efficient (SHGC) no geater than that listed in the table below. Total system U-values ith National Fenestration Rating Council (NFRC) conditions. The description is a with complying U-value and SHGC may be substituted.		~	~
ing edge of each eave, pergola, verandah, balcony or awning must be no more than d door and no more than 2400 mm above the sill.	~	~	~
he projection from the wall to the height above the window or glazed door sill must be	~	 	~
lucent material must have a shading coefficient of less than 0.35.		~	~
window or glazed door beside which they are situated when fully drawn or closed.		~	~
arallel to the window or glazed door above which they are situated, unless the pergola 1g between battens must not be more than 50 mm.		~	~

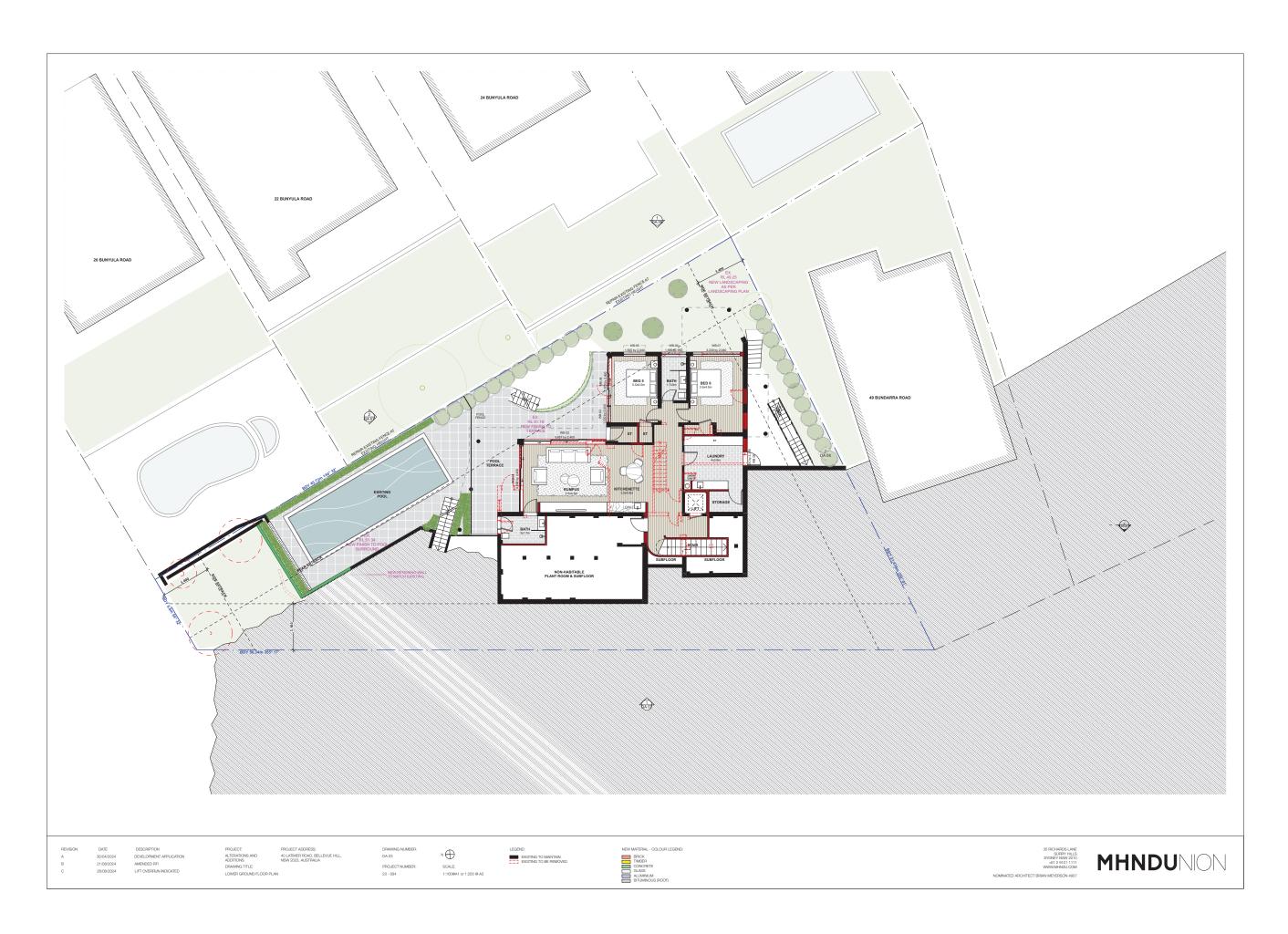
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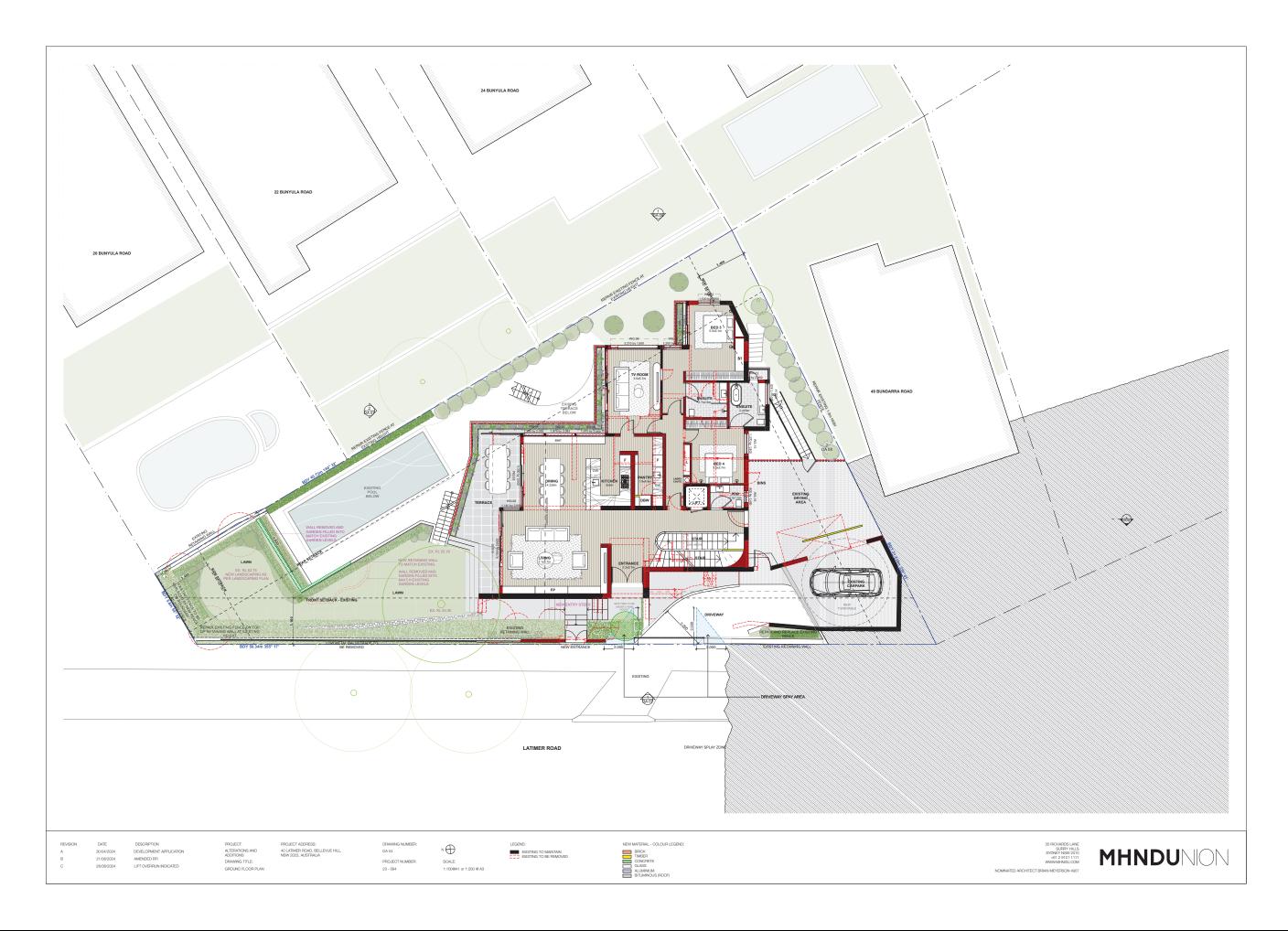
							built or s
					Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
'glass 1g m2)	Overshadowing height (m)	Overshadowing distance (m)	Shading device	Frame and glass type			
	0	0	projection/ height above sill ratio >=0.29	standard aluminium, single pyrolytic low-e, (U- value: 5.7, SHGC: 0.47)			
	0	0	eave/ verandah/ pergola/balcony >=450 mm	standard aluminium, single pyrolytic low-e, (U- value: 5.7, SHGC: 0.47)			
	0	0	eave/ verandah/ pergola/balcony >=450 mm	standard aluminium, single pyrolytic low-e, (U- value: 5.7, SHGC: 0.47)			
	0	0	projection/ height above sill ratio >=0.29	standard aluminium, single pyrolytic low-e, (U- value: 5.7, SHGC: 0.47)			
	0	0	eave/ verandah/ pergola/balcony >=450 mm	standard aluminium, single pyrolytic low-e, (U- value: 5.7, SHGC: 0.47)			

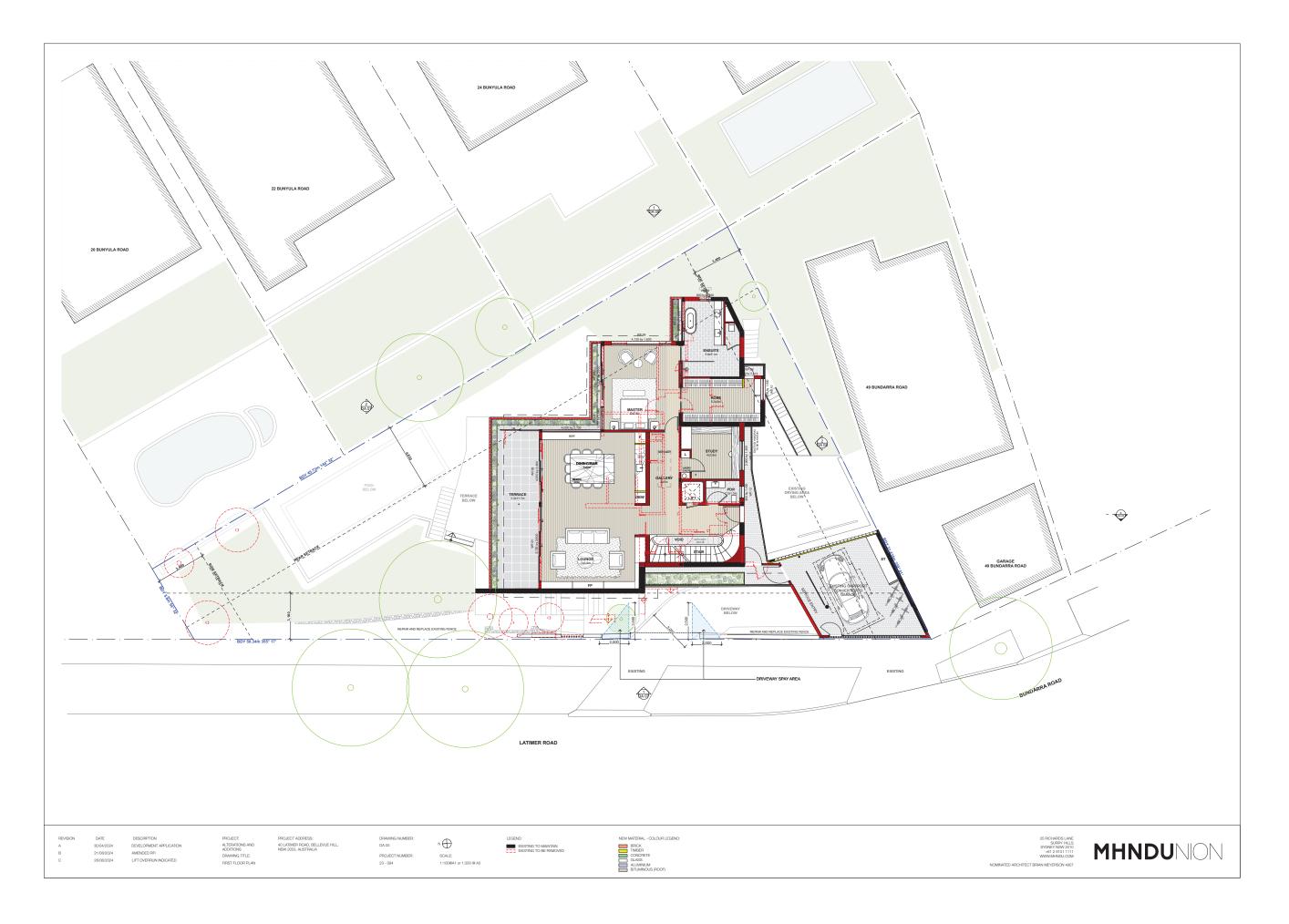
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							page 12/14
					Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
f glass ing (m2)	Overshadowin height (m)	g Overshadowing distance (m)	Shading device	Frame and glass type			
	0	0	eave/ verandah/ pergola/balcony >=450 mm	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
					Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
ribed in #	e table below in a	ccordance with the s	nerifications listed	in the table			
					~	~	~
	on to each glazed					~	
iber frame HGC) no g Fenestrat	s and single clear preater than that li ion Rating Counci	or toned glass may o sted in the table belo I (NFRC) conditions.	aither match the de w. Total system U-i	scription, or, have values and SHGCs		~	~
zing (m2)	no sh		clear, (or U- SHGC: 0.75	5)			
	no sh	ading	standard alk clear, (or U- SHGC: 0.75	uminium, single value: 7.63,			
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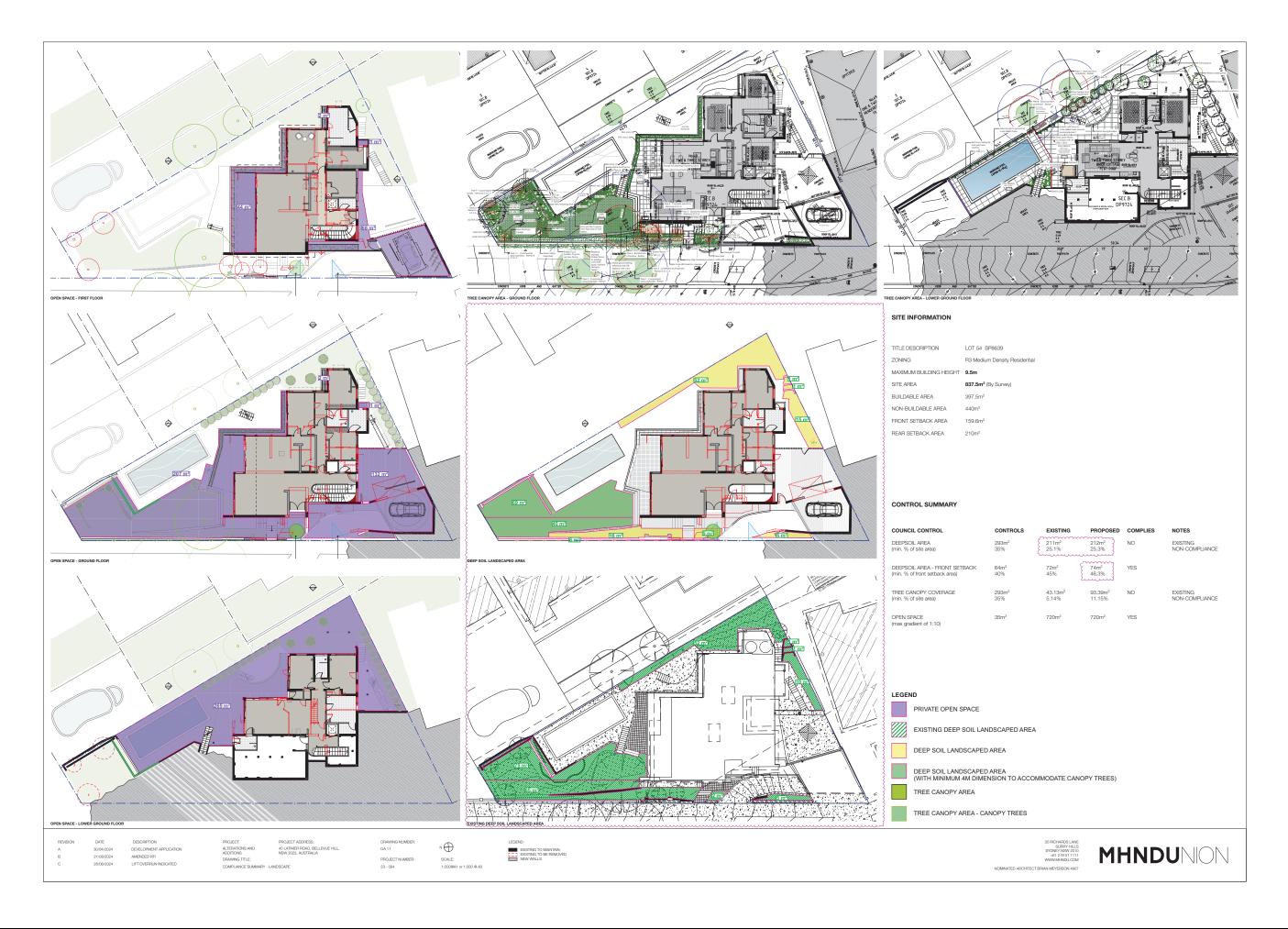


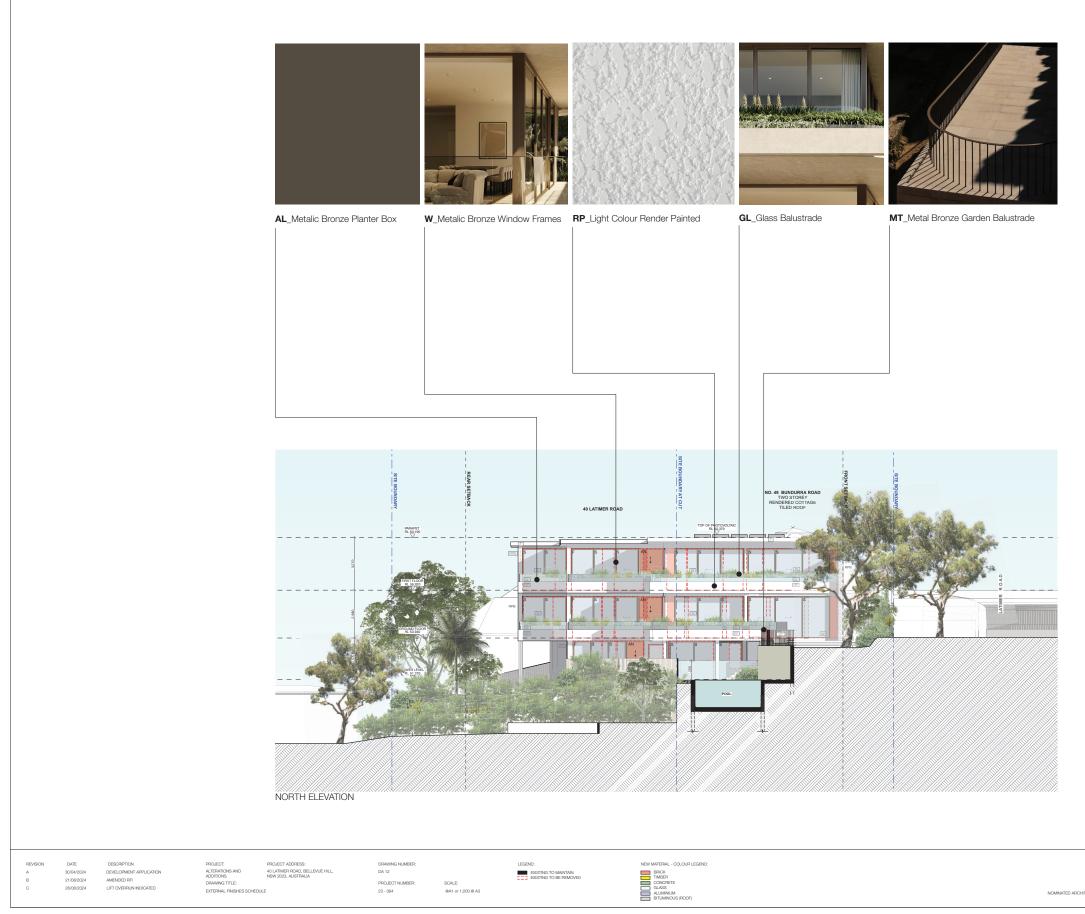






LOT 54 SP	8639				
R3 Medium	Density Residential				
9.5m					
837.5m ² (B)	y Survey)				
397.5m ² 440m ²					
159.6m ²					
210m ²					
		EXISTING			NOTES
	9.5m	9.5 m	9.5 m	YES	
	0.5m ²	564m ²	545m ²	EXISTING	PROPOSED IS LESS THAN
					EXISTING
	2	2	2	YES	
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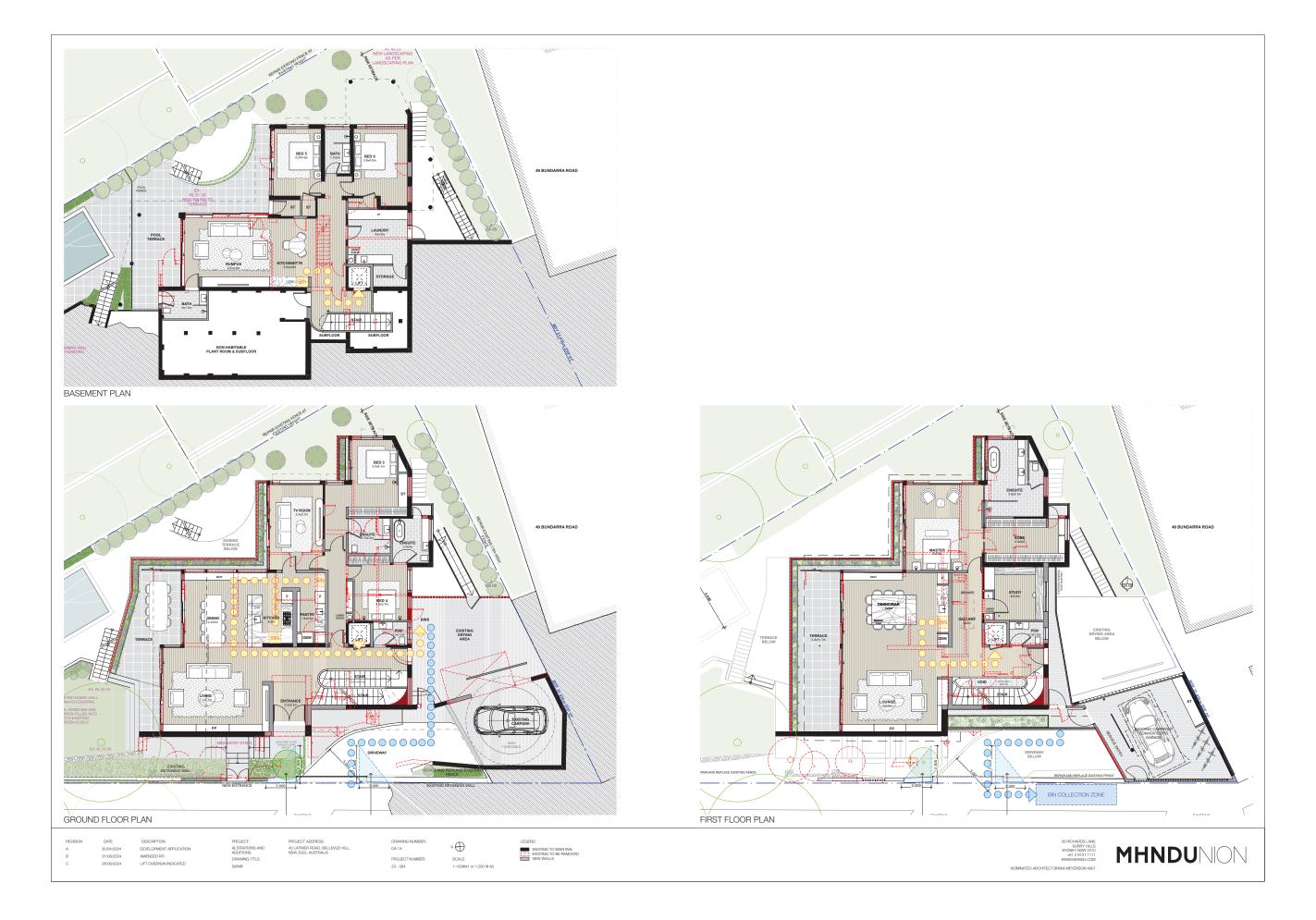
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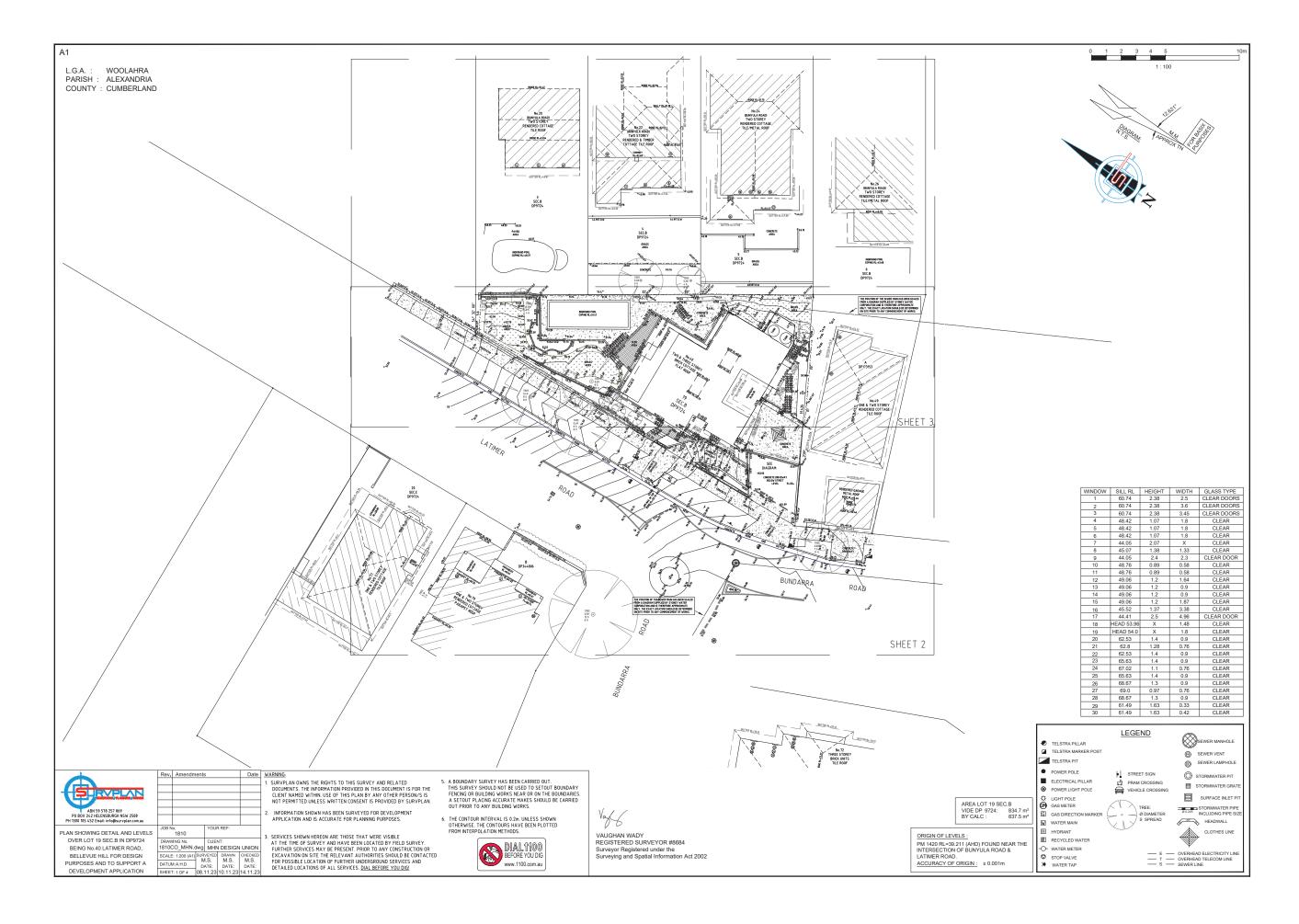


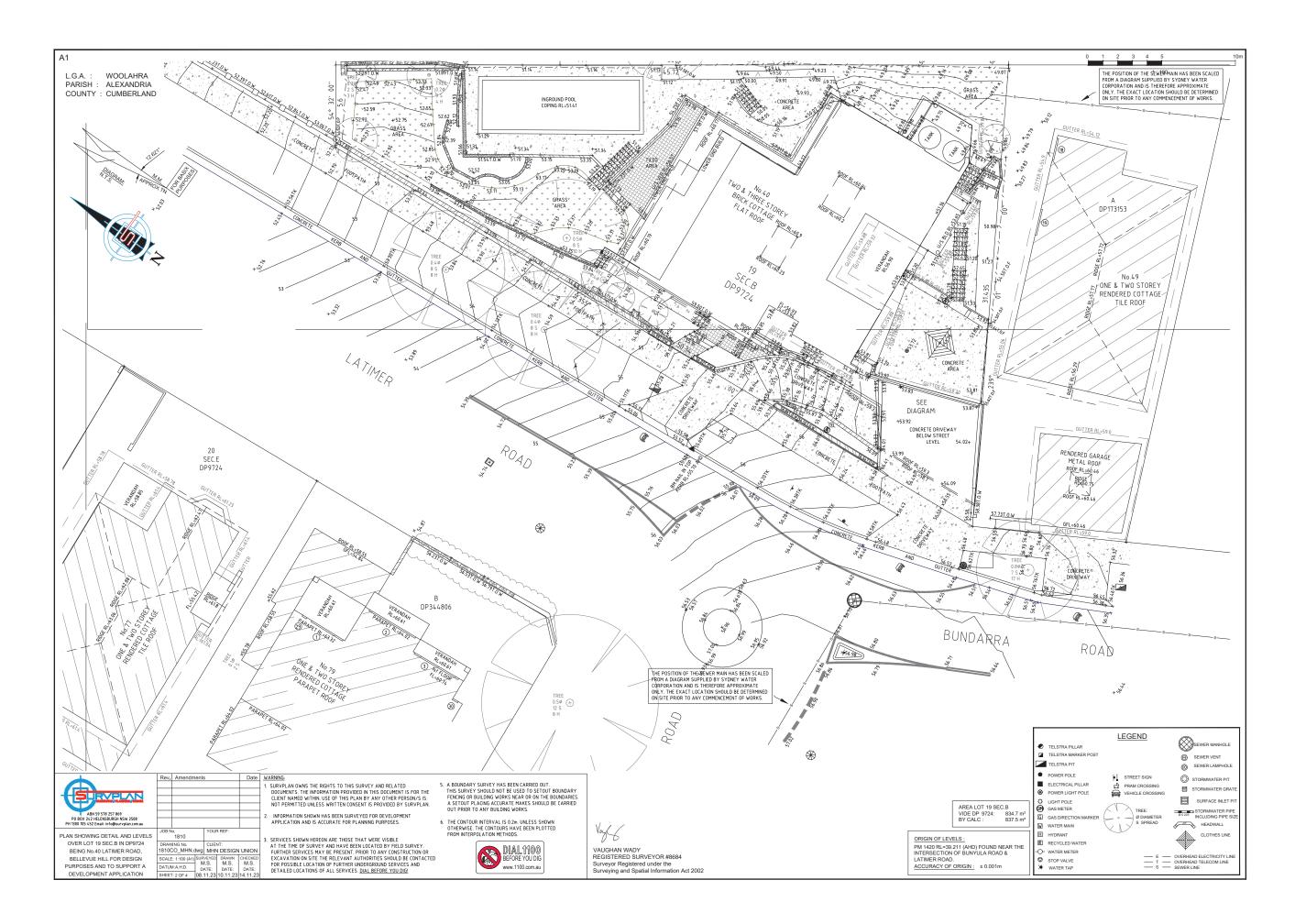
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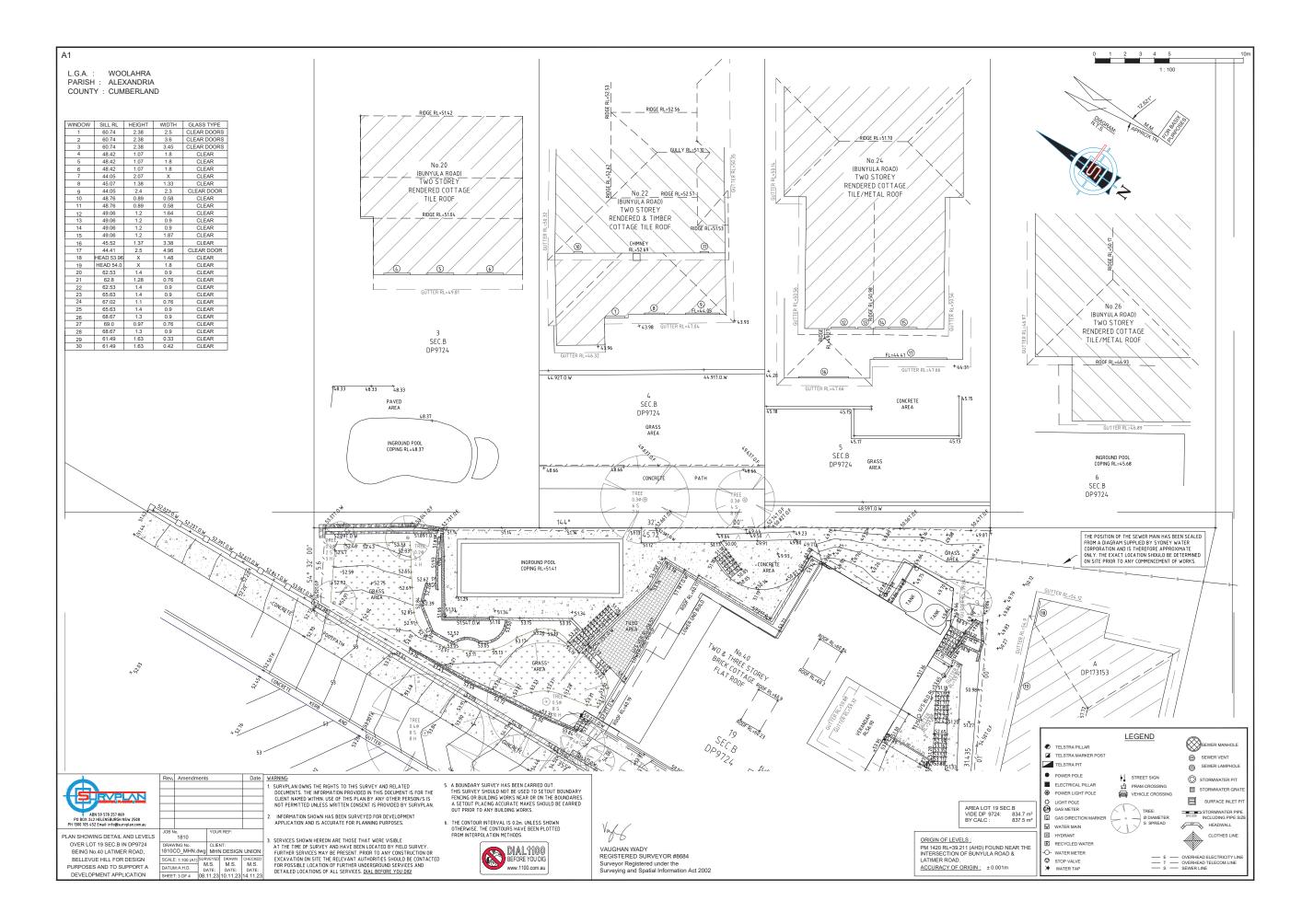


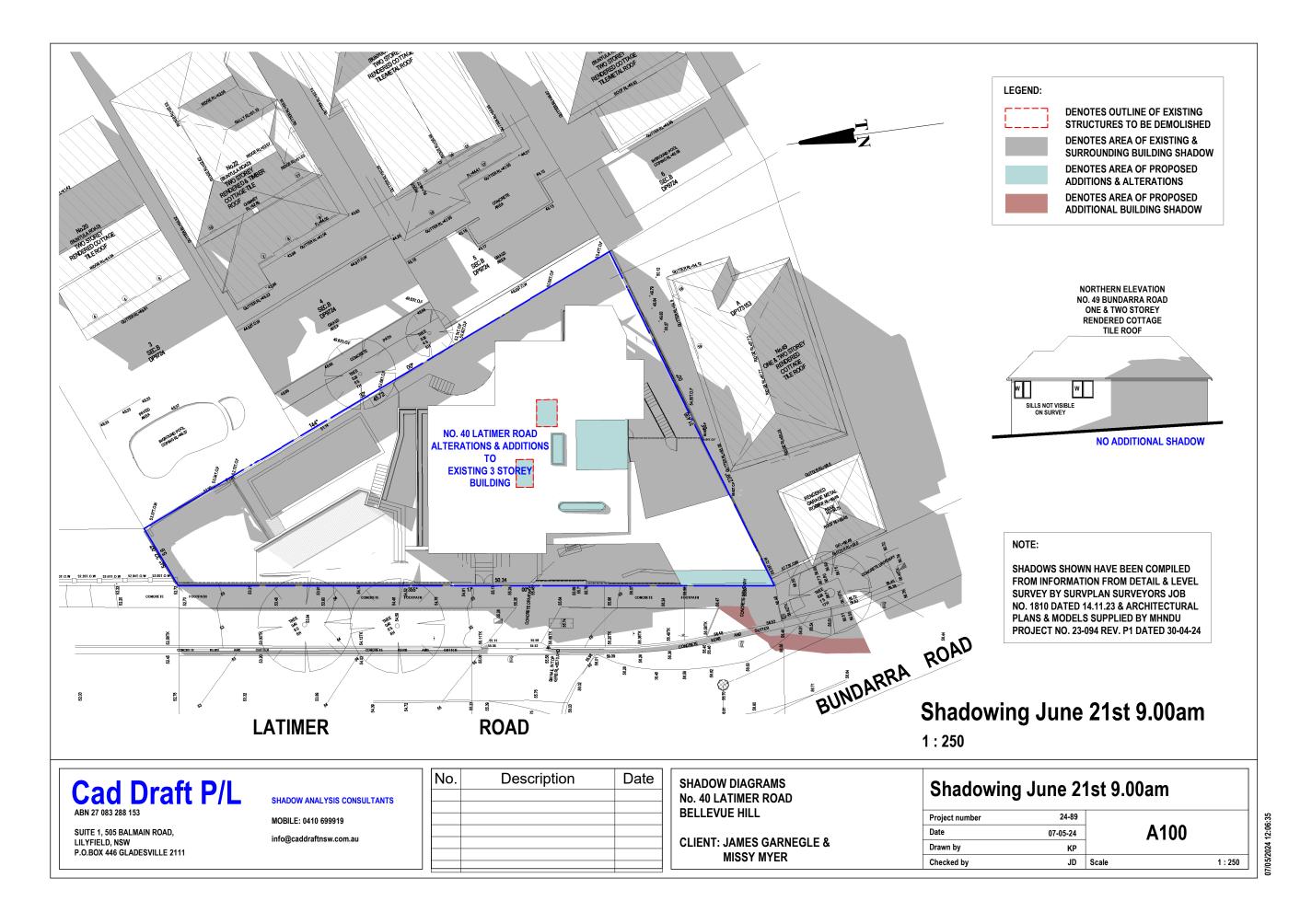
Woollahra Municipal Council Woollahra Local Planning Panel (Electronic Meeting) Agenda

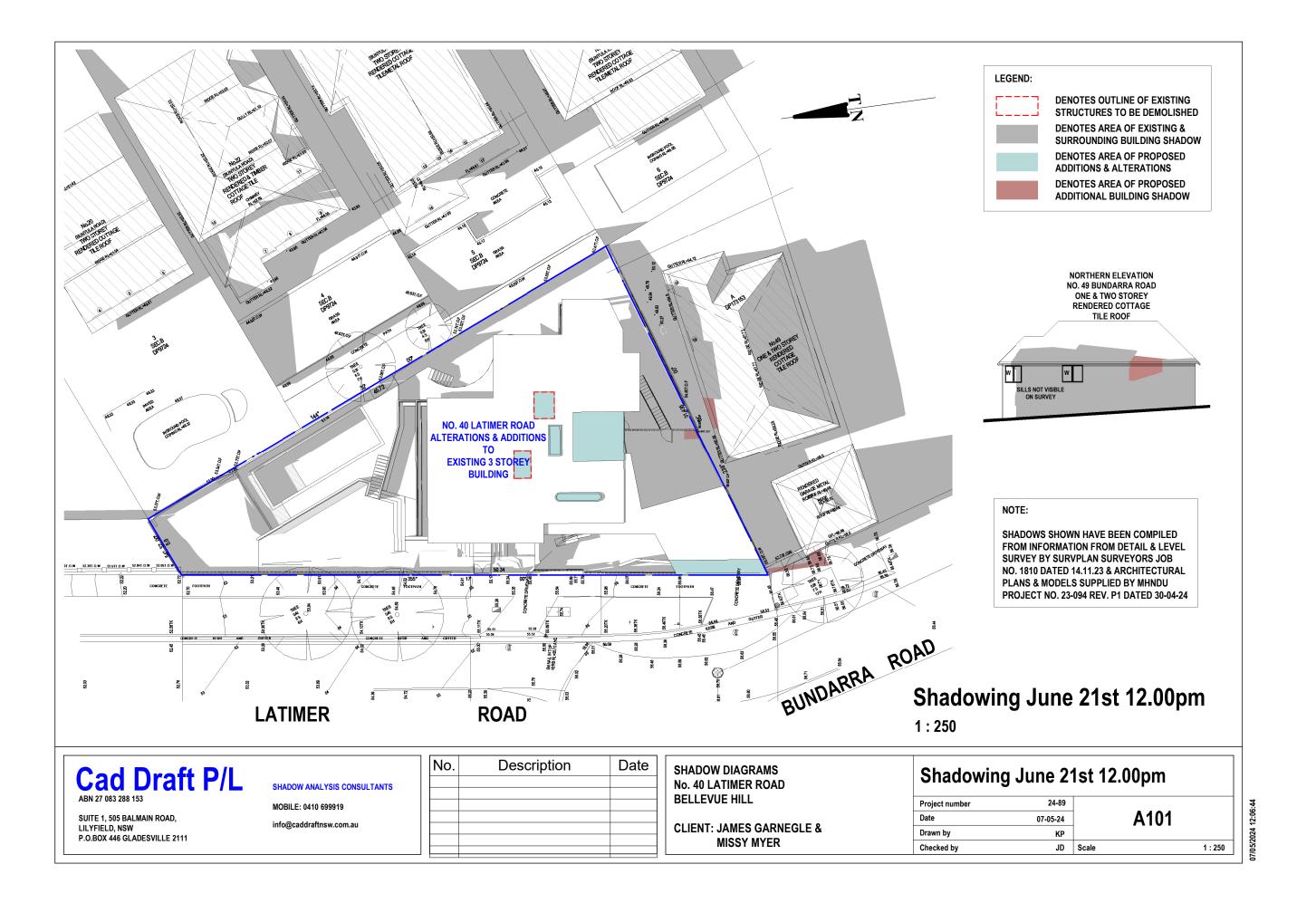


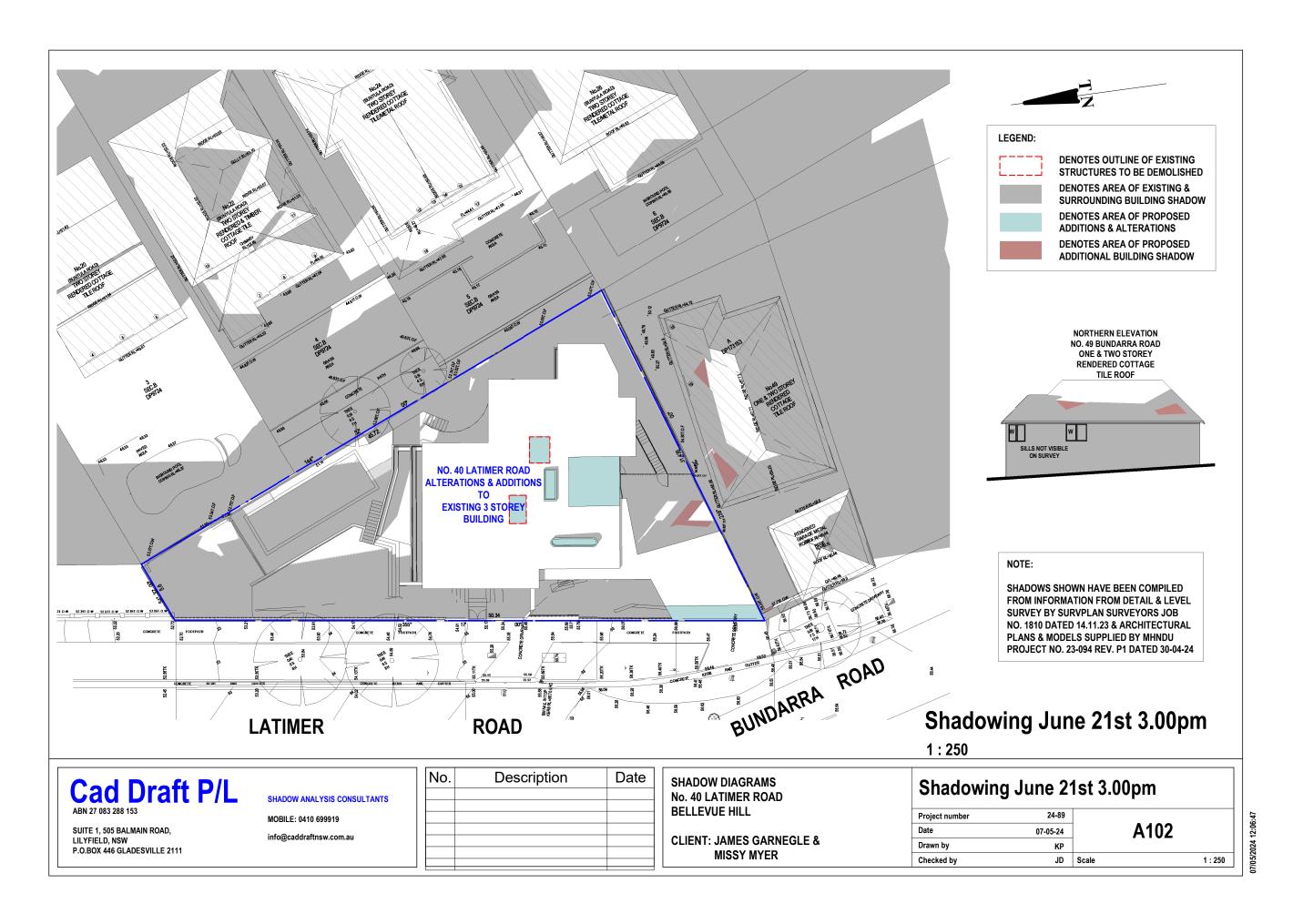


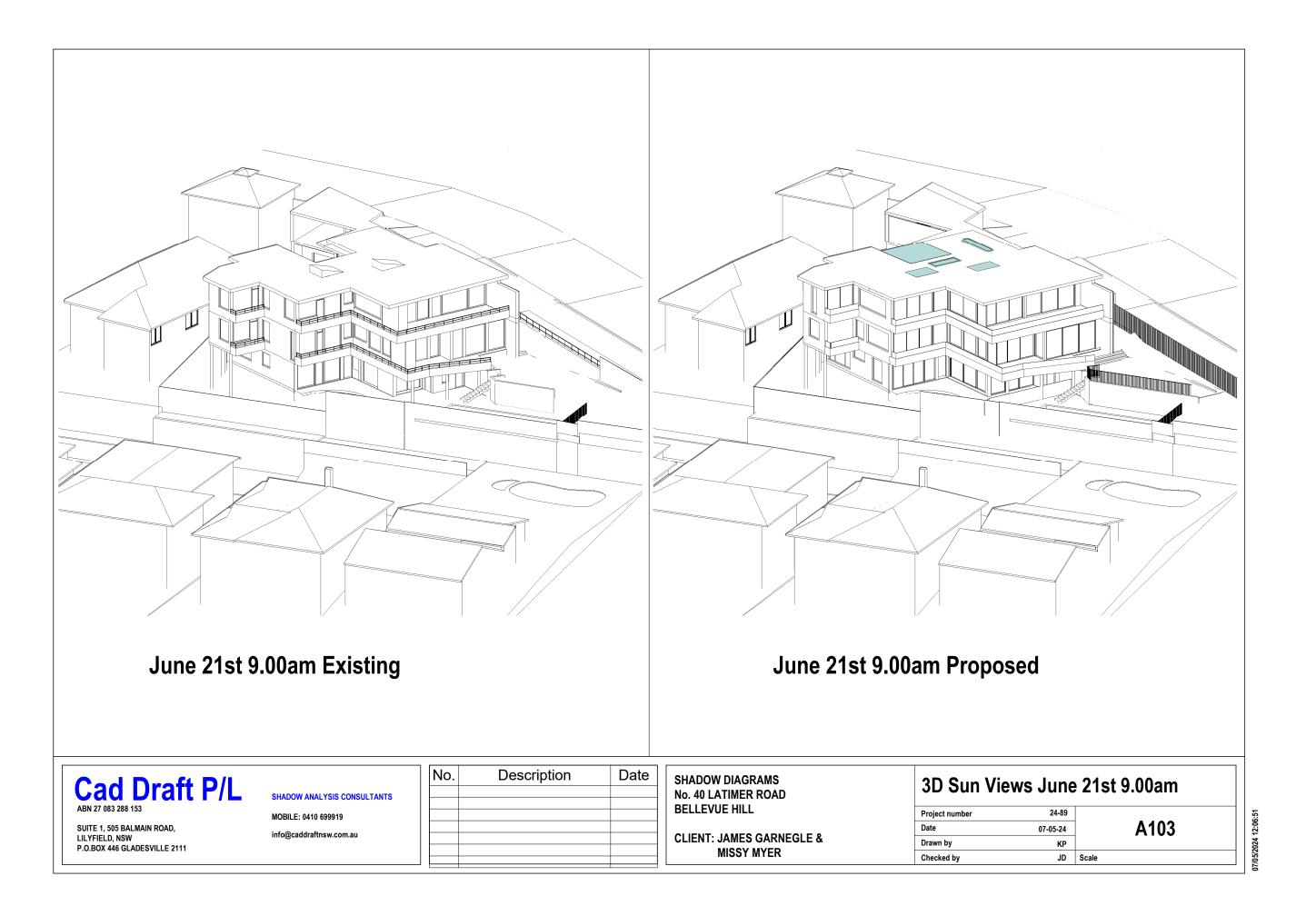
Woollahra Municipal Council Woollahra Local Planning Panel (Electronic Meeting) Agenda

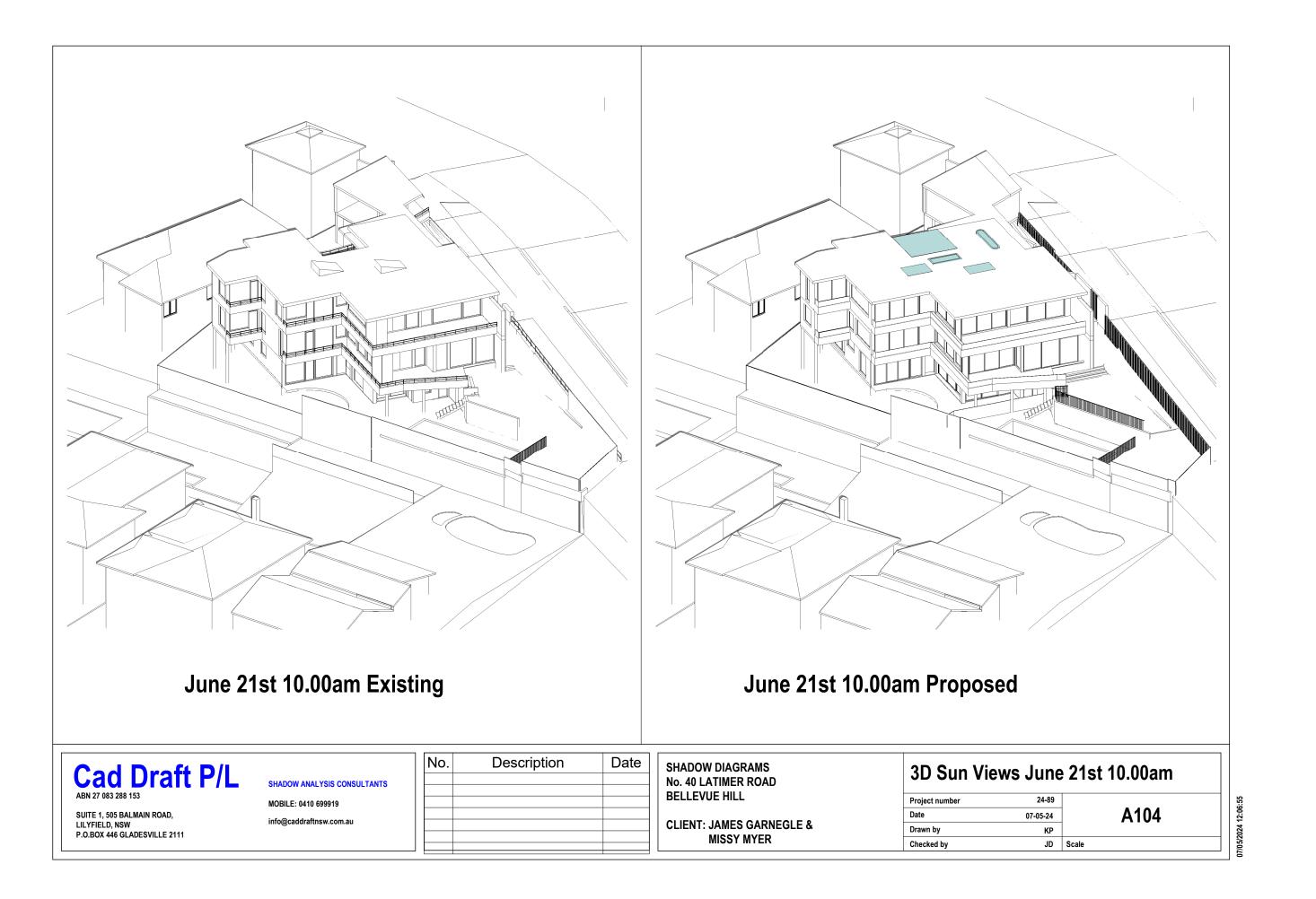




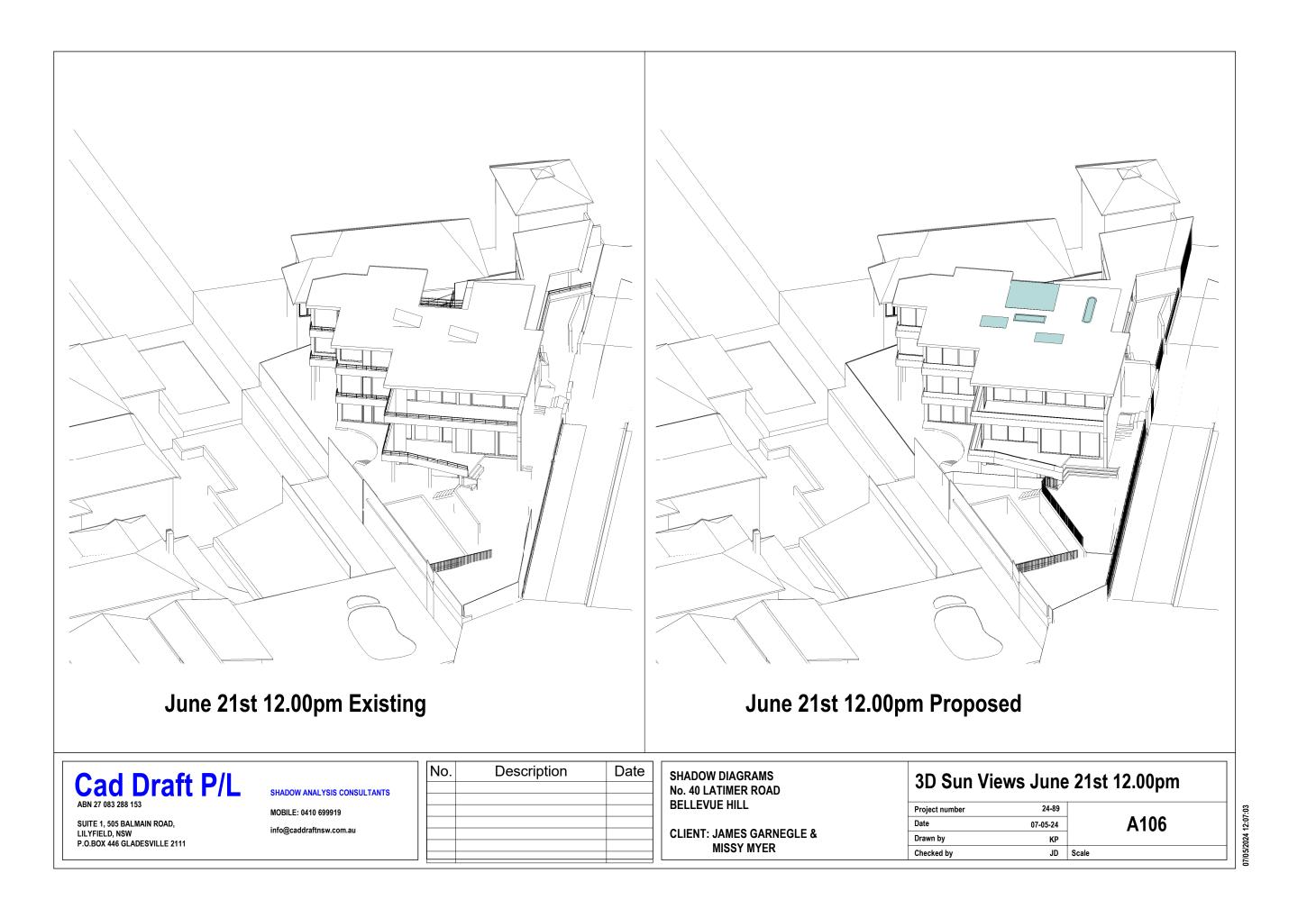


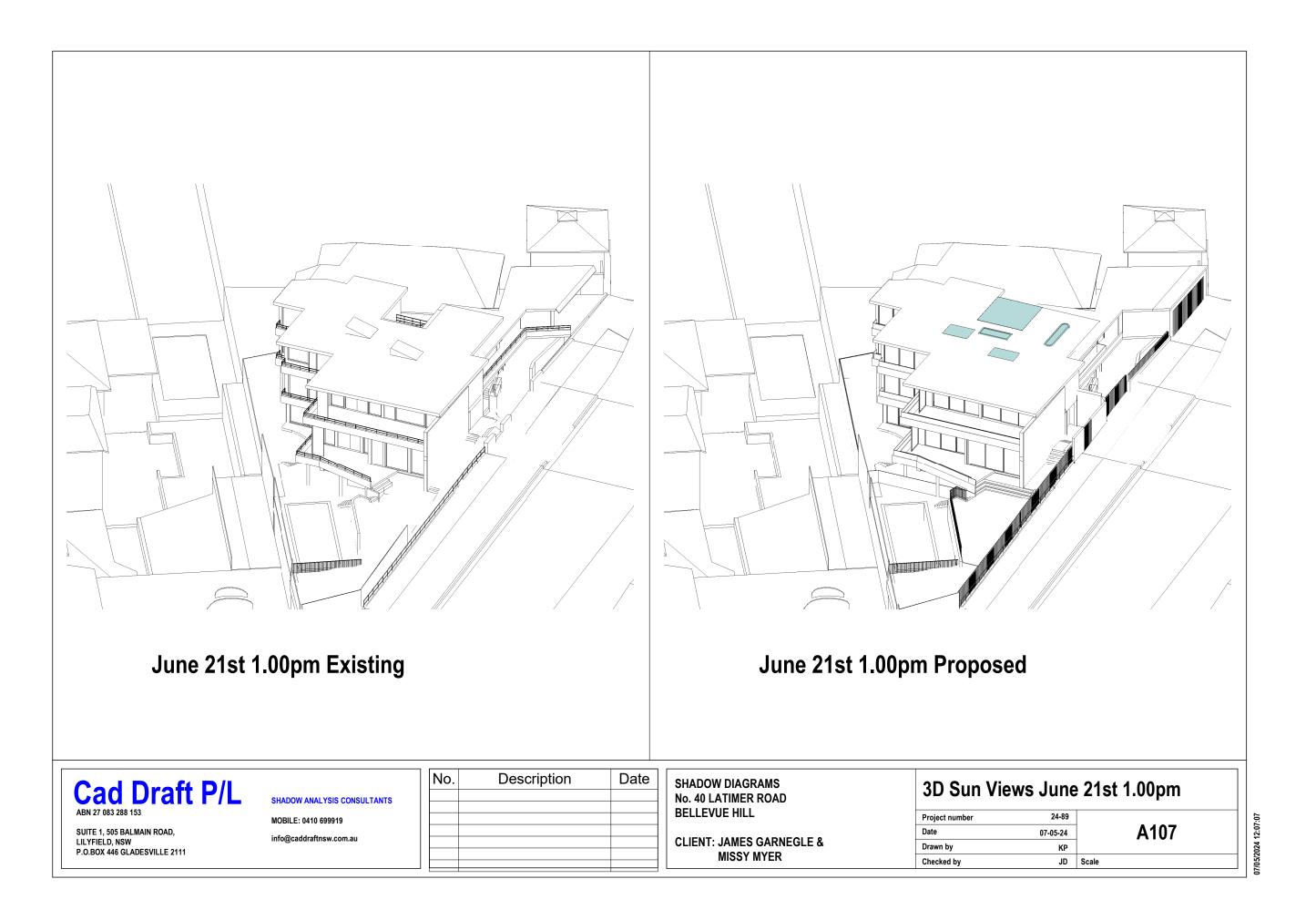




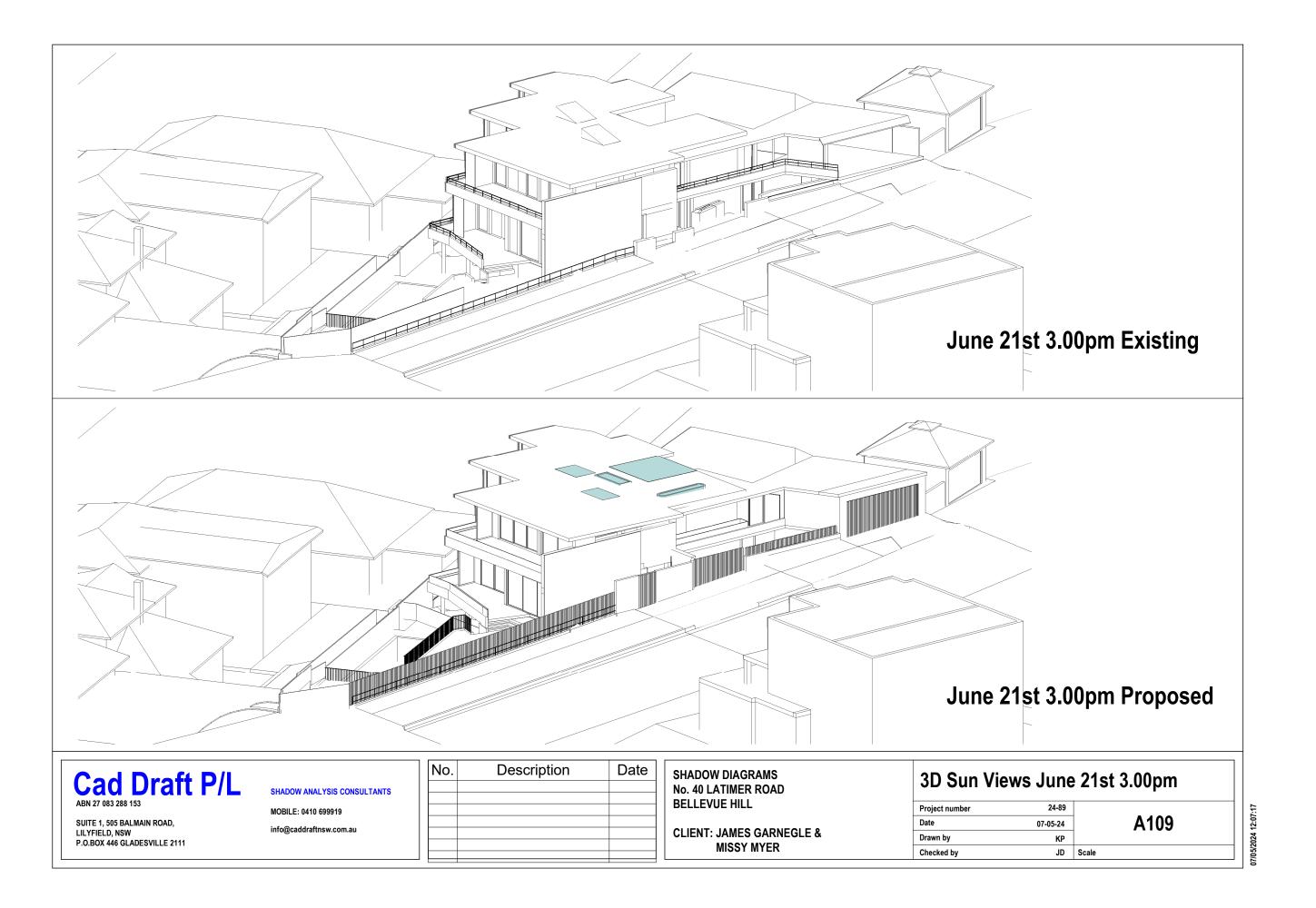












Woollahra LEP 2014 Clause 4.6 Exceptions to Development Standards – Floor Space Ratio (FSR)

Proposed alterations and additions to existing dual occupancy and conversion to dwelling house with associated works at

No. 40 Latimer Road, Bellevue Hill

Prepared for: James and Missy Carnegie c/o Anais Demars MHNDU 35 Richards Lane, 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. 23551 June 2024

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WOOLLAHRA LOCAL ENVIRONMENTAL PLAN (LEP) 2014 CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

APPLICANT'S NAME: Mr James Carnegie & Mrs Missy Carnegie

SITE ADDRESS: No. 40 Latimer Road, Bellevue Hill

1. (i) Name of the applicable planning instrument which specifies the development standard:

Woollahra Local Environmental Plan (LEP) 2014

(ii) The land is zoned:

R2 Low Density Residential Zone. The objectives of the R2 Zone are as stated:

- 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.

(iii) The number of the relevant clause therein:

Clause 4.4E Exceptions to Floor Space Ratio which states:

4.4E Exceptions to Floor Space Ratio—dwelling houses, dual occupancies and semi-detached dwellings in Zones R2 and R3

- (1) The objectives of this clause are as follows-
 - (a) to ensure the bulk and scale of development is compatible with the desired future character of the area,
 - (b) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,
 - (c) to ensure development makes adequate provision for deep soil planting, tree canopy cover and private open space.
- (2) This clause applies to land in the following zones—
 - (a) Zone R2 Low Density Residential,
 - (b) Zone R3 Medium Density Residential.
- (3) The maximum floor space ratio for a dual occupancy, dwelling house or semi-detached dwelling is—

 (a) for land identified as "Area 6" on the Floor Space Ratio Map—0.75:1, or
 - (b) for other land—the floor space ratio specified for the lot size in the table to this subclause.

Lot size	Maximum floor space ratio
<150m ²	1.05:1
≥150m ² <200m ²	0.95:1
$\geq 200m^2 < 250m^2$	0.85:1

Clause 4.6 Exceptions to Development Standards – FSR No. 40 Latimer Road, Bellevue Hill - Job No. 23429

PROPOSAL: Alterations and additions and change of use to dwelling house with associated works at

≥250 <i>m</i> ² <300 <i>m</i> ²	0.75:1
$\geq 300m^2 < 350m^2$	0.65:1
$\geq 350m^2 < 400m^2$	0.55:1
≥400 <i>m</i> ²	0.5:1
	d all the second determined

(4) This clause does not apply to a dual occupancy, dwelling house or semi-detached dwelling in the Paddington, Watsons Bay or Woollahra heritage conservation areas identified on the <u>Heritage Map</u>.

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning.

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 4.4E Exceptions to floor space ratio—dwelling houses, dual occupancies and semi-detached dwellings in Zones R2 and R3, which indicates a maximum FSR of 0.5:1 applies to the subject site. Clause 4.4E is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

The existing dwelling has a GFA of 564m² and an FSR of 0.67:1 which exceeds the development standard by 35%. As such, the variation as a result of this development application relates to an existing non-compliance. In fact, the proposal will reduce the existing GFA by 19m², with an overall GFA of 545m² and an FSR of 0.65:1, exceeding the standard by 30% (see **Figure 1** on the following page).

Clause 4.6 Exceptions to Development Standards – FSR No. 40 Latimer Road, Bellevue Hill - Job No. 23429



Figure 1: Existing v Proposed GFA Plans

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:

Clause 4.6 Exceptions to Development Standards – FSR No. 40 Latimer Road, Bellevue Hill - Job No. 23429

 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 FSR development standard to the proposed development in the circumstance of this particular case, especially considering the proposal will reduce the existing GFA. In our view, the proposed FSR is appropriate in the locality irrespective of the extent of variation.

The proposal has been designed to ensure that neighbouring properties amenity is maintained. The only FSR addition is localised by enclosing an existing terrace at the first level. Overall, the FSR is reduced as the existing non-habitable subfloor level is to be converted into a plant room. All proposed building alterations and additions will be located within the existing building footprint. Given the extent of alterations to building envelope is only for fully enclosing an already mostly enclosed area to the side, located behind the existing carport, there is no discernible change when viewed from the streetscape. This sympathetic approach and the compliant building height will achieve contextual compatibility with Latimer Road and the Bellevue Hill North Precinct.

The proposed FSR variation allows for architecturally designed alterations and additions that upgrade internal amenity, but also largely retain the existing streetscape presentation, continuing to provide a part two part three storey dwelling with a flat roof form. This remains contextually compatible with the existing and recently approved developments in the neighbourhood. It will enhance residents' amenity and contribute to the evolution of residential building styles encouraged in the Bellevue Hill North Precinct, including many recently existing dwellings of similar scale.

By reducing the existing FSR breach, the proposal will maintain a positive relationship with adjoining developments, as demonstrated in the SEE. To protect the streetscape and neighbour amenity, the proposed floor space is generally contained within the existing envelope and located away from the street frontage. This will maintain an appropriate presentation to the public domain and remain compatible with the bulk and scale of nearby dwellings.

We consider the FSR variation to offer a better planning outcome, especially as it provides improvements to the dwelling while remaining within the existing GFA. This is also because it will remain visually compatible with adjacent dwellings. Thus, the variation relates well to the public domain and visual amenity. In our opinion, as the proposal is consistent with the provisions of Clause 4.6, the variation 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 to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and

(b) there are sufficient environmental planning grounds to justify the contravention of 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.

Clause 4.6 Exceptions to Development Standards – FSR No. 40 Latimer Road, Bellevue Hill - Job No. 23429

5.1 Compliance with the Development Standard is Unreasonable or 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.

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;

Despite the proposed development's non-compliance with the applicable FSR development standard, the proposal achieves the desired low density character of the area. The proposal provides a bulk and scale that is generally consistent with that envisaged by Council's controls. The reasons why the proposed development achieves the objectives of the FSR standard are explained below.

(a) To ensure the bulk and scale of development is compatible with the desired future character of the area,

'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 4.3 Height of Buildings and Height of Buildings Map which prescribes a maximum height of 9.5m.
 - Clause 4.4E Exceptions to Floor Space Ratio dwelling houses, dual occupancies and semidetached dwellings in Zones R2 and R3 which prescribes a maximum FSR of 0.5:1.

The R2 Low Density Residential zoning envisages a wide range of uses and built forms on the site which promotes the eclectic desired future character. The permissible uses are:

Clause 4.6 Exceptions to Development Standards – FSR No. 40 Latimer Road, Bellevue Hill - Job No. 23429

Attached dwellings; Bed and breakfast accommodation; Business premises; Centre-based child care facilities; Community facilities; Dual occupancies; **Dwelling houses**; Environmental protection works; Group homes; Home occupations (sex services); Information and education facilities; Office premises; Oyster aquaculture; Pond-based aquaculture; Public administration buildings; Recreation areas; Respite day care centres; Secondary dwellings; Semi-detached dwellings; Shops; Tank-based aquaculture

The proposal will contribute to the eclectic mix of permissible uses in the R2 Zone. The FSR addition is localised and is concealed within a side terrace thar is already enclosed on three sides. Overall, the proposal reduces the existing GFA and remains within the existing building envelope. It also maintains the maximum building height, and will largely retain the existing appearance from the streetscape, with only minor landscaping works, carport façade adjustments and fence alterations to be readily discernible, which do not contribute to GFA. Therefore, the FSR variation will maintain the dwelling's compatibility with low-density development on Latimer Road and the general locality. In other words, the height and envelope are compatible with these buildings and the area's desired future character as per 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 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 nearby and future development and not limited to development standards. Latimer Road and Bellevue Hill is characterised by detached dwellings of various ages and styles, some exceeding the current FSR standard (some of these also exceed the height standard). As indicated, the existing streetscape appearance is generally retained and improved. As the reduced FSR is contained within the existing building height and generally within the existing envelope, the proposal will appear contextually compatible. This is not dissimilar to a recently approved DA (No. 438/2023) for alterations and additions at No. 8 Chamberlain Avenue, Rose Bay, which also exceeded the FSR standard but was considered appropriate by Council on the basis of the maintained external envelope and no additional impact.

Accordingly, with an FSR less than the existing situation and the careful location of massing ensures consistency with the locality's height, bulk, scale and eclectic developments, maintaining an appropriate visual presentation. The dwelling's perceived size and scale will remain generally unchanged, compatible with the existing and desired future character.

We therefore consider contravening the development standard to provide additional residential amenity with an appropriate level of visual and environmental amenity is justified.

(b) To minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,

As outlined in the SEE, the proposal has been carefully designed to maintain adjoining neighbour's amenity. As discussed before, the extent of FSR variation resultant from the enclosure of a recessed terrace while the remainder of the building outline is to be retained as existing or reduced. As such the extent of FSR variation is not readily discernible from either the streetscape and adjoining properties. When viewed from Latimer Road, there is no discernible bulk and scale difference when compared to

Clause 4.6 Exceptions to Development Standards – FSR No. 40 Latimer Road, Bellevue Hill - Job No. 23429

the existing, in terms of GFA. Further, the proposed localised FSR addition is compliant with the building height standard and fully compliant with all setback controls.

The proposal has been carefully designed to minimise the impacts of the new development on adjoining and nearby properties in respect to views, privacy, overshadowing and visual impact. This is detailed below:

Visual and Acoustic Privacy

The proposed new window facing south serving the new study addition is not directly facing any windows. Importantly, this study replaces an existing unscreened terrace. This is expected to improve both visual and acoustic privacy for neighbours. As the remainder of windows in the proposal are ones retained in location from the existing dwelling with minor adjustments, there will not be any adverse privacy impacts on the adjoining developments.

Solar Access

As the extent of FSR variation is within the existing and compliant building envelope, there will not be any form of additional overshadowing onto private open spaces or windows. This is supported by the shadow diagrams prepared by Cad Draft P/L, in which the extent of overshadowing is depicted at 9:00 am, 12:00 pm noon, and 3:00 pm in the winter solstice (June 21st).

It is demonstrated that infilling the recessed terrace does not affect any windows (north-facing or otherwise) or private open space of the adjoining property to the south. This demonstrated that the FSR variation maintains the existing solar amenity for neighbours.

View Loss

Similarly, as the area of FSR variation is located within the existing and compliant building envelope, no view loss as a result of the FSR variation is anticipated (see **Figure 2**). Significant public views are also not identified across the site.



Source: Apple Maps **Figure 2:** 3D View of Site & Surrounds (Looking North-East)

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In our opinion, the proposal will maintain the environmental amenity of neighbouring properties and the locality and satisfy Objective (1)(b).

(c) To ensure development makes adequate provision for deep soil planting, tree canopy cover and private open space.

Notwithstanding the FSR breach due to the existing situation, the proposal substantially improves tree canopy cover, deep soil landscaping in the front setback and generally across the site. The proposal also continues to provide compliant private open space. Accordingly, although the proposal will exceed the FSR control, the development overall will in fact increase provision for deep soil planting, tree canopy cover and provide compliant private open space, positively contributing to the area.

Accordingly, although the proposal will continue to exceed the current FSR standard, this is no worse than the existing situation and the variation has been demonstrated to have no adverse impacts, as it is contained within the existing building envelope.

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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 minor FSR variation in this particular circumstance. In addition to consistency with the objectives of the zone and the development standard, environmental planning grounds include reduction from the existing FSR variation; consistency with surrounding development and compatibility with the desired future character of the area; and good design and amenity. These will now be addressed.

Reduction from Existing FSR Breach

As discussed, the FSR variation is existing. As the proposal is for alterations and additions to an existing development, the non-compliance with the FSR provision is to be expected. Nonetheless, the proposal reduces the existing GFA through layout reconfiguration and facilitates a high-quality new study within an existing predominantly enclosed space.

Given the proposal is for alterations and additions to an existing dwelling that pre-dates current controls, it would be unreasonable and unnecessary to impose strict compliance. Strict compliance with the standard would create a drastic and significant removal in the existing built form of the dwelling, which is likely to be incompatible with neighbouring properties or the streetscape.

Contextual Compatibility and Consistency with Desired Future Character

Notably, the area of additional GFA is localised and can be attributed to the enclosure of the recessed terrace at the first floor. This is thoughtfully located to be behind the existing carport and entirely not visible from the streetscape, being surrounded by three existing walls. As indicated, this addition is balanced out by reductions elsewhere. Overall, this ensures contextual compatibility.

The proposal is permissible in the R2 Low Density Residential Zone, is consistent with the relevant zone objectives and satisfies an 'unreasonable and unnecessary' test established in *Wehbe*. The existing total floor space is reduced, and the variation remains below the existing building height and is not discernible from the streetscape or public domain. The existing appearance of the site is largely retained with minor façade adjustment works to the car port and landscape works that do not contribute to GFA while improving the site appearance. Alternatively, if the proposal were to comply with the FSR by providing voids or removing existing built form, this would result in an awkward architectural design which would result in a development less compatible with the surrounding locality.

The existing bulk and scale of the site is largely preserved, while the landscaping and appearance is greatly improved upon. The alterations and additions enhance the existing facades, and the majority of works relate to the internal layout where the internal amenity is improved. The FSR variation allows for better internal solar access, ventilation and amenity gained through skilfully placed skylights, adjustments of windows, and better utilisation of the lower ground level, while maintaining neighbour amenity by remaining with the existing external envelope. This will upgrade the existing building into a high-quality dwelling house, further contributing to the desirable low-density housing stock of the area.

In Initial Action v Woollahra Municipal Council [2019] NSWLEC 1097, Commissioner O'Neill states at [42], inter alia:

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

Clause 4.6 Exceptions to Development Standards – FSR No. 40 Latimer Road, Bellevue Hill - Job No. 23429

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 that by proposing a total GFA that remains less than the existing situation and within the existing envelope, it will be compatible with nearby developments. The contravention will not be easily noticeable from the public domain or surrounding sites and therefore will not impact the streetscape amenity or existing characteristics of the area. Being less than the existing, the proposed FSR exceedance, will maintain neighbour amenity and will not be out of character with surrounding properties in terms of bulk or scale, nor will it be incompatible with the area's desired future character.

Good Design and Amenity

The proposal allows for the dwelling to achieve the objective of the EP&A Act relating to the good design and amenity of the built environment. The proposed alterations and additions are predominantly internal, and generally utilise the existing building envelope with a limited enclosure of a recessed terrace area. This minimises any potential additional visual bulk and enhances the degree of articulation at all elevations.

In this case, reduction of the FSR variation is resultant from converting a lower ground level trafficable sub floor room into a dedicated plant room, and addition of a first-floor habitable room which replaces an existing recessed terrace on the side. This enhances internal amenity. The development will retain its existing presentation to the street by accommodating the floor space within the existing and maximum building height, complying with the minimum rear and side setback and skilful positioning to ensure the proposed addition is not readily discernible. Our assessment has also demonstrated that the proposal will maintain existing, compliant levels of privacy, views and solar access for neighbours and the locality.

The variation facilitates high levels of residential amenity to the subject site without any adverse impacts on adjoining properties amenities. To enforce strict compliance with the LEP provisions would unnecessarily reduce the internal amenity of the subject site with no benefits to adjoining properties.

Other Matters for Consideration

It should also be noted that the proposal achieves the objectives of the R2 Low Density Residential Zone and the relevant DCP built form and amenity provisions; and results in an improved planning outcome for the site. While these factors may not strictly constitute environmental planning grounds, they should be considered in the assessment of the FSR breach.

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. 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 R2 Low Density Residential Zone pursuant to the LEP. On that basis, the request to vary Clause 4.4E should be upheld.

Clause 4.6 Exceptions to Development Standards – FSR No. 40 Latimer Road, Bellevue Hill - Job No. 23429

	Table 1: Complia	nce Mat	rix		
Para (Initial Action)	Requirement	Section of this Report	Summary	Satisfied	
10	Is it a development standard (s.1.4) What is the development standard	1	Yes Clause 4.4E: Exceptions to floor space ratio – dwelling houses, dual		
12	What is the control	1&2	occupancies and semi-detached dwellings in Zones R2 and R3		
14	Precondition to Enlivening the Power – Consent authority must form the positive opinion:	102	Both positive opinions can be formed as detailed below.	YES	
15, 25	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.		
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 <i>Wehbe</i> .	5.1	 The proposal satisfies Test 1 of Wehbe: The objectives of the standard are achieved notwithstanding the non-compliance with the standard. 		
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 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 variation is a function of an existing non-compliance, which the proposed development improves upon. The variation appears visually consistent as viewed from the front, sides and rear as proposed area of FSR variation is contained within the existing envelope and compliant building height; Despite the non-compliance, the proposal increases deep soil planting, tree canopy and soft landscaping; The proposal is similar to other dwellings in the neighbourhood, including many dwellings that are existing, recently approved and constructed; The variation seeks to promote good design; The variation maintains privacy, solar access and views for neighbours; and The proposed FSR facilitates a low density development and achieves the FSR objectives of the standard. 	YES	

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Clause 4.6 Exceptions to Development Standards – FSR No. 40 Latimer Road, Bellevue Hill - Job No. 23551



27 June 2024

REFERRAL RESPONSE – TREES AND LANDSCAPING

FILE NO:	Development Applications: 202/2024/1
ADDRESS:	40 Latimer Road BELLEVUE HILL 2023
PROPOSAL:	Alterations and additions to an existing dual-occupancy and its conversion into a single dwelling house; landscaping and siteworks.
FROM:	Sam Knight
TO:	K Qi

1. ISSUES

None.

2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environmental Effects, prepared by GSA Planning, dated May 2024
- Survey Plans, drafted by SurvPlan, dated 14 November 2023
- Architectural Drawings, drawn by MHNDU, dated 30 April 2023
- Arboricultural Impact Assessment Report, written by George Palmer, dated May 2024
- Landscape Plans, designed by Paul Bangay, dated 7 May 2024

A site inspection was carried out on 3 July 2024.

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

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4. SUMMARY

The proposal is supported subject to the below tree conditions being included into the Development Application (DA) consent.

5. 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 is consistent with the Construction Impact Assessment and Management Plan (Arborist Report) prepared by George Palmer dated May 2024.

Tree Removal – <5m Height

The plans and Arborist Report indicate trees 3, 4, 9, 10 and 11 are proposed for removal as they will be directly impacted by the works.

The trees have been noted as being less than 5 metres in height and are not a prescribed tree as defined by the WMC DCP Chapter E.3 - Tree Management. These trees can be removed without consent regardless of the proposed development.

Tree Removal – Exempt Species

The plans and Arborist Report indicate tree 5 is proposed for removal due to species type.

The tree has been identified as a *Cotoneaster glaucophyllus* (Cotoneaster). This species is listed as exempt from WMC DCP Chapter E.3 - Tree Management and can be removed without consent regardless of the proposed development.

Tree Retention

The plans and Arborist Report indicate trees 1, 2, 6, 7 and 8 will be retained.

<u>Trees 1 and 2</u> – have been identified as *Cupaniopsis anacardioides* (Tuckeroos) located outside the site on Council land. The trees have been noted in good healthy condition and provide a positive contribution to the amenity and canopy cover of the immediate area.

No works are proposed within the Tree Protection Zones (TPZ) of these trees. However, to ensure they are not accidently damaged during construction works, tree protection measures are to be installed in accordance with the below conditions.

<u>Trees 6 and 7</u> – have been identified as *Brachychiton acerifolia* (Illawarra Flame trees) located adjacent to the eastern boundary within 22 Bunyula Road. The trees are growing approximately 1 metre below the ground level within the subject site and separated by a wall along the northern boundary. This would have prevented any tree roots from entering the subject property. As such no special tree protection measures are required for these trees.

<u>Tree 8</u> - has been identified as a *Backhousia citriodora* (Lemon Scented Myrtle) located on the western boundary of the rear yard. The tree has been noted in good healthy condition and provides a positive contribution to the amenity and canopy cover of the immediate area.

The plans indicate works are proposed within the TPZ of the tree which has been calculated as being 7 metres (radius from tree trunk). This includes a new terrace area and side pathways which the applicants Arborist has calculated it as being a 15% incursion into the TPZ. This is deemed a Major

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Encroachment (greater than 10% of the TPZ) as defined by the Australian Standards AS4970 'Protection of trees on development sites'.

Where an encroachment is greater than 10% of the TPZ, AS4970 outlines that the project arborist must demonstrate that the trees will remain viable. This may require root investigation and consideration of health, condition, age, species type and tolerance to disturbance, lean and stability.

As detailed in the applicants Arborist Report, the tree has grown with a girdled structural root which has grown away from the area where the new terrace is being constructed. In addition, differing levels, pathways and retaining walls currently surrounding the tree would be restricting roots from spreading into the area where the new pathways along the western side of the dwelling. These factors would mean tree roots would not be growing in a typical radial direction but are expected to be mainly growing towards toe northern grassed area. Provided this area remains undisturbed, it is not expected that the proposed development will impact on the tree.

To ensure the tree remains viable into the future, tree sensitive construction methods and tree protection measures are installed during the works. These have been detailed in the conditions below for inclusion into the DA consent.

Canopy Cover – Dwellings

Chapter B3.7 Landscape area and private open space of the WMC DCP outlines under Control 1 that 35% canopy cover is to be provided within sites for dwelling houses, dual occupancy, semidetached development and attached dwellings.

The submitted plans indicate that the proposal will provide 93.39m² canopy cover which equates to 11.15%. An additional 199.10m² is required in order for the DCP controls to be satisfied.

However, due to the existing building, paved areas and swimming pool occupying a large portion of the site, incorporating additional tree planting to achieve the DCP requirements is not possible.

Therefore, the non-compliance with the DCP canopy cover controls is accepted for this particular DA.

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					
		use and wor affixed a Cou unless modif Where the p	he benefit of this consent musks in accordance with both thuncil stamp "Approved" and s ied by any following condition lans relate to alterations or ac hlighted are approved.	e architectural pla upporting docume n.	ans to which is ents listed below
		Reference	Description	Author	Date
		Sheet 1 to 4	Landscape Plans	Paul Bangay	7.5.24

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2024/019	Arboricultural Impact Assessment Report	George Palmer	June 2024
Council sta numbers ir original co original co • These plar	Principal Certifier – You must alwa amped approved plans. You must in this condition. Should the Applica py Council will provide you with acc py of the approved plans. is and supporting documentation m ion 4.17(1)(g) of the Act modifying	not rely solely upor int not be able to p cess to its files so y nay be subject to co	n the plan refer rovide you with ou may review onditions impos
	teason: To ensure all parties are ocumentation that applies to the		proved plans
Standard Conditi	on A.2 (Autotext 2A)		

2.	Tree Pres	ervation and Landsc	aping Works		
	accordance	work is being carried on which the approved la ent plan and transplan	ndscape plan, ar	borist repo	rt, tree
		lowing trees must be r	etained:		
	• 1	rees on private land:			
	Council Ref No	Species	Location		Dimension (metres)
	6	Backhousia citriodora	Rear Yard		10 x 5
	Council Ref No	Species	Location	Dimensio (metres)	
	1	Cupaniopsis anacardioides	Street tree	8 x 6	\$5000
	2	Cupaniopsis anacardioides	Street tree	8 x 6	\$5000
	Constructi b) The fol Council	required to be retaine on Certificate plans. lowing trees may be re Species		bloured gre	en on the Dimension
	Ref No				
		Cardonia avillaria*	Poor Vord		(metres)
	3	Gordonia axillaris*	Rear Yard		(metres) 3 x 2
	3 4	Camellia sasanqua*	Rear Yard		(metres) 3 x 2 4 x 2
	3				(metres) 3 x 2

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11	Cotoneaster glaucophyllus*	Rear Yard	2 x 2
The tree/s Certificate		/ed must appear colou	red red on the Constructio
		empt from the WMC D nsent from Council.	CP 2015 and can be
		re all landscape works d plans and documents	
Standard Cor	ndition A.22 (Autotext 22A)		

B. BEFORE DEMOLITION WORK COMMENCES

В.	1.	Payment of Security and Fe	es		
		Prior to any site works, the fo	llowing security	and fees mus	t be paid in full:
		Description	Amount	Indexed	Council Fee Code
		SECURITY under section 4.17(6) of the Environme	ental Planning and A	ssessment Act 1979	,
		Tree Damage Security Deposit – making good any damage caused to any public tree	\$10,000	No	T114
		INSPECTION FEES under section 608 of the Local Govern	nment Act 1993	·	
		Public Tree Management Inspection Fee	\$231.30	No	Т95
		TOTAL SECURITY AND FEES	\$10,231.30		
		 How must the payments be Payments must be made by: cash deposit with Council, credit card payment with C bank cheque made payable 	Council, or	Municipal Cou	ncil.
		 The payment of a security mathematical security mathematical security mathematical security mathematical security and security date is not acceptable. the bank agrees to pay the Applicant or landowner or without regard to any displayer in the security and secu	stralian bank fo grees to pay th ncil on completi m the provision ed bank guarar ole < ### Inva guaranteed su other person w	r the amount of e guaranteed s on of the devel of the guarante tee or a bank g lid Field Definit um without refe ho provided the	f the total sum to the Council opment or no ee whichever occurs guarantee with an tion ###, rence to the e guarantee and

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CAL	<u> </u>		
		 with the development consent, the bank guarantee is lodged with the undertaken, and the bank's obligations are discharg in accordance with the guarantee of writing that the guarantee is no long Notes: An application must be made to Counce release of the securities held under set. The securities will not be released unti with Council, Council has inspected the works have been carried out to Counci of the security to complete the works to Council's requirements. Council will only release the security u works, the purpose for which the securit completed to Council's satisfaction as Council may retain a portion of the security public work that arise within 6 months Upon completion of each section of roas satisfaction, 90% of the bond monies hereleased upon application. 10% may b period and may be used by Council to works during the 6 month period. The Refund of Security Bond Application www.woollahra.nsw.gov.au 	ger required. Sil by the person who paid the security for ction 4.17 of the Act. I the Occupation Certificate has been lodged e site and Council is satisfied that the public I's requirements. Council may use part or all to its satisfaction if the works do not meet pon being satisfied that all damage or all rity has been held have been remedied or the case may be. urity to remedy any defects in any such after the work is completed. ad, drainage and landscape work to Council's held by Council for these works will be e retained by Council for a further 6 month repair or rectify any defects or temporary on form can be downloaded from
В.	2.	Standard Condition B14 (Autotext 14B) Establishment Tree Protection Mea	sures within the Tree Protection
5.		Zones (TPZ)	
		all trees to be retained in accordance Protection of Trees on Development S The Tree Protection Zones must be ca	measures must be established around with Section 4 of the Australian Standard Sites (AS 4970). alculated in accordance with Section 3 of Trees on Development Sites (AS 4970).
			n, which clearly details the tree protection ne issue of a construction certificate. The v with the following requirements;
		a) Trunk protection must be installed	around the trunks of the following trees:
		Council Ref No	Species
		1	Cupaniopsis anacardioides
		1	Cupaniopsis anacardioides
		6	Backhousia citriodora
		1	

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	Trunk protection must consist of a padding material such as hessian or thick carpet underlay wrapped around the trunk. Hardwood planks (50mm x100mm or similar) must be placed over the padding and around the trunk
	of the tree at 150mm centres. The planks must be secured with 8 gauge wire at 300mm spacing. Trunk protection must extend a minimum height of 2 metres or to the maximum possible length permitted by the first branches.
b)) 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.
с)	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.
d)) 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.
e)) 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.
f)	The project arborist must provide written certification of compliance to the Principal Certifier with the above conditions.
Co	ondition Reason: To ensure the protection of existing trees
Sta	andard Condition B.5 (Autotext 5B)

В.	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.;
		 c) Site construction access, temporary crossings and movement corridors on the site defined;
		 d) Contractors car parking; e) Phasing of construction works;
		 e) Phasing of construction works; f) The space needed for all foundation excavations and construction works; g) All changes in ground level;

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	 h) Space for site sheds and other temporary structures such as toilets; i) 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. 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 Docu	mentation and Compliance Checklist			
	 that all tree protections of the consent are implied. A record of the development Recommendation compliance. 	ed actions to improve site conditions and rectification of non-			
		ations 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. 			
	AQF Level 5 qu	I compliance documentation must be made by an arborist with alifications. risits must be made when required by the site arborist and/or			
	site foreman for	ongoing monitoring/supervisory work.			
		son To ensure that written certification that all tree protection construction techniques relevant to this consent have been			
	Standard Condition B.	29 (Autotext 29B)			

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В.	5.	Permissible work within Tree Protection Zones				
		Prior to an Protection		owing works are permi	ssible within the Tree	
		Council Ref No	Species	Radius from Centre of Trunk (Metres)	Approved works	
		6	Backhousia citriodora	4m	Construction of new terrace and pathways. Landscape upgrade works	
			et arborist must provi Certifier with the abov	de written certification /e condition.	of compliance to the	
			Reason To establis ection Zones.	h the works which are	permissible within the	
		Standard Con	dition 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. 				

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 To minimise construction damage, the plan must show specific areas requiring works to be done under direct supervision of the project arborist.

c) 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 – <i>Tree Management</i> 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

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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:

- 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	Compliance documentation and photos must include
supervision 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 pavers and retaining wall within 4 metres from Tree No 6. The condition of exposed roots must be managed and documented.
	 The project arborist must supervise the installation of the terrace area and stairs within 4 metres of Tree No.6, 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 AQF Level 5 qu	d compliance documentation must be made by an arborist w ualifications.
	visits must be made when required by site arborist and/or sit going monitoring/supervisory work.
	ason: To ensure that all tree protection measures and chniques relevant to this consent have been implemented.
Standard Condition I	E 45 (Autotext 45E)

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F	3.	Replacement/Supplementary trees which must be planted
		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 tree/s 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	4.	Level changes in the vicinity of trees While site work is being carried out, no level changes must occur within the specified radius from the trunks of the following trees.				
		Council Ref No	Species	Location	Radius from centre of trunk (metres)	
		1	Cupaniopsis anacardioides	Street tree	4.5m	
		2	Cupaniopsis anacardioides	Street tree	4.5m	
		The proje	ct arborist must document	compliance with	the above condition.	
			n Reason: To ensure leve of existing trees.	l changes would	not adversely impact up	
		Standard Cor	ndition F.49 (Autotext 49F)			

F	5.	Hand excavation within tree root zones			
		as existing	work is being carried out footings and approved e n the trunks of the follow	excavation undertaken	within the specified
		Council Ref No	Species	Location	Radius from centre of trunk (metres)
		6	Backhousia citriodora	Rear Yard	4m
		only must	d tools such as mattocks be used. Roots with a dia ered or damaged unless orist.	ameter equal to or in ex	cess of 50mm must

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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.

Standard Condition F.50 (Autotext 50F)

F 6.	Footings	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)		
	6	Backhousia citriodora	Rear Yard	4m		
	minimum ² accommod above grou diameter e The projec	 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 Cone	dition F.51 (Autotext 51F)				
F 7.		n of stormwater pipes a				

F	7.	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)	
		6	Backhousia citriodora	Rear Yard	4m	

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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.				

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Woollahra Municipal Council

> 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.

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. 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. As a minimum the following intervals of site inspections must be made: Stage of arboricultural Compliance documentation and photos must include inspection and supervision The project arborist must supervise the dismantling of Before the issue of any tree protection measures occupation certificate for the After all demolition, construction and landscaping works whole of the building 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 remediation.

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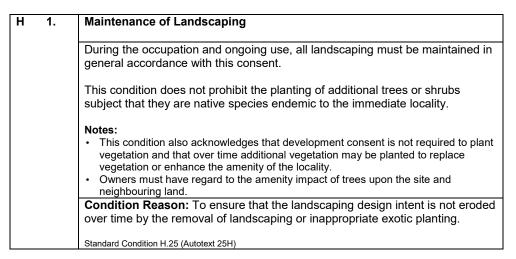
Inspections and compliance documentation must be made by an arborist with AQF Level 5 qualifications.

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



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 Tree Officer 4 July 2024 Completion Date



16 August 2024

REFERRAL RESPONSE - HERITAGE

FILE NO:	Development Applications: 202/2024/1
ADDRESS:	40 Latimer Road BELLEVUE HILL 2023
PROPOSAL:	Alterations and additions to an existing dual-occupancy and its conversion into a single dwelling house; landscaping and siteworks.
FROM:	Tristan Ryan – Senior Strategic Heritage Officer
TO:	K Qi

1. DOCUMENTATION

The following documentation provided by the applicant has been examined for this referral response:

- Drawing set by MHNDUnion, dated April 2023, and numbered DA 01 DA 15.
- Demolition Report by Weir Phillips Heritage and Planning, dated July 2024
- Statement of Environmental Effects by GSA Planning, dated May 2024.

2. SITE INSPECTION / RESEARCH

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

• The site was (previously, if second response) inspected on the x 2019, 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

5. SIGNIFICANCE OF SUBJECT PROPERTY

National Parks and Wildlife Act 1974

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The site is in an area of Potential Aboriginal Heritage Sensitivity, but no excavation or works that would impact exposed sandstone are proposed. Therefore, an Aboriginal Heritage Impact Assessment was not required as part of the DA.

A basic search conducted on AHIMS (Aboriginal Heritage Information Management System) on 14 August 2024 from the Office of Environment & Heritage NSW (OEH) website has revealed that there are 0 recorded Aboriginal sites recorded within a 50m buffer in or near the above location.

The site contains landscape features that indicate the likely existence of Aboriginal objects as defined in Section 2, Step 2 p.12 of the Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW ('Due Diligence Code') published by the Department of Environment, Climate Change and Water and dated 13 September 2010.

The subject site is considered to be on 'disturbed land' as per the definition outlined in the Due Diligence Code, p. 18.

Woollahra LEP 2014

The subject site is/is not a heritage item in Woollahra Local Environment Plan 2014 'the LEP' and is/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

Assessment of potential heritage significance against the NSW Heritage Criteria

Criterion (a) Historical

An item is important in the course, or pattern, of NSW's cultural or natural history (or the cultural or natural history of the local area

- The place is a dwelling designed by noted Modernist architect George Reves, c. 1962. It therefore has some significance as Modernist house in Bellevue Hill, demonstrating the evolution of living styles in the local area and NSW in the 20th century, and as a work by a prominent émigré architect. However, these aspects do not mean that it is important in the course or pattern of the history of the local area.
- The place is unlikely to meet the threshold under this criterion.

Criterion (b) Historical Association

An item has strong or special association with the life or works of a person, or group of persons, of importance in NSW's cultural or natural history (or the cultural or natural history of the local area

- The place is likely to have a strong and special association with Ted and Cynthia Jackson, who were Members of the Order of Australia for service to the arts, particularly their establishment of the Primavera: Young Australian Artists exhibition at the Museum of Contemporary Art. The exhibition has been the starting point for many prominent Australian artists. Cynthia Jackson was described in an obituary as "the unofficial mother of the Museum of Contemporary Art Australia". She commissioned the house, and lived there until she died in January 2023.
- The place may meet the threshold for listing under this criterion.

Criterion (c) Aesthetic

An item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in NSW (or the local area)

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- 40 Latimer Road is a house designed by noted Modernist architect George Reves. Reves was a highly acclaimed architect, with three buildings on the Australian Institute of Architects Register of Significant Buildings in NSW. 40 Latimer Road is not one of these.
- The building exhibits key facets of Modern architecture in Australia in this period, including the use of sandstone, breeze blocks, asymmetric planning, and expansive glazing. In these aspects it is a good example of an architect-designed house of its period.
- Additionally, the building displays some impressive architectural resolution in its façade treatments, driveways and entry. A deep top level terrace with coloured tiles also takes impressive advantage of the northward view and sun.
- Some aspects of the internal planning are less resolved, leading to some dark and narrow corridors.
- Custom joinery and furniture evident in real estate photos and likely original to the house has since been demolished.
- I am inclined to agree with the assessment of Weir Phillips that the house is less impressive than 86B Victoria Road, Bellevue Hill, which better displays Reves' skill as an architect in both its planning and detail. Nevertheless, the house does represent a high degree of creative achievement in terms of its exterior presentation, driveway and entry sequence, as well as the use of contrasting materials.
- It is likely that the place meets the threshold for listing under this criterion.



Figure 1 This aerial photograph shows the success of Reves' planning of the site with regard to the entryways and driveways. RealEstate.com.au, 2023.

Criterion (d) Social

An item has strong or special association with a particular community or cultural group in NSW (or the local area) for social, cultural or spiritual reasons

• The place is unlikely to reach the threshold for listing under this criterion.

Criterion (e) Technical/Research

An item has potential to yield information that will contribute to an understanding of NSW's cultural or natural history (or the cultural or natural history of the local area

• The place is unlikely to reach the threshold for listing under this criterion.

Criterion (f) Rarity

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An item possesses uncommon, rare or endangered aspects of NSW's cultural or natural history (or the cultural or natural history of the local area)

- As a work by George Reves, the place is relatively rare in NSW and Woollahra.
- The place may meet the threshold for listing under this criterion.

Criterion (g) Representativeness

An item is important in demonstrating the principal characteristics of a class of NSW's

cultural or natural places; or

• cultural or natural environments.

(or a class of the local area's

cultural or natural places; or

- cultural or natural environments.)
- The place is broadly representative of houses designed in the mid-Twentieth Century Modernist style.

Integrity

 Apart from the loss of joinery and furniture, the integrity of the building is high. There are some elements that require repair.

Based on the above assessment, it is possible that the property would meet the threshold for listing as a local item in the Woollahra LEP 2014 under at least four criteria (associative, aesthetic, rarity, representativeness). It is likely that it would meet the threshold for listing under one criteria (aesthetic). It is not recommend that listing is pursued at this stage because:

- While reaching the threshold under criterion C is considered more likely than not, the conclusions of the applicant's consultant that the property does not meet the threshold under any criteria are evidence-based and reasonable. It is true that there are higher quality examples of both the style and the work of the specific architect, and that there is no evidence of the building having been recognised either at the time of its design or subsequently by scholars as part of Reves' oeuvre. These facts do not preclude the listing of the place, but do reduce the likelihood that it will reach the threshold.
- Demolition of internal joinery and furniture has already had an impact on the significance of the place.
- The proposed works carry a substantial risk of further impacting the significance of the place.
- It is not advisable to pursue an Interim Heritage Order, which would be required to mitigate this risk, unless an assessment is convinced of the item's value and high likelihood of reaching the threshold for listing, due to the cost of the pursuit of an Interim Heritage Order borne by Council as well as potential costs for the applicant.

Clause 5.10 Heritage Conservation

In consideration of the above assessment, the development an assessment is not required against Clause 5.10 of the Woollahra LEP 2014 except in regard to Aboriginal heritage, which is addressed above.

Significance of items in the vicinity

There are no listed heritage items in close proximity that would be adversely affected by the proposal.

Page 4 of 5



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 not impact the listed heritage of Woollahra.

Part 5.10

No assessment under this clause is required except as discussed in reference to the National Parks & Wildlife Service Act 1979.

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 is recommended.

Standard Conditions

2B Recording of significant or contributory buildings prior to any demolition or alteration
8B Archaeological Features - Unexpected Findings
9B Skeletal Remains
10B Aboriginal Objects – Unexpected Findings
12B Aboriginal Heritage Due Diligence Responsibilities

Special Conditions

1.	Salvage
	Stone, brick, joinery and decorative architectural elements to be demolished, which include windows and doors, chimney pieces, timber flooring and ceiling roses must be catalogued, labelled, 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.
	Condition Reason:
	To promote the use of ecologically sustainable building materials in accordance with O2 of Clause E6.1.4 Woollahra DCP 2015 and to enable the conservation of other heritage buildings in accordance with the Woollahra LEP 2014, Clause 5.10 Heritage Conservation, 1(a), (b).

Tristan Ryan Senior Strategic Heritage Officer 16 August 2024 Completion Date

Page 5 of 5

LOCAL PLANNING PANEL DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D4
FILE No.	DA278/2024/1
ADDRESS	451 New South Head Road DOUBLE BAY (Tenancy L16)
COUNCIL WARD	Cooper Ward
ZONING	E1 Local Centre
PROPOSAL	Extend the Business Hours of Operation of a "Food and Drinks Premises"
TYPE OF CONSENT	Local
COST OF WORKS	\$1.00
DATE LODGED	19/07/2024
APPLICANT	Embrace The Chi Pty Ltd
OWNER	Woollahra Municipal Council & BGIS Pty Ltd
AUTHOR	Ms S Soliman
TEAM LEADER	Mr Thomas Wong
SUBMISSIONS	0
RECOMMENDATION	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:

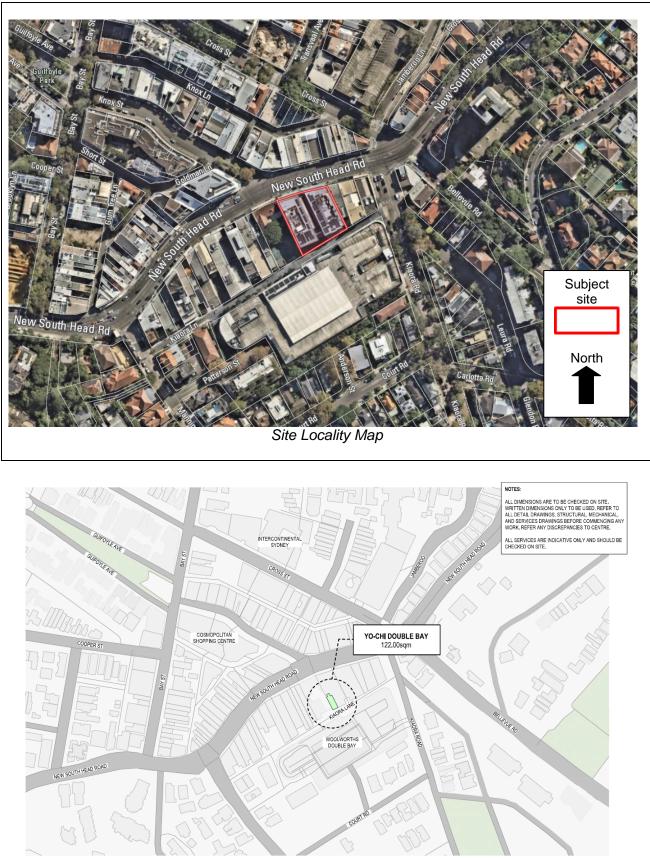
- Conflict of interest
 - Development for which the applicant or land owner is:
 - a) the council

2. REASONS FOR RECOMMENDATION

The development application (DA) has been assessed within the framework of the matters for consideration under section 4.15 of the Environmental Planning and Assessment (EP&A) Act 1979 and is recommended for approval because:

- It is considered to be satisfactory with all relevant planning policies including the objectives of Woollahra Local Environmental Plan (LEP) 2014 and Woollahra Development Control Plan (DCP) 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; and
- The proposal is in the public interest.

3. LOCALITY PLAN



Site Plan (Source: Sheet No. A100, prepared by Yo-Chi, dated 14/06/2024)

4. PROPOSAL

This development application (DA) proposes to extend business operation hours associated with an approved "Food and Drinks Premises" (Yo-Chi Frozen Yogurt Store) located at Tenancy L16/451 New South Head Road, Double Bay, noting that the approval of the use and internal fitouts were undertaken via Complying Development Consent (CDC-240205-01).

Approved operation hours (under CDC-240205-01):

- 7:00am to 10:00pm Monday to Saturday
- 7:00am to 8:00pm Sunday or a public holidays

Proposed operation hours:

- 7:00am to <u>12:00 midnight</u>, Monday to Saturday
- 7:00am to <u>10:00pm</u>, Sunday including all bank and public holidays

5. ISSUES

5.1 Exceptions to Development Standards in Woollahra Local Environmental Plan 2014

Nil.

5.2 Primary Issues

Nil.

PROPERTY DETAILS AND REFERRALS

6. SITE AND LOCALITY

Existing Site and Surrounds

The subject tenancy, known as Tenancy L16, is located at the ground floor level of a large commercial complex located at 451 New South Head Road, Double Bay. The commercial complex is located on the southern side of New South Head Road, between Kiaora Road to the east and Manning Road to the west.

The subject tenancy forms part of a strip of Food and Drinks Premises situated along the 'Kiaora Lane pedestrian arcadia' to the South of the building.

The subject site is located within the Double Bay Centre, which is predominately defined by a mix of commercial uses, comprising retail shops (including Woolworths), cafés, restaurants and offices.

7. RELEVANT PROPERTY HISTORY

Current use

The approved use of the subject tenancy is for a Retail Premises – Food and Drink Premises.

Relevant Application History

Complying Development Certificate No. CDC-240205-01 was issued on the 25 July 2024 to allow internal alterations and the use of Tenancy L16 as a Yo- Chi Store (Self-Serve Frozen Yogurt and Acai). The approved hours of operation are as follows:

- 7:00am to 10:00pm Monday to Saturday
- 7:00am to 8:00pm Sunday or a public holidays

8. **REFERRALS**

Referral	Summary of Referral Response	Attachment
Environmental Health	No objection, subject to standard conditions.	3
	More specifically, Council's Environmental Health Officer provided the following commentary:	
	'The site is located at 451 New South Head Road. The applicant proposes extension of hours of operation. Previous CRM history associated with the business [shows that there are] no noise complaints noted. The applicant submitted a Plan of Management for assessment. No further action from Environmental Health is warranted.'	

ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

The relevant matters for consideration under Section 4.15 of the EP&A 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 07 August 2024 to 22 August 2024 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. No submissions were received in response to the notification process.

9.2 Statutory Declaration

The applicant has completed the statutory declaration, dated 27/08/2024, declaring that the site notice for DA278/2024/1 was erected and maintained during the notification period in accordance with Schedule 1 of the Woollahra Community Participation Plan 2019.

10. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

10.1 Part 1.2: Aims of Plan

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

10.2 Land Use Table - E1 Local Centre zone

The proposed extension of operation hours is associated with an approved Food and Drink premises which is permitted within the E1 Local Centre zone. Furthermore, the proposal is consistent with the relevant objectives of the zone.

10.3 Part 5.10: Heritage Conservation

The subject site is not located within a heritage conservation area, nor has it been identified as a heritage item.

10.4 Part 6.10: Development in local centres

Part 6.10 aims to ensure the scale and function of development in local centres is appropriate for the location, and to make certain development in local centres is compatible with the desired future character and amenity of surrounding residential areas.

Part 6.10(3) requires Council to consider the impact of the development on the amenity of any surrounding residential areas, and the desired future character of the local centre. Furthermore, Council must consider whether the development is consistent with the hierarchy of centres.

The proposed extension in operation hours is considered to be acceptable with regard to the immediate site context and will not result in any unreasonable amenity impacts to neighbouring tenancies/properties. As such, the proposal is acceptable with regard to Part 6.10 of Woollahra LEP 2014.

11. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

11.1 Chapter D5: Double Bay Centre

11.1.1 Part D5.4.13 Desired Future Character – Kiaora Lane

A proposal to increase to the hours of operation will support the continued use of the site as a food and drink premises, and in turn, support the function of the broader centre.

This application does not seek to alter the existing building, protecting the desired future character of Kiaora Lane.

11.1.2 Part D5.6.2 Use

The development application proposes to increase the hours of operation in association with an approved use. As such, no further consideration is required under this Part.

12. CONTRIBUTION PLANS

The DA does not propose any physical works that would result in costs. As such, a contribution levy does not apply.

13. APPLICABLE ACTS/REGULATIONS

Nil as relevant to the scope of this DA.

14. THE LIKELY IMPACTS OF THE PROPOSAL

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

15. THE SUITABILITY OF THE SITE

The proposal is suitable with respect to its context.

16. THE PUBLIC INTEREST

The proposal is considered to be in the public interest.

17. CONCLUSION

The proposal is acceptable against the relevant considerations under s4.15.

18. DISCLOSURE STATEMENTS

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

19. 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. 278/2024/1 to extend the Business Hours of Operation of a "Food and Drinks Premises" on land at 451 New South Head Road Double Bay, subject to the following conditions:

ALL DEVELOPMENT TYPES

A. GENERAL CONDITIONS

Α.	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.
Α.	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.
		<i>Approved Plans</i> mean the plans endorsed by Council referenced by this consent as amended by conditions of this consent.
		<i>Local native plants</i> 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 <i>Act</i> , 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.
		<i>Site work</i> 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 storag the demol the piling, excavation the deliver or the occup certificate. 	e of waste, materials, s ition of a building, piering, cutting, boring n of land, ry to or removal from th ation of the <i>site</i> by any	ne, article, material, or thir site crane, machine, article , drilling, rock breaking, ro ne <i>site</i> of any machine, ar person unless authorised	e, material, or thing, ock sawing or ticle, material, or thing, d by an occupation	
	Condition R	eason: To ensure all p	arties are aware of the re	levant definitions.	
A. 3.	Approved P	lans and Supporting I	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	
	24/125542	Plan of Management	Prestige Town Planning	17 July 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. 				
			arties are aware of the ap es to the development.	proved plans and	

DEMOLITION WORK

B. BEFORE DEMOLITION WORK COMMENCES

Nil.

REMEDIATION WORK

C. ON COMPLETION OF REMEDIATION WORK

Nil.

BUILDING WORK

D. BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Nil.

E. BEFORE BUILDING WORK COMMENCES

Nil.

F. DURING BUILDING WORK

Nil.

G. BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Nil.

H. OCCUPATION AND ONGOING USE

H. 1. Hours of Deliveries During the occupation and ongoing use, the hours of deliveries are limited to the following: a) Monday to Friday: 7:00am - 6:00pm b) Saturday, Sunday and Public Holiday: 8:00am - 6:00pm Notes: · Deliveries to or dispatches from the site must not be made outside these hours. **Condition Reason:** This is to mitigate amenity impacts upon the neighbourhood Η. 2. **Trading Hours** During the occupation and ongoing use, trading hours (indoor) are limited to: Monday to Saturday: 7:00am – 12:00 mid-night Sunday and Public Holiday: 7:00am - 10:00pm b) 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.

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. 3. 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/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 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.
Н.	4.	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.
Н.	5.	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 Prestige Town Planning and dated 17 July 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.

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.

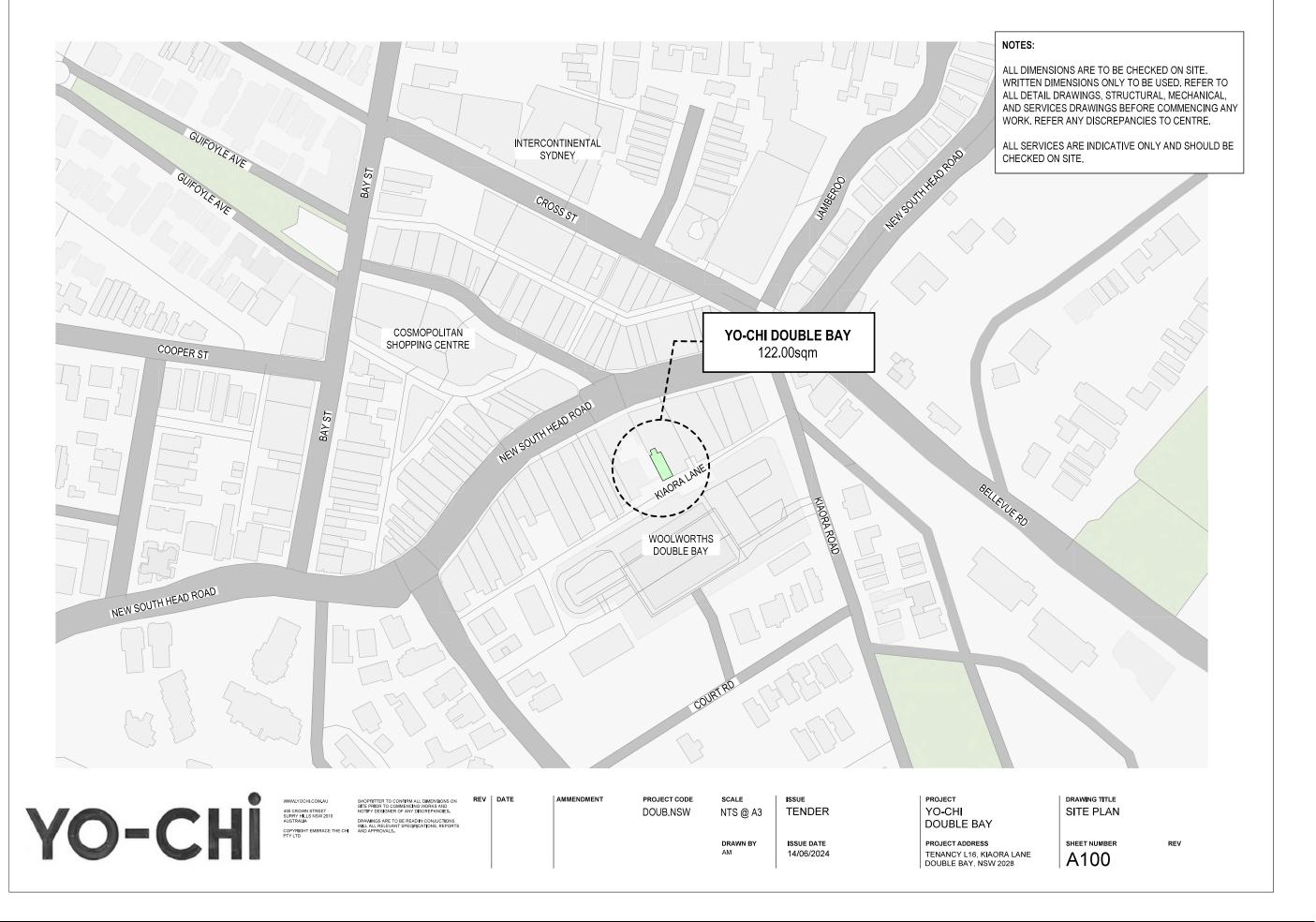
STRATA SUBDIVISION

M. BEFORE ISSUE OF A STRATA CERTIFICATE

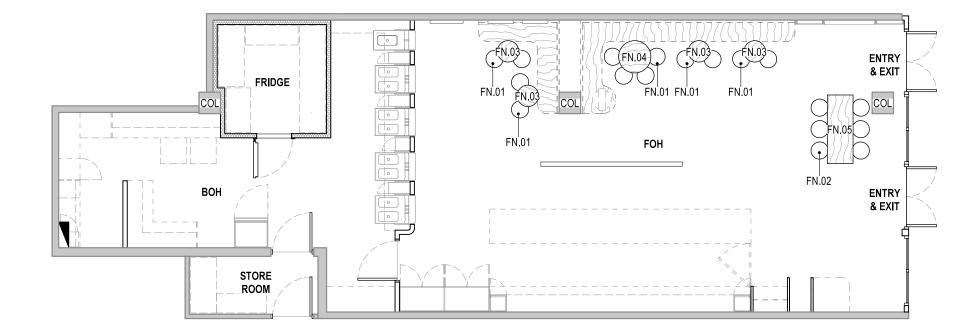
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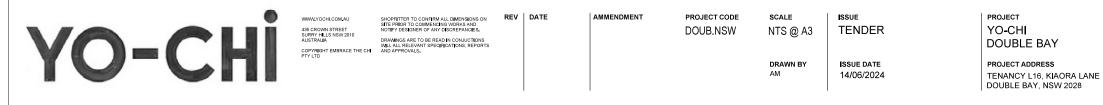
Attachments

- 1. Plans and Elevations <u>J</u>
- 2. Plan of Management J
- 3. Referral Response Environmental Health 😃 🛣



LEGEN	D	
CODE	DESCRIPTION	QTY
FN.01	STANDARD TIMBER STOOL	12
FN.02	HIGH TIMBER STOOL	6
FN.03	ROUND TABLE 500 DIA	4
FN.04	ROUND TABLE 750 DIA	1
FN.05	HIGH TABLE 2000L x 600W	1



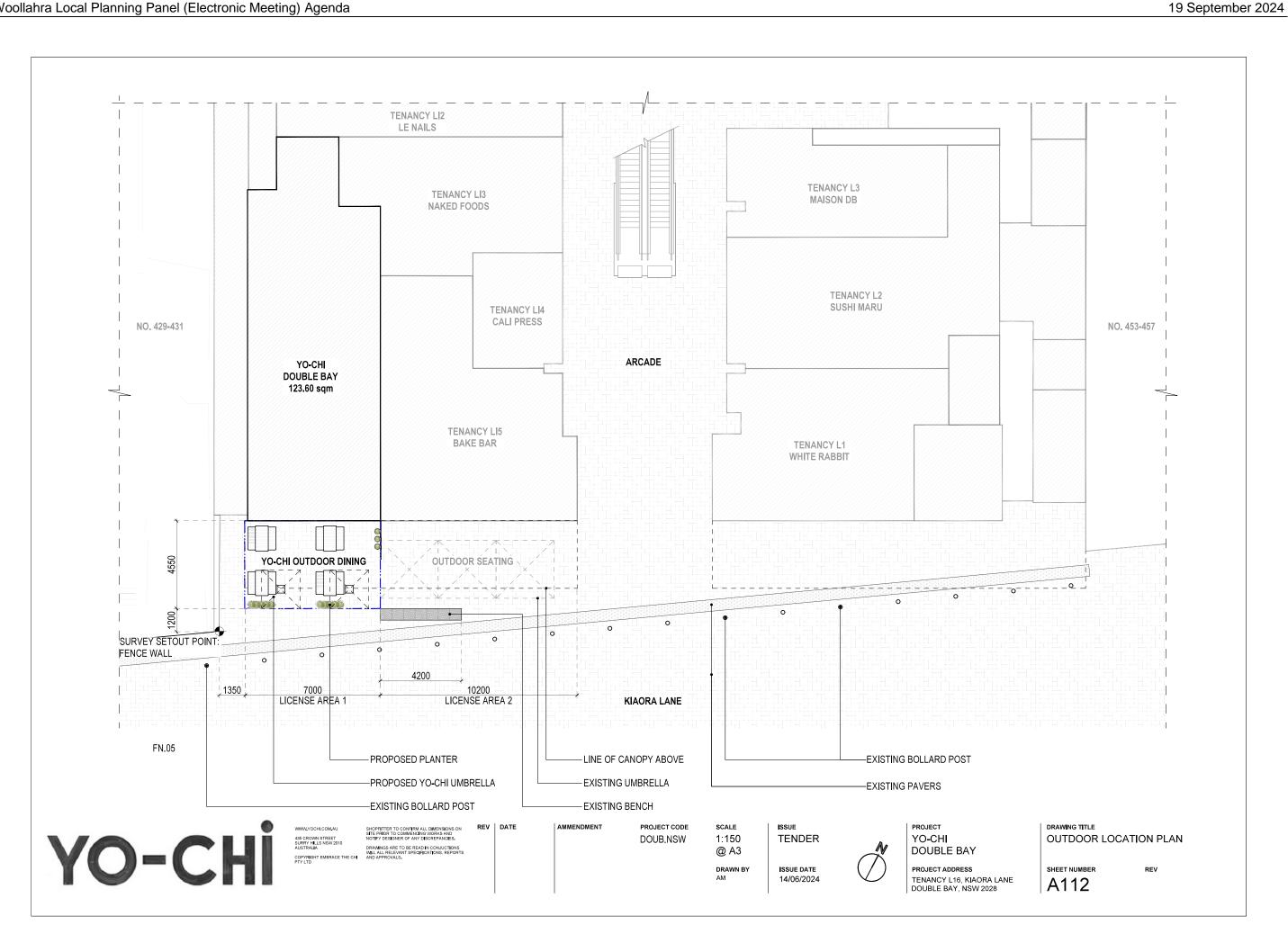


SHEET NUMBER A111

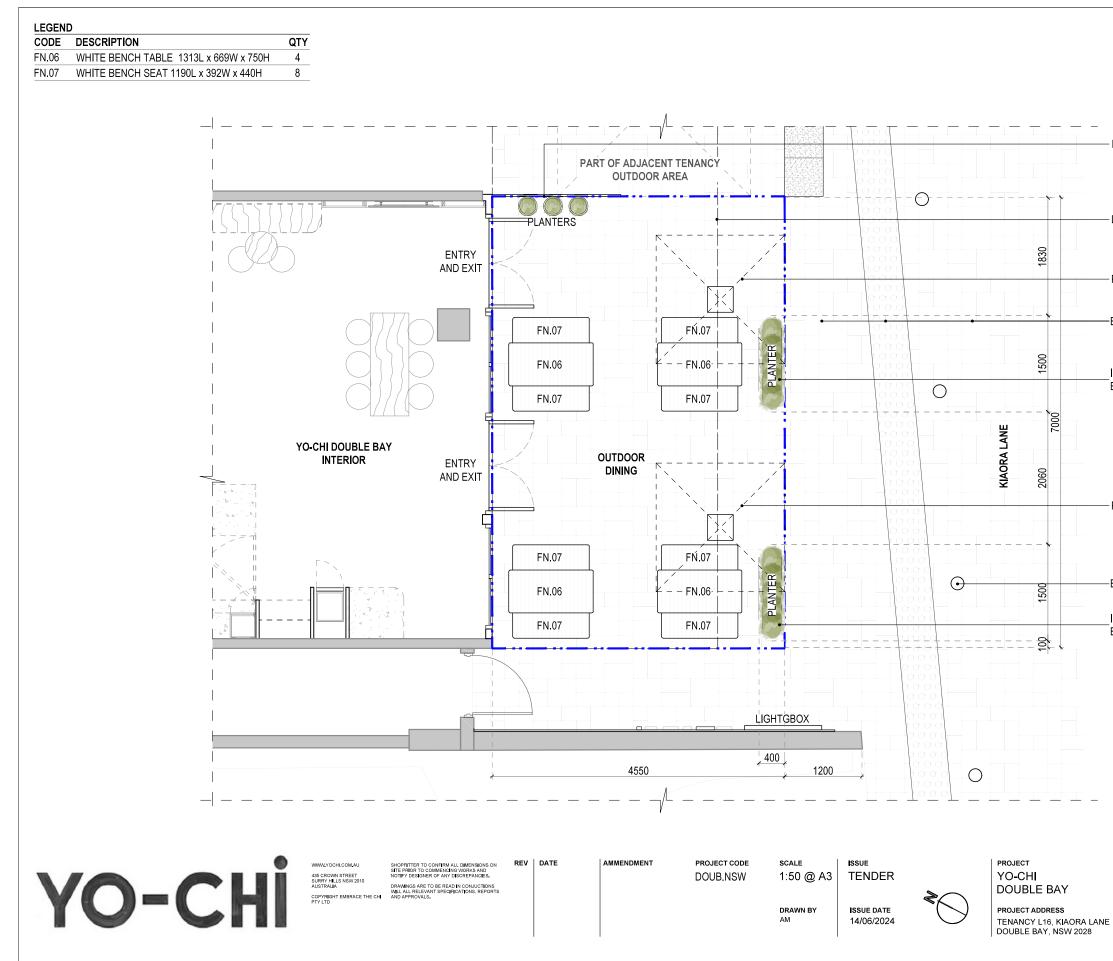
REV

DRAWING TITLE FURNITURE PLAN





Woollahra Municipal Council Woollahra Local Planning Panel (Electronic Meeting) Agenda



SHEET NUMBER A113

REV

DRAWING TITLE OUTDOOR PLAN

INTERNALLY LINE PLANTER BOX WITH STAINLESS STEEL

-EXISTING BOLLARD POST

- PROPOSED YO-CHI UMBRELLA

-EXISTING PAVERS

PROPOSED YO-CHI UMBRELLA

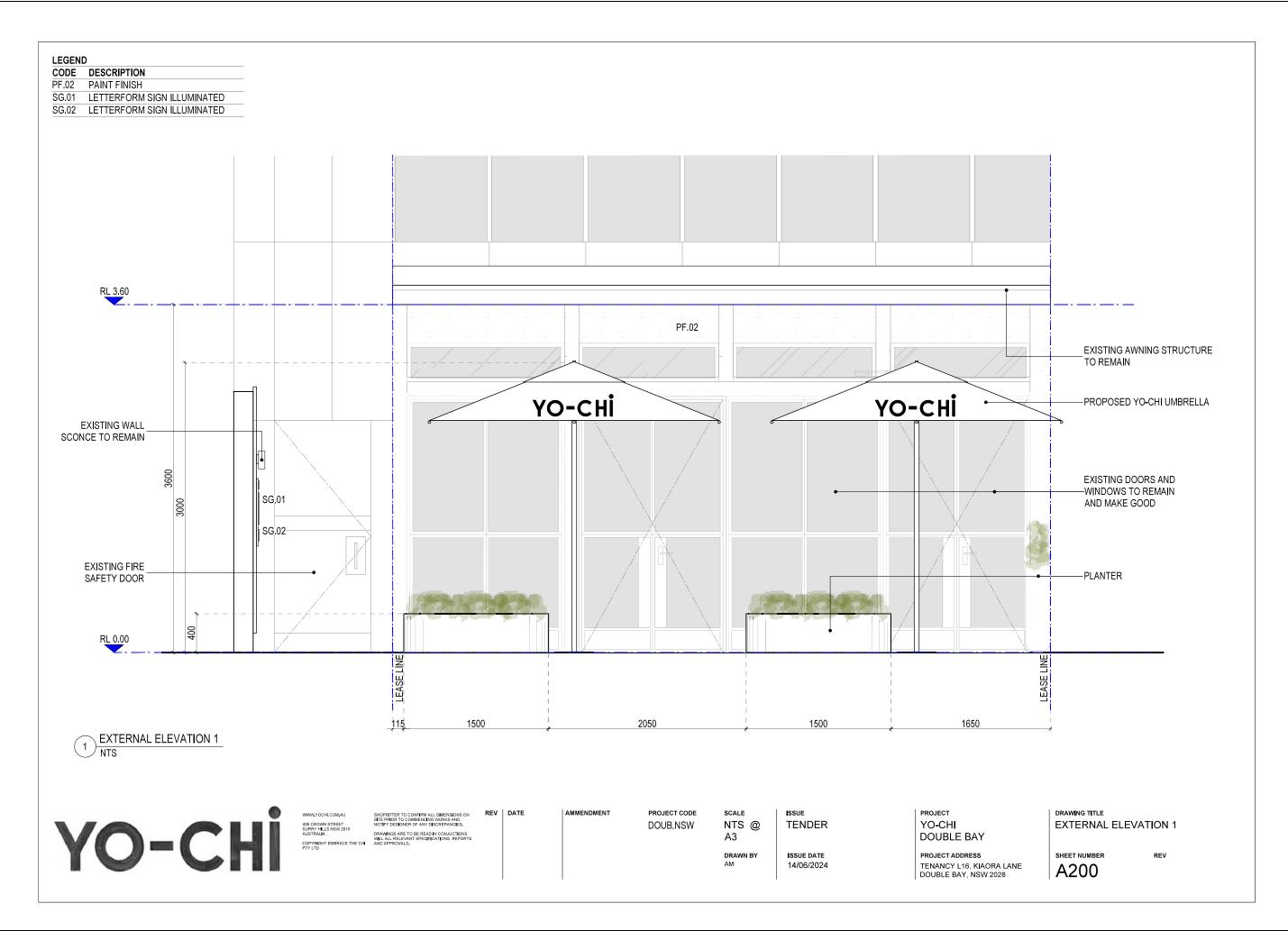
_INTERNALLY LINE PLANTER BOX WITH STAINLESS STEEL

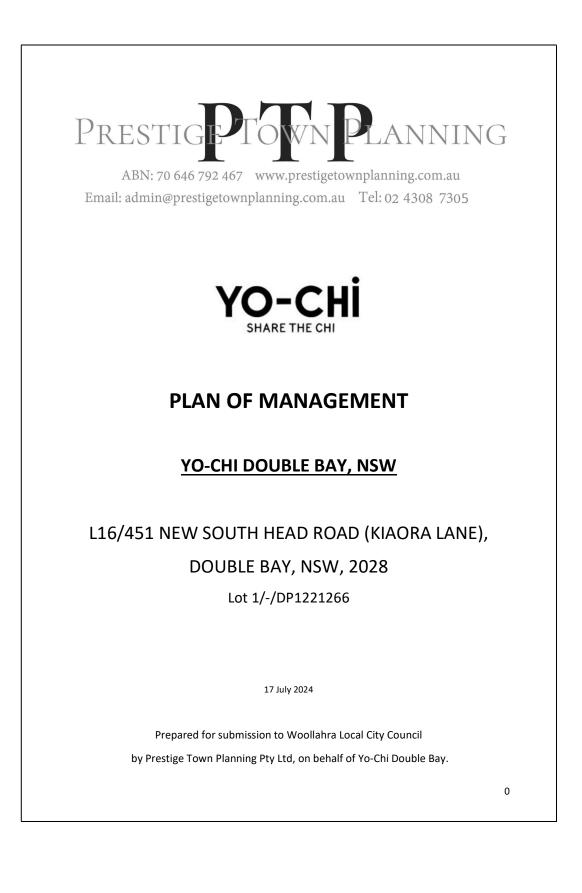
LINE OF CANOPY ABOVE

19 September 2024

EXISTING FABRIC PARTITION

Woollahra Municipal Council Woollahra Local Planning Panel (Electronic Meeting) Agenda





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Introduction

This Plan of Management has been prepared by Prestige Town Planning Pty Ltd to accompany the Development Application for Extended Business Hours of Operation of a "Food and Drinks Premises" (Yo-Chi Frozen Yogurt Store) located at Tenancy L16/451 New South Head Road, Double Bay, NSW, 2028.

Purpose of this Plan of Management

The purpose of this Plan of Management is to describe the operational details of the business and outline measures that should be implemented in order to mitigate any potential impacts on adjoining properties. Details in the plan include the number and hours of staff that is to be employed on the premises at any one time, security and access arrangements as well as noise and patron management.

Yo-Chi Operational Overview

The "YO-Chi" brand is a locally owned and proudly Australian artisanal food and drinks premises that aims to provide healthy, premium and signature frozen yogurt self-serve, dining in and take away experiences to the general public. The brand currently features authentic styled establishments in Victoria, New South Wales, Queensland, Western Australia and South Australia and offers a vast array of frozen yogurt options with choices of healthy toppings to be enjoyed as either a snack or a desert. The establishments are generally small in nature and features intimate on-site dining experiences with small group banquette styled seating, while focussing primarily on take-away.

Hours of Operation

The trading hours of the establishment will be 7:00am to 12:00 midnight, Monday to Saturday and 7:00am to 10:00pm, Sunday including all public and bank holidays.

Staffing

The premises would operate with a maximum of six (6) staff members as follow:

- One (1) Manager
- One (2) Staff for front of house services
- Four (3) Staff for back of house and kitchen services

Maximum Capacity

Absolute maximum patron capacity of sixty (60) at any one time, excluding staff.

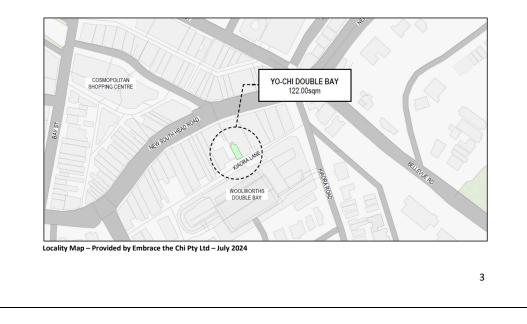
- Maximum seating capacity of Forty (45)
- Maximum standing capacity of Fifteen (15)

The Site

The subject property address relates to the ground-floor level Tenancy L16 located at 451 New South Head Road (Kiaora Lane), Double Bay, NSW, 2028; a property also known as the "Woollahra Library" or the "Double Bay Day Hospital" and which is located on the Southern side of New South Head Road. The subject tenancy forms part of a strip of Food and Drinks Premises situated along the "Kiaora Lane" pedestrian arcadia to the South of the building and located within an E1-Local Centre Land Use Zone pursuant to the Woollahra Local Environmental Plan 2014. The subject locality is noted to be predominantly commercial in nature and surrounding land uses include shops (Woolworths), cafés, restaurants and offices. The subject tenancy features a primary road frontage onto Kiaora Lane with direct pedestrian access from the thoroughfare and which was previously utilised as a "China Diner" restaurant.



Locality and Zoning Map – NSW Planning Portal eSpatial Viewer – Accessed 4 July 2024 - Superimposed





Shopfront Elevation from Kiaora Lane – Provided by Embrace the Chi Pty Ltd – July 2024

Safety and Security

Due to the very nature of the subject 'Yo-Chi' food and drinks premises and its locality, the establishment is not considered to require any on-site security guards during the proposed hours of operation. All staff members would however be required to have extensive experience and expertise in working in late night venues of a similar kind. All staff would further be obligated to committing to the overall safety and security of patrons during all hours of operation and will be required to proactively monitor both the establishment's operations as well as its patrons as to identify any potential problematic behaviour. The establishment would further invest in adequate management procedures and etiquette training and staff will remind patrons to behave in a courteous and respectful manner as required.

The proposed establishment would further have clear and appropriate signage displayed at the main entrance and front counter area of the premises as to remind patrons to behave in a quiet, courteous and respectful manner at all times. Should patrons be found to cause amenity disturbance through loud or obnoxious behaviour, staff would immediately refuse entry to the establishment and ask them to leave the premises. If deemed necessary, the NSW Police will be notified and engaged as appropriate. The proposed establishment will not be serving and/or selling alcohol to patrons on the premises.

A CCTV system is further to be utilised and include 24-hour digital video recording, with high resolution cameras positioned at the main entrance and a number of other cameras strategically located in and around the facility to ensure that supervision is maximised. The coverage of these cameras will be thorough both internally and externally and will provide excellent surveillance of the premises for the safety of both its patrons as well as the local community. Security camara surveillance and off-site security response services will be engaged as necessary by an appropriate and contracted private security company.

<u>Noise</u>

Potential operational noise associated with the proposed establishment is to be appropriately managed and controlled during all hours of operation. The establishment shall always be committed to minimising both internal and external noise emissions as to avoid potential amenity disturbance to surrounding properties. It should however be considered that the intimate nature of operations associated with the proposed establishment and the small-scaled artisan boutique concept itself is not conducive of generating unacceptably loud noises nor to attract large groups of crowds. Instead, the venue focuses primarily on serving take-away customers and offers only intimate small group experiences for parties comprising of mostly two (2) to eight (8) patrons per sitting as well as catering for single customers wishing to have a meal by themselves.

There will further be no loud music playing at the venue, neither internally nor externally and noise levels will be controlled as to enable speech intelligibility without the need to raise one's voice to communicate at any one time. Staff will be expected to continuously monitor and manage patron's behaviour and control overall noise levels to an appropriate level. All staff are to practice responsible serving practices during all hours of operation (despite there being no alcohol served on site) and failure by patrons to abide by these principles will lead to the refusal of service and being requested to leave the premises immediately.

All operations (including security alarms, kitchen operations, and the serving of customers) will be wholly conducted within the confines of the premises and front of house staff will be delegated to manage potential customer queuing during periods of higher demand. Queuing customers (to a maximum of two parties of up to five (5) patrons each) will be accommodated wherever practical in an orderly and organised fashion, and should the venue be filled to capacity, customers would be asked to place their name on a waiting list and will be contacted by staff to return to the venue when their table is prepared and ready. Larger sized seating parties of six or more patrons would however be encouraged to make reservations before visiting the establishment.

Staff are further to ensure that patrons leave the premises in a quiet and sensible manner to minimise any potential impacts on the surrounding amenity. Noise generating activities such as placing empty containers or bottles in bins, receipt of deliveries and waste collections are to be conducted during the daytime hours only (7am to 6pm Monday to Saturday, 8am to 6pm Sundays and Public Holidays). Mechanical equipment is to be regularly maintained and serviced to maintain low mechanical noise emission levels; and at the cessation of trade, staff and security are to actively discourage loitering near the venue to minimise any potential impact on the surrounding amenity.

All waste separation practices and preparations for collection shall further be wholly conducted within the confines of the property and is to be collected during scheduled collection times as per the relevant regulations and during the above daytime hours only. The venue is further expected to always comply with the relevant noise and vibration standards and guidelines under the Australian Standards, Protections of the Environment Operations Act 1997 and the Environmental Planning Act on Industrial Noise Guidelines.

Complaint Resolution

Management will maintain a complaint register to record any complaint made by police, Council and/or surrounding business owners or residents and will endeavour to fully address any reasonable concerns expressed by such persons. Management will endeavour to fully address all reasonable concerns of people in the surrounding area or other third parties without the unnecessary involvement of Council or the New South Wales Police Service and will meet with any complaints and endeavour to completely address all reasonable concerns. Details of the owner will also be made available for complaints to be directed to.

Details which are to be recorded within the complaints and incident register as to include the following as a minimum:

- Complaint/Incident date and time
- Name, contact and address details of person(s) making the complaint
- Nature of the complaint
- Name of staff member that received and registered the complaint
- Action taken by the venue to resolve the complaint
- Follow up(s) procedure
- Outcome of the resolution

Following the receipt of a complaint of any kind, staff are to immediately consult the CCTV monitoring system and table reservation data upon receipt of the complaint as to identify any patrons and/or staff which were present at the time of an incident. The CCTV footage and table reservation data shall then be made readily available to Police and/or Council should an incident occur that requires further investigation.

Emergency Evacuation

In the event of an emergency, the following evacuation procedures are to be strictly followed by all staff and patrons to the premises:

- 1. Stop all activities immediately.
- 2. Assess that all persons are able to evacuate the venue in a safe and controlled manner.
- 3. Follow EXIT signs to the nearest safe exit.
- 4. Staff are to guide and instruct patrons to walk briskly, but not to run.
- 5. Allow for emergency personnel to enter the venue as required and follow all directions.
- 6. Continue evacuation via the nearest safe exit route.
- 7. Move away from the building and proceed to the Evacuation Assembly Area.
- 8. Do not re-enter the building without an "all clear".

Emergency procedures and evacuation diagrams are to be displayed within the premises at all times.

Maintenance, Cleaning and Waste Management

It is noted that the volume of waste generated by the proposed establishment is minimal when compared to other and/or the previous food and drinks premises due to its nature, size and capacity. Bins will be provided for patrons throughout the premises and will be routinely emptied by staff. All food waste will be stored separately in proper containers before being removed for disposal by appropriate contractors. All waste is to be appropriately sorted and kept within the existing 'bin storage' area at the rear of the establishment for removal. All waste removal activities are to be conducted outside of the proposed business hours and during appropriate times as to avoid neighbourhood amenity disturbance.

All appliances, furnishings, apparatus and waste storage amenities will be maintained in good working order and serviced on a regular basis as required. Cleaning of the premises, equipment, appliances, furniture and waste storage areas will be carried out on a daily basis by staff and routinely by private cleaning contractors. Personal cleaning articles such as napkins and cleaning fluids will also be provided to patrons as required and tables are to be cleared and cleaned after every use.

Conclusion

In order to satisfy Council that the facility can operate harmoniously with surrounding land uses during the proposed hours of operation, the mitigation measures discussed in this report are to be undertaken on a daily basis as to ensure that the subject development would not adversely affect the surrounding premises in the locality. Through the implementation of the aforementioned mitigation measures, the facility would not create any adverse impacts for any neighbourhood or surrounding land uses.



16 August 2024

REFERRAL RESPONSE – ENVIRONMENTAL HEALTH

FILE NO:	Development Applications: 278/2024/1
ADDRESS:	451 New South Head Road DOUBLE BAY 2028
PROPOSAL:	Extend the Business Hours of Operation of a "Food and Drinks Premises"
FROM:	K Pakhomova
TO:	Ms S Soliman

1. ISSUES

2. DOCUMENTION

I refer to the following documents received for this report:

- Statement of Environment Effects, referenced 24/125543, prepared by Prestige Town Planning, dated 17 July 2024.
- Plan of Management, referenced 24/125542, prepared by Prestige Town Planning, dated 17 July 2024.

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

Page 1 of 5



Proposed Development

This Development Application seeks consent for Extended Business Hours of Operation of a "Food and Drinks Premises" (Yo-Chi Frozen Yogurt Store) located at Tenancy L16/451 New South Head Road, Double Bay, NSW, 2028. It is noted that the current business hours of operation are limited via a Complying Development Certificate (CDC) under schedule 8 of State Environmental Planning Policy (Exempt and Complying Development Code) 2008 to 7:00am to 10:00pm Monday to Saturday, 7:00am to 8:00pm Sunday and public holidays.

Proposed Development Parameters

- The proposed establishment would feature on-site 'banquette' style seating with a
 maximum capacity of up to sixty (60) patrons and will primarily focus on serving
 artisan take-away and self-serve frozen yogurt food to walk-in customers.
- Maximum number of staff to be six (6) at any one time. One (1) Manager, Two (2) Front of house with Three (3) staff in kitchen and washroom areas.
- Hours of operation to be 7:00am to 12:00 midnight, Monday to Saturday and 7:00am to 10:00pm, Sunday including all bank and public holidays.
- Deliveries to be facilitated during daytime hours of operation only (7am to 6pm Monday to Saturday, 8am to 6pm Sundays and Public Holidays).

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

The site is located at 451 New South Head Road. The applicant proposes extension of hours of operation (please see above). Previous CRM history associated with the business is complainant with no noise complaints noted. The applicant submitted a Plan of Management for assessment. No further action from Environmental Health is warranted.

6. RECOMMENDATION

Council's Environmental Health Officer has determined that the proposal is satisfactory, subject to the following conditions:

A. GENERAL CONDITIONS

Α.	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			

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	Acoustic Report			
	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)			
24/125542	Plan of Management	Prestige Town	17 July 2024	
	-	Planning		
	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

- C. ON COMPLETION OF REMEDIATION WORK
- D. BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE
- E. BEFORE BUILDING WORK COMMENCES
- F. DURING BUILDING WORK

G. BEFORE ISSUE OF AN OCCUPATION CERTIFICATE H. OCCUPATION AND ONGOING USE

Н	1.	Hours of Deliveries		
		During the occupation and ongoing use, the hours of deliveries are limited to the following:		
		a) Monday to Friday: 7:00am – 6:00pm		
		b) Saturday, Sunday and Public Holiday: 8:00am – 6:00pm		
		Notes:		
		Deliveries to or dispatches from the site must not be made outside these hours.		
		Condition Reason: This is to mitigate amenity impacts upon the neighbourhood		

н 2. **Trading Hours** During the occupation and ongoing use, trading hours are limited to:

Page 3 of 5



a) Monday to Saturday: 7:00am – 12:00am
b) Sunday and Public Holiday: 7:00am – 10:00pm

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.

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 3.	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/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 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 4.	Noise from Mechanical Plant and Equipment	
	During the occupation and ongoing use, the noise level measured at any	

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.

Page 4 of 5



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) <u>www.epa.nsw.gov.au/your-environment/noise/industrial-noise/noisepolicy-for-industry-(2017)</u> and Noise Guide for Local Government (2013) <u>www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guidelocal-government</u>

Condition Reason: To protect the amenity of the neighbourhood.

Kristina Pakhomova Environmental Health Officer 16/8/2024 Completion Date

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LOCAL PLANNING PANEL DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D5
FILE No.	DA143/2024/1
ADDRESS	144 Glenmore Road PADDINGTON
COUNCIL WARD	PADDINGTON
SITE AREA	303m ²
ZONING	R2 Low Density Residential
PROPOSAL	Alterations and additions including a new garage with roof terrace
TYPE OF CONSENT	Local development
COST OF WORKS	\$669,934.00
DATE LODGED	01/05/2024
	14/08/2024 Amended documentation
APPLICANT	Kenstrom Design Pty Ltd
OWNER	N J Swift
AUTHOR	Ms F Stano
TEAM LEADER	Mr G Fotis
SUBMISSIONS	1 (One)
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:

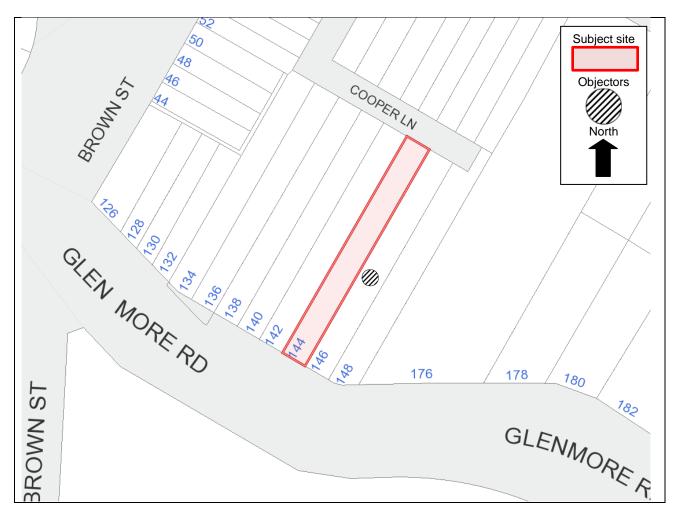
- Departure from development standards
 - (a) Development that contravenes a development standard imposed by an environmental planning instrument by more than 10%

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, subject to conditions, 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 height of buildings development standard is justified; and
- The proposal is in the public interest.

3. LOCALITY PLAN



4. PROPOSAL

Refer to Section 7 of the report for relevant application history, including amendments to the proposal. As amended, the proposal involves the following works:

- Boundary-to-boundary extension to the Lower Ground Floor existing rear addition to incorporate the existing side breezeway in the internal floorspace. New awning facing the rear.
- Rear and side extensions to the Ground Floor existing rear addition to incorporate part of the existing outdoor terrace in the internal floorspace. The proposed extension will present an approximate side setback of 1m.
- New First Floor rear addition to accommodate a bedroom and a balcony with hipped roof above. Minor internal layout reconfiguration to the First Floor rear addition to accommodate a bathroom. New bathroom window facing the Eastern side breezeway.
- To the rear laneway (Cooper Lane), new single garage with storage area. New trafficable roof terrace above.

5. ISSUES

5.1 Exceptions to Development Standards in Woollahra Local Environmental Plan 2014

Clause	Development Standard	Departure from Control	Conclusion
Part 4.3	Height of Buildings	10.56m or 11.15% departure from the 9.5m control	Satisfactory

5.2 Primary Issues

Issue	Conclusion	Section
Departure from Height of Building development standard.	Satisfactory.	13.4
Council's Heritage Officer Issues.	Satisfactory, subject to recommended conditions.	14.1
Privacy Issues	Satisfactory, subject to recommended conditions.	14.1
Objectors' concerns	Satisfactory, and/or satisfactory subject to recommended conditions.	5.3

5.3 Summary of Submissions

Issue	Conclusion	Section
Issues related to the proposed height and bulk of the rear addition, including: - Visual intrusion. - Visual privacy impacts due to the proposed Ground Floor fenestration to the side (facing No.146 Glenmore Road). - Impacts on solar access. - Impacts on district views enjoyed from the dining area through north-facing windows. The objection also notes that the proposed development does not achieve objective O4 of Part C1.3.4 and Objectives O1, O2, O4 and O5 and controls C12, C14 and C23 of Part C1.4.2 of the Woollahra DCP 2015. Issues related to the proposed air- conditioning condenser unit located on the roof of the existing rear addition, including:	 Conclusion The proposal was assessed against Chapter C1 of the Woollahra DCP 2015 and it was considered acceptable in terms of setbacks, site coverage, bulk and scale, views and solar access (refer to assessment of Parts C1.4.3, C1.4.5, C1.4.6 and C1.4.9). Finally, the proposed development is generally consistent, in terms of setbacks and height with approved Development Applications in the immediate context (subject group), namely the subject site (DA2018/90/1), No.142 (DA2018/264/1) and No.146 (DA2020/535/1). Part C1.4.2 of the Woollahra DCP 2015 does not apply to the proposed development. The amended proposal noted in Section 7 of the report has deleted the originally proposed condenser unit to the roof. 	<u>Section</u> 13, 14 7
 Including: Acoustic impacts. It breaches the height limit. Visual intrusion. It is inconsistent with adjoining developments. It does not achieve objectives O3, O4 and controls C2, C3 and C4 of Part C1.5.11 of the Woollahra DCP 2015. 		
Issues related to the proposed roof terraces , including: - Submitted documentation does not allow to determine if the proposal is compatible with the context of the area. - Overlooking and visual privacy concerns due to the proposed Ground Floor balcony.	 The documentation submitted is considered sufficient to undertake the assessment of the proposed development, as detailed in this report. With regards to the Ground Floor terrace to the rear of the building, this relates to an existing terrace and the proposal seeks to reduce its size. The proposal remain generally consistent with the existing scheme and is considered compatible in the context. 	14

	Conclusion	Section
Issue - Overlooking and visual privacy concerns	Conclusion	Section
due to the proposed roof terrace above the garage.	 The privacy assessment of the proposal is detailed in this report and it was considered acceptable, subject to recommended conditions. 	
- Roof terrace above the First Floor study and shower does not allow to determine if it is BCA compliant, if it feasible in terms of maintenance and access. Furthermore, it does not comply with control C12 of Part C1.4.8 of the Woollahra DCP 2015. Visual privacy impacts due to the proposed Ground and First Floor rear balconies. The objection also notes Objective O8 of Part C1.4.8 and objectives O1 and O2 and controls C4, C5, C6 of Part C1.4.10 of the Woollahra DCP 2015.	 The proposal does not seek for any roof terraces above the First Floor. 	
Issues related to the architectural documentation , including: - Plans not indicating the extent of the existing building.	 The documentation submitted, including amendments and clarifications noted in Section 7 of the report has been considered sufficient to undertake the assessment of the proposed development. 	7, 13.3, 13.4
- Documentation submitted does not allow to determine the height of the proposed works and assess the proposal against Clause 4.3 and 4.6 of the Woollahra LEP 2014.		
Issues related to insufficient information , including:		7, 13
- Insufficient shadow diagrams.	 The applicant submitted additional shadow diagrams during the assessment of the application. 	
- Demolition plan not submitted.	 The scope of the demolition works is identified in the architectural drawings. Furthermore Council's Heritage Officer has reviewed the proposal and has posed no issues with regards to the documentation submitted. As such, the request for a Demolition Report has not been deemed 	
- Structural feasibility report not submitted.	 Demonstration receptor has not been deemed necessary in this instance. Council's Development Engineer has reviewed the submitted documentation and has considered the proposal satisfactory, subject to recommended conditions of consent. 	

PROPERTY DETAILS AND REFERRALS

6. SITE AND LOCALITY

Physical features

The subject site is rectangular in shape and 303m² in area. It is located on the north side of Glenmore Road, opposite The Royal Hospital for Women Park. The property has a depth of 53.5m.

Topography

The front boundary has a slight cross-fall from RL41.00 (East) to RL40.90 (West). The street front zone incorporates steps up to the Ground Floor Level (FL41.90) and steps down to a front courtyard and Lower Ground Floor Level at RL 38.70. The Lower Ground Floor Level opens to the rear courtyard at approximately RL38.10, and the site slopes towards the rear boundary at approximately RL 36.00. The rear boundary to Cooper Lane incorporates a significant cross-fall from East to West.

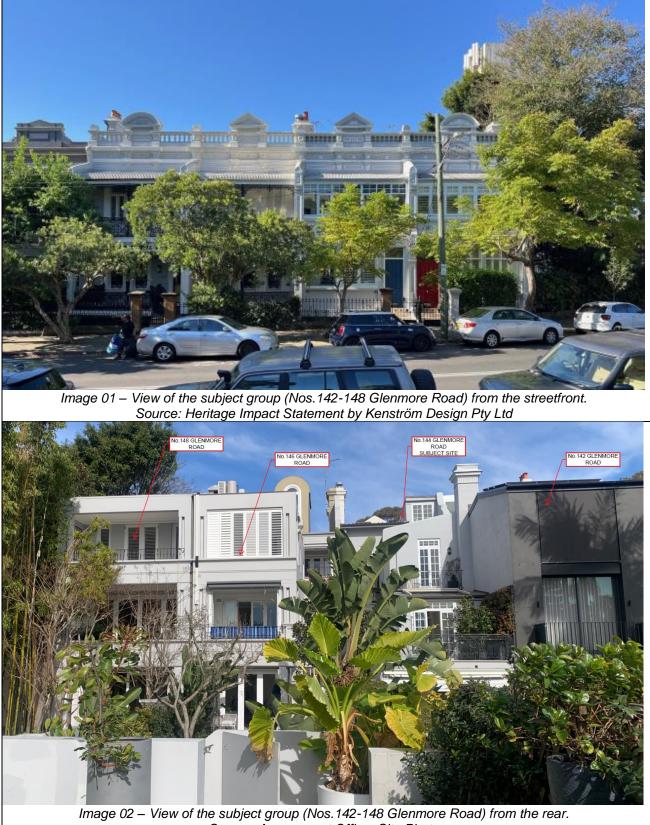
Existing buildings and structures

The site contains a large three storey terrace dwelling house. A masonry wall and gate separate the rear car-space with the rear yard.

Surrounding Environment

Three storey terrace houses adjoin the side boundaries of the subject site. The north side of Glenmore Road in this vicinity is characterised by large 3 and 4 storey terrace houses which front The Royal Hospital for Women Park. A large post-war residential flat building is located at No. 176 Glenmore Road to the east. Cooper Lane is characterised by garage structures, many with accessible roof terraces.





Source: Assessment Officer Site Photo

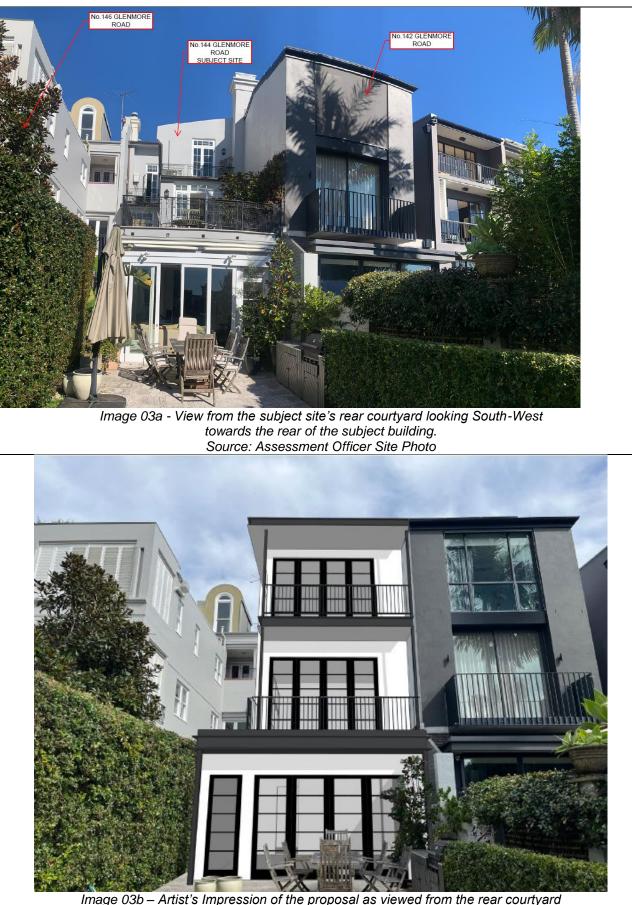


Image 03b – Artist's Impression of the proposal as viewed from the rear courtyard Source: Statement of Environmental Effects by Kenström Design Pty Ltd



mage 04 – View of the subject site as viewed from the rear lane (Cooper Lane) Source: Assessment Officer Site Photo

7. RELEVANT PROPERTY HISTORY

Current use

Residential dwelling Relevant Application History

DA2018/90/1 titled Demolish structures at the rear of building, construct a garage and a 3 level rear addition to dwelling, new swimming pool with landscaping and new boundary wall was approved on 15/11/2018 by the Woollahra Local Planning Panel. According to Council's database, a Construction Certificate for this works has not been issued.

Relevant Compliance History

None relevant.

Pre-DA

PreDA2017/49 was held on 19/12/2017 and preceded the submission of DA2018/90/1 (refer above in this table)

Requests for Additional Information and Replacement Applications

A <u>Stop the Clock</u> letter dated 15/05/2024 was issued to the applicant requesting additional information, including vehicular access and parking arrangement and a landscape plan. The applicant submitted additional information on 07/06/2024.

The applicant submitted <u>revised architectural drawings</u> on 22/07/2024 to clarify the scope of the proposed works and additional shadow diagrams.

Following the on-going assessment of the application, including review of the objector's concerns and site inspection, a Council's <u>Request for Information and/or Modification</u> was sent to the applicant on 06/08/2024 requesting the following information:

- Clarifications on the height of the proposed development.

- Clarifications on the external finishes schedule.
- Clarifications on boundaries encroachments.

- Removal of the originally proposed air-conditioning condenser units due to the non-compliance with the Woollahra LEP 2014 and Chapter C1 of the Woollahra DCP 2015.

The applicant responded on 14/08/2024 submitting <u>amended documentation</u> to address the issues raised. Nevertheless, **Condition A.4** is recommended to exclude any works encroaching the property boundaries from the consent.

Land and Environment Court Appeal(s) None.

8. REFERRALS

Referral	Summary of Referral Response	Attachment
Heritage	Satisfactory, subject to conditions.	3
Trees and Landscaping	Satisfactory, subject to conditions.	4

Further to the referral above, the proposed development was reviewed at DARC by Council's Development Engineer that has recommended conditions of consent, posing no further issues with the proposal.

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 22/05/2024 to 06/06/2024 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. Submissions were received from:

1. Mr A Boskovitz on behalf of the owners of No.146 Glenmore Road PADDINGTON.

A summary of the submission raised is noted in Section 5.3 of the report.

9.2 Replacement Application

The additional documentation 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, as amended, will have no greater impacts than the previously advertised application.

9.3 Statutory Declaration

The applicant has completed the statutory declaration dated 13/06/2024 declaring that the site notice for DA143/2024/1 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

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.

Chapter 2 Standards for residential development—BASIX

Chapter 2 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 by standard condition.

11. STATE ENVIRONMENTAL PLANNING POLICY (RESILIANCE AND HAZARDS) 2021

Chapter 2 – Coastal Management

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

Given the long-term use of the site as residential, the site is unlikely to be contaminated. On this basis, no further consideration is required under Section 4.6 of Chapter 4 – Remediation of Land of the Resilience and Hazards SEPP 2021.

12. 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.

The proposal will have no significant adverse impacts on the Sydney Harbour Catchment, subject to standard conditions including erosion and sedimentation, stormwater and flood risk management control.

13. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

13.1 Part 1.2: Aims of Plan

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

13.2 Land Use Table

The proposal is defined as alterations and additions to existing attached dwelling and is permitted and is consistent with the objectives of the R2 Low Density Residential zone.

13.3 Part 4.3: Height of Buildings

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

Maximum Duilding Llaight 40.75m 40.50m		Existing	Proposed	Control	Complies
Maximum Building Height 13.75m 10.56m 9.5r	Maximum Building Height	13.75m	10.56m	9.5m	NO#

Clause 4.6 Written Request submitted

The proposal does not comply with Part 4.3 of Woollahra LEP 2014 as detailed and assessed in Section 13.4 of the report.

13.4 Part 4.6: Exceptions to Development Standards

Departure

The proposal involves a non-compliance with the 9.5m height of buildings statutory control under section 4.3 of the Woollahra LEP 2014, as detailed and summarised in Sections 5.1 and 13.3 of the report.

Purpose

Section 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 section 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.

Justification Requirements

Section 4.6(3) states that:

Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

- a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
- b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

Section 4.6(3) does not require the applicant to demonstrate those matters solely in the written request.

Applicant's Written Request

Section 35B of the *Environmental Planning and Assessment Regulation 2021* requires a development application for development that proposes to contravene a development standard to be accompanied by a document [the written request] setting out the grounds on which the applicant seeks to demonstrate the matters in section 4.6(3) paragraphs (a) and (b).

The applicant has provided a written request in accordance with Section 35B of the *Environmental Planning and Assessment Regulation 2021*, refer to **Attachment 2**.

Council's Assessment

Section 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 section 4.6(3). This is set out below.

Step 1: Are the planning instrument, development standard and proposed variation identified in the written request accurate?

In determining whether the information contained within the written request is accurate, the following questions have been considered:

- Is the provision proposed to be varied a development standard?
- Is the development standard proposed to be varied one that can be varied, and not excluded from the operation of section 4.6 by section 4.6(8)?
- Is the correct LEP or SEPP section (and objectives if relevant) referenced?
- Is the extent of the variation correctly identified?

Assessment:

Having regard to the definition of 'development standards' under the EP&A Act, Council is satisfied that the provision proposed to be varied is a development standard and is not excluded from the operation of Clause 4.6 by subclause (8).

The submitted documentation (**Attachment 2**) have accurately referenced Clause 4.3 Height of Buildings and the associated objectives under the Woollahra LEP 2014. The extent of the variation has been accurately identified in the submitted documentation.

Step 2: Section 4.6(3)(a): Is compliance unreasonable or unnecessary?

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.

Assessment:

The arguments provided in **Attachment 2** (pages 9-15) are relevant to Test 1 – in that the objectives of the development standards are achieved notwithstanding non-compliances with the standards.

The applicant has adequately demonstrated that the objectives of the development standard are achieved notwithstanding non-compliance with the standard. An assessment against the objectives of the subject development standard is included below.

Objectives underlying Clause 4.3 Height of Buildings 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

The proposal is assessed against the objectives of Clause 4.3 as follows:

- The proposal will achieve a built form, scale and height that is consistent with the desired future character of the neighbourhood. The height non-compliance is due particularly to the slope of the land and would match in height existing adjoining developments (in particular the rear built forms of the subject group, refer to *Image 02* above), as such, the proposed rear building structure will be consistent with the context.
- The height of the development achieves an acceptable relationship with the neighbouring properties when viewed from lanescape and is consistent with the character of development within the context.
- The proposal complies with the solar access controls outlined in the Woollahra DCP 2015, as detailed in Section 14 of the report.
- As discussed throughout this report, the non-compliant height does not have an adverse impact upon views, loss of privacy or overshadowing and is acceptable with regard to the impact on the amenity of the neighbourhood.

• The non-compliant height will not have an adverse impact upon the amenity of the public domain and will not adversely impact upon the surrounding areas.

The relevant objectives underlying the R2 Low Density Residential zone are as follow:

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

Comment:

- The existing residential land use is maintained and the proposal will continue to provide for the housing needs of the community.
- Overall, the proposed development is considered to be of a sympathetic design which aligns with the overall character and amenity of the surrounding neighbourhood. The proposal will offer a sympathetic response to the heritage conservation area and will be compatible with surrounding development so as to ensure a positive integration. The variation does not compromise this outcome.
- The variation is limited to part of the roof form of the proposed rear addition. Given the minor nature of the variation it is unlikely that this would be perceived by the casual observer thereby achieving an acceptable bulk and scale presentation which is in keeping with the desired future character.
- The proposal would have no adverse impacts on tree canopy cover.

Step 3: Section 4.6(3)(b) Are there sufficient environmental planning grounds to justify the contravention?

In *Initial Action* Preston CJ provided the following guidance (at paragraphs 23 and 24) concerning whether there will be sufficient environmental planning grounds to justify a contravention of 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.
- 24 The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". ... the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) 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. 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: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15].

Section 1.3 of the EPA Act reads as follows:

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.

Assessment:

To determine whether the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of the development standard, the following questions have been considered:

- What environmental planning grounds have been put forward to justify the variation?
- Are the environmental planning grounds specific to the proposed variation?
- Are there sufficient environmental planning grounds to justify the proposed variation to the development standard?

The applicant in **Attachment 2** (pages 12-16) has provided sufficient environmental planning grounds to justify the Height of Building variation.

The written request provides explanation of how the proposed development and in particular the breach of the Height standard is reasonable and supportable in the circumstances. In doing so, the written request provides sufficient environmental planning grounds to justify contravention of the Clause 4.3 Height of Buildings development standard, as it demonstrates that the proposal achieves Object (c) of Section 1.3 of the Act.

Conclusion

Council is 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 contraventions.

13.5 Part 5.10: Heritage Conservation

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

The proposed development is located in the Paddington Heritage Conservation Area.

Council's Heritage Officer provides the following commentary:

SIGNIFICANCE OF SUBJECT PROPERTY/TO THE CONSERVATION AREA

144 Glenmore Road is a terrace within the Paddington Heritage Conservation Area. It is a contributory building within the HCA.

[...]

Woollahra LEP 2014

The subject site is not a heritage item in Woollahra Local Environment Plan 2014 'the LEP' but is within the Paddington heritage conservation area.

[...]

Clause 5.10 Heritage Conservation

Significance of items in the vicinity

The following listed heritage item is located in proximity of the site:

 'Royal Hospital for Women Group' (No. 1244) The Royal Hospital for Women precinct has local historic, associative, aesthetic, social and representative heritage significance at local level. There is no impact on this site resulting from the proposed works.

As further detailed in the assessment report the proposal, subject to recommended conditions, is acceptable with regard to the objectives in Parts 5.10 of the Woollahra LEP 2014.

13.6 Part 6.1: Acid Sulfate Soils

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 of the Woollahra LEP 2014.

13.7 Part 6.2: Earthworks

The proposal involves earthworks to accommodate the footing of the proposed Lower Ground extension and the works to the proposed garage, which includes the proposed storage room and stairs to access the terrace above the garage.

Council's Development Engineer has reviewed the proposed development and has posed no issues with the proposal, subject to recommended conditions of consent.

The proposal, subject to recommended conditions, is acceptable with regard to Part 6.2 of the Woollahra LEP 2014.

14. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

14.1 Chapter C1: Paddington Heritage Conservation Area

Part C1.2.4: Desired Future Character

As further detailed in this section of the report, the proposal achieves the relevant desired future character objectives c, d and e and it is considered acceptable against Part C1.2.4 of the Woollahra DCP 2015.

Part C1.3.4: Multi-Storey Terrace Style Housing

The proposal will achieve the relevant objective O1 and is considered satisfactory against Part C1.3.4 of the Woollahra DCP 2015.

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

The proposal does not involve works to the principal building form and it is considered acceptable against Part C1.4.1 of the Woollahra DCP 2015.

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

	Existing	Proposed	Control	Complies
C4 Height of a rear alteration and addition	Below	Below	Below the gutter line of principal building roof	YES
C5(f) Rear setback	As existing	Achieved	Not extend beyond the predominant rear building setbacks at any level of a group or row of buildings	YES
C6 Original chimneys	As existing	Achieved	Retained	YES

- In terms of rear lanescape presentation, the proposed development is considered consistent with the character of the subject group built forms, has regard to the overall balance of the group in terms of height, alignment and scale and is considered acceptable against control C1. This is furthermore confirmed by Council's Heritage Officer that notes that "the design is considered acceptable due to the prevalence of similar designs along this rear lane and within this terrace group" (Attachment 3, page 3).
- The proposed roof form to the rear addition matches the adjoining property at No.142 and is considered to achieve control C3.
- Further to the above, the proposed rear addition height is designed to be set below the gutter of the principal roof form, meeting control C4.
- The proposed rear addition setback does not extend beyond the rear setback of the group, satisfying control C5f.
- The proposed development is not considered to adversely impact the amenities of the adjoining properties, as further detailed in this Section of the report (refer to assessment of Parts C1.4.9 and C1.4.10 of the Woollahra DCP 2015).

In light of the points above, the proposal meets the relevant objectives and controls of Part C1.4.3 of the Woollahra DCP 2015.

Part C1.4.4: Roofs and Roof Forms

	Existing	Proposed	Control	Complies
C3 Roofscape of the principal building form of contributory buildings	-	As existing (no changes proposed)	Retained, with the exception of: a) a dormer and skylight to the rear slope (where permitted) b) a dormer to the front roof slope (where permitted)	YES

- The proposed rear addition roof form matches the adjoining property at No.142 in terms of form and height and meets objective O4 and control C6.
- The proposed roofing materiality and colour of the rear addition complies with control C8.

The proposal is considered acceptable against Part C1.4.4 of the Woollahra DCP 2015.

Part C1.4.5: Building Height, Bulk, Form and Scale

	Existing	Proposed	Control	Complies
C1 Height of existing buildings on street frontages	As existing	Not increased	Not increased	YES
C3 The height, bulk, form and scale of infill and new development	As existing	Achieved	Consistent with the predominant height, bulk, form and scale of appropriate adjoining buildings	YES
C4 Sunlight provided to the main ground level private open space of adjoining properties	As existing	Achieved	Minimum 50% (or 35m ²) for two hours between 9am and 3pm on 21 June	YES
C5 Sunlight to north-facing windows to habitable rooms of adjoining dwellings (where existing sunlight greater than 3 hours)	As existing	Achieved	Minimum 3 hours between 9am and 3pm on 21 June	YES

- The proposed height, bulk form and scale of the proposed development is considered consistent with adjoining buildings, achieving control C3.
- An objection was raised in terms of overshadowing impacts on the adjoining property at No.146 due to the proposed development. In this regard it is noted that the submitted documentation has demonstrated that the proposed overshadowing will be cast within acceptable parameters as defined by controls C4 and C5. North-facing windows to habitable rooms that currently receive more than 3 hours of sunlight during the winter solstice, will retain a minimum of 3 hours of sunlight.
- The proposal conforms to the height in storeys of adjacent buildings, meeting the requirements of Control C7.
- The proposal does not adversely impact on adjoining amenities and meets objective O6:
 - One objection was raised in relation to overbearing visual bulk as viewed from the adjoining property at No.146 Glenmore Road. The view impact assessment of the proposed development is undertaken further below in this Section (Part C1.4.9) and it was found to be reasonable: the proposed building bulk will retain the neighbouring's main direct outlook towards the rear and will not unreasonably impede on ventilation and sense of enclosure.
 - Subject to recommended **Condition D.1**, the proposal is acceptable in terms of privacy, as assessment under Part C1.4.10 in this Section.

The proposal is considered acceptable against Part C1.4.5 of the Woollahra DCP 2015.

Part C1.4.6: Site Coverage, Setbacks and Levels

	Existing	Proposed	Control	Complies
C1 Proportion of building footprint	As existing	Consistent	Consistent with similar properties in the immediate vicinity	YES

- The proposal is consistent in terms of proportion of building footprint and development pattern within the group (refer to No.142 Glenmore Road) and complies with control C1.
- The proposed setbacks does not extend beyond the established pattern of the group, complying with control C3.
- The levels of the proposed rear additions are consistent with the existing levels, complying with control C7.

The proposal is considered satisfactory against Part C1.4.6 of the Woollahra DCP 2015.

Part C1.4.7: Excavation

	Existing	Proposed	Control	Complies
C7 Excavation for other structures beyond the principal building form or secondary wing	-	>0.9m	0.9m (lot width <6m)	YES

• The proposal allows for some excavation to the storage area within the garage level (refer to *Image 07* below), which was reviewed by Council's Development Engineer and was considered satisfactory on technical grounds, subject to recommended conditions.

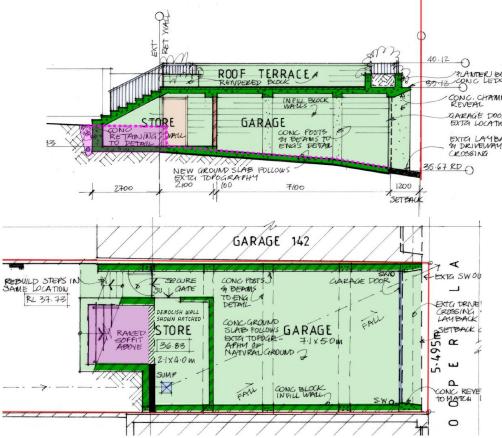


Image 07 – Section and Plan View of the proposed garage and roof terrace above. Highlighted in magenta is the approximate extent of the proposed excavations. Base drawing: Kenström Design Pty Ltd

The proposal, subject to recommended conditions, is satisfactory against Part C1.4.7 of the Woollahra DCP 2015.

Part C1.4.8: Private Open Space, Swimming Pools, Courtyards and Landscaping

Site Area: 303m ²	Existing	Proposed	Control	Complies
C4/Table 3 Lot>180m ²				
Minimum Unbuilt Upon Area	95.6m ²	59m ²	18% (54.5m ²)	YES
Minimum Principal Rear Area	>35m ²	>35m ²	35m ²	YES
Minimum Dimension	>3m	>3m	3m	YES
Minimum Deep Soil Landscape Area	>12%	>12%	12% (36.3m ²)	YES

- The unbuilt upon area, private open space and deep soil landscape provisions provided by the proposed development are satisfactory and beyond the minimum requirements set-out in control C4.
- The courtyard levels remains consistent with the existing scheme and therefore retains an adequate degree of privacy between properties, achieving objective O8.
- **Condition D.1** is recommended for the proposed rear garden to incorporate a medium-sized tree, so to achieve objective O9.
- Council's Tree and Landscape Officer has not raised any issues with the proposed development, subject to recommended conditions.
- Control C12 prescribes that private space is generally not permitted in the form of a roof terrace. In this regard, the proposed roof terrace over the garage is considered acceptable on merit, as follow:
 - The proposed roof terrace over the garage is not an incompatible element in the specific context, which include similar structures in the immediate vicinity, including roof terraces on either sides of the subject site, both part of the subject group (No.142 and No.146 Glenmore Road Paddington).
 - The proposed roof terrace design allows for a landscaped front setback, which buffers visibility from the laneway. Furthermore, as shown in *Image 08* below, proposal in the existing context will generate an adequate level of privacy as side walls on both sides will have a height of not less than 1.5m so to not create adverse overlooking and privacy impacts to the adjoining properties private open spaces.
 - The solar access impacts caused by the proposed roof terrace structure are within acceptable parameters (refer to Part C1.4.5).
 - The proposed roof terrace has been considered acceptable from a heritage perspective by Council's Heritage Officer (refer to **Attachment 3**).

In light of the above considerations, the proposed design is considered to have had regard to the amenity of the occupiers of adjoining properties, achieving objective O6.

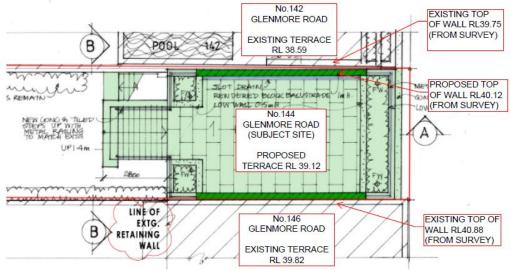


Image 08 – Plan View of the proposed roof terrace above garage. Base drawing: Kenström Design Pty Ltd

The proposal is considered acceptable against the relevant controls and objectives of Part C1.4.8 of the Woollahra DCP 2015.

Part C1.4.9: Views

Public Views

The proposal will not affect any significant public views.

Private Views

Loss of district views concerns have been raised in relation to No.146 Glenmore Road. On the basis that the proposal will have an impact upon private views, albeit considered to be reasonable, the following objective of Part C1.4.9 of the Woollahra DCP 2015 applies:

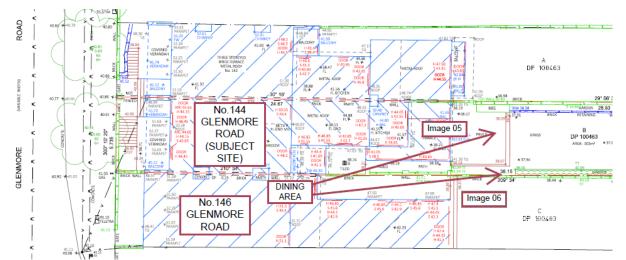
O2 To promote the concept of view sharing from private properties as a means of ensuring equitable access to views.

In assessing the reasonableness or otherwise the degree of view loss to the concerned property, the planning principle established in *Tenacity Consulting v Warringah (2004) NSWLEC 140* provides a four step assessment of view sharing. The steps are as follows:

1. The assessment of the views affected

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

<u>Comment</u>: The views that the objector notes to be impacted by the proposal are district views of Paddington. *Images 05* and *06* show the views obtained from No.146 Glenmore Road's dining area, with the red line that indicates the approximate extent of the proposed rear addition.



Key plan showing the area of view impact concern expressed by the objector Base drawing: Survey submitted with the Development Application



Image 05 – View from No.146 dining area (sitting position) Source: Assessment Officer Site Photo

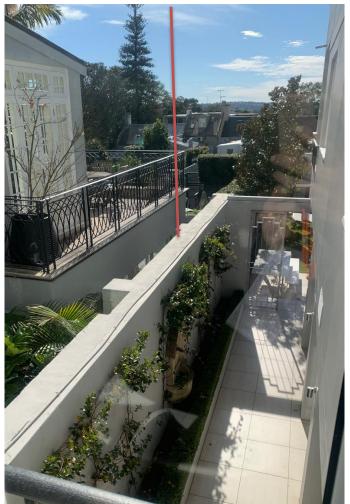


Image 06 – View from No.146 dining area (standing position) Source: Assessment Officer Site Photo

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

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

<u>Comment</u>: The views that the objector notes to be impacted by the proposal are enjoyed from the Ground Floor dining area, which is located in the rear room of No.146 Glenmore Road's principal building form and which presents with a rear-facing window that abuts the side breezeway. As seen in *Images 05* and *06*, the Ground Floor dining area of No.146 currently benefits from district views spanning from North and North / North-East, partly across the subject site, through side views over the existing Ground Floor terrace, and partly looking across towards No.146 rear boundary.

3. The extent of the impact

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

<u>Comment</u>: As shown in *Images 05* and *06*, the views will have a minor impact caused by the proposed development. Furthermore, the rest of the property at No.146, including the upper levels and the rear addition windows facing the courtyard, will maintain their district views and will not be adversely impacted by the proposal.

4. The reasonableness of the proposal that is causing the impact and the potential mitigation of the impact

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

<u>Comment</u>: The proposed development has been assessed above in this Section of the report and is considered satisfactory in terms of setbacks, site coverage, bulk and scale (refer to assessment of Parts C1.4.3, C1.4.5 and C1.4.6). Furthermore, the proposed rear addition's height is not considered as incisive so to create an unreasonable adverse impact on the neighboring property in terms of visual intrusion and view loss. As such, not-withstanding the areas breaching the Woollahra LEP 2014 Height of Building development standard, the view impact upon this property is considered to be reasonable.

The proposal is considered acceptable against Part C1.4.9 of the Woollahra DCP 2015.

Part C1.4.10: Acoustic and Visual Privacy

- The proposed Ground Floor balcony to the rear elevation is similar in its scale to balconies to existing adjoining properties. It is also noted that it is significantly reduced in size, when compared to the existing terrace. Privacy screens are proposed to the Ground Floor balcony and as such the proposal is considered to be acceptable against control C4 and C5. **Condition D.1** is recommended for the proposed privacy screens to be of suitable materiality and detailing.
- The new First Floor balcony to the proposed rear extension is fitted with privacy screens to the side. **Condition D.1** is recommended for the proposed privacy screens to be of suitable materiality and detailing.
- The proposed fenestration to the Ground Floor casual eating to the rear extension side elevation (facing No.146 Glenmore Road) is considered acceptable in term of privacy, as it will provide for translucent glazing up until a height of 1.6m above the Ground Floor finished floor level, meeting objective O1. **Condition D.1** is reiterated to ascertain that the lower panels of the abovementioned window are fixed.
- Consideration has been given to whether the new First Floor window facing the side breezeway (W5) would pose adverse privacy impacts. Given its location and size, and given the presence of wall nibs that partly screen from side views, the abovementioned window would not create adverse privacy impacts.
- The proposed First Floor bathroom window (W6) will have translucent glass. **Condition D.1** is recommended, to ascertain that the lower panels of the abovementioned window are fixed, to address privacy and meet control C3.

• As detailed above in this Section of the report, the proposed roof terrace above the garage will provide an acceptable degree of privacy between properties.

The proposal, is considered acceptable against Part C1.4.10 of the Woollahra DCP 2015.

Part C1.5.2: Chimneys

Satisfactory.

The proposal is considered acceptable against Part C1.5.2 of the Woollahra DCP 2015.

Part C1.5.3: Windows, Doors, Shutters and Security

• An objection was submitted in relation to the size of the proposed side fenestration to the casual dining area. In this regard the proposal is considered acceptable, as the fenestration details and frames are vertically proportioned, are not readily visible from the public domain and do not pose an issue from a heritage perspective. Moreover, the proposed windows are considered acceptable in terms of privacy, subject to recommended **Condition D.1**.

Subject to recommended conditions, the proposal is considered acceptable against Part C1.5.3 of the Woollahra DCP 2015.

Part C1.5.4: Verandahs and Balconies

- The proposed rear balconies, are of simple, unobtrusive contemporary design and respond adequately to objective O3.
- The subject site is part of an altered group of building and balconies to the First Floor and Ground Floor levels are found in adjoining buildings in the group (Nos.146 and 148) as well as other adjoining terraces in the row. The proposed balconies to the rear are similar in dimensions and considered acceptable in this case from a heritage point of view (refer to **Attachment 3**), the proposal meets control C6.
- In accordance with control C7, the proposed privacy screens to the rear balconies (Ground Floor and First Floor) are acceptable, subject to **Condition D.1**.

The proposal is considered acceptable against Part C1.5.4 of the Woollahra DCP 2015.

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

- The proposed lanescape presentation (garage roller door) remains generally consistent with the existing scheme and sympathetic in the context, achieving objective O4.
- The proposal results in a non-compliance with control C13 in that it presents with a trafficable and partly landscaped roof terrace. Notwithstanding the non-compliance, the proposal is consistent with the adjoining properties that presents trafficable roof terraces above the rear garages and it is considered acceptable in this case on a heritage perspective (refer to **Attachment 3**).
- Council's Development Engineer has reviewed the submitted documentation and does not poses further issues with the proposal, subject to recommended conditions.

The proposal, subject to recommended conditions, is considered acceptable against Part C1.5.6 of the Woollahra DCP 2015.

Part C1.5.8: Materials, Finishes and Details Part C1.5.9: Exterior Colours

The proposal is considered acceptable against Part C1.5.8 and Part C1.5.9 of the Woollahra DCP 2015.

Part C1.5.10: Gardens and Trees

• To achieve compliance with control C4, which requires rear gardens to include one mediumsized tree, **Condition D.1** is recommended.

The proposal, subject to recommended conditions, is considered acceptable against Part C1.6.2 of the Woollahra DCP 2015.

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

Satisfactory.

The proposal is considered acceptable against Part C1.5.11 of the Woollahra DCP 2015.

Part C1.6.2: Views and Vistas

Satisfactory.

The proposal is considered acceptable against Part C1.6.2 of the Woollahra DCP 2015.

14.2 Chapter E1: Parking and Access

The proposal, subject to conditions recommended by Council's Development Engineer, is acceptable with regard to Chapter E1 of the Woollahra DCP 2015.

14.3 Chapter E2: Stormwater and Flood Risk Management

The proposal, subject to conditions recommended by Council's Development Engineer, is acceptable with regard to Chapter E2 of the Woollahra DCP 2015.

14.4 Chapter E3: Tree Management

In accordance with Council's Trees and Landscape's advice, **Condition 18** is recommended, in relation to the protection of the street tree to Glenmore Road located in proximity of the subject site.

The proposal, subject to recommended conditions, acceptable with regard to Chapter E3 of the Woollahra DCP 2015.

14.5 Chapter E5: Waste Management

The applicant provided a SWMMP with the development application and it was found to be satisfactory. Subject to recommended conditions, the proposal is acceptable with regard to Chapter E5 of the Woollahra DCP 2015.

15. CONTRIBUTION PLANS

15.1 Section 7.12 Contributions Plan

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 2023.

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		

Refer to recommended **Condition D.4**.

16. APPLICABLE ACTS/REGULATIONS

16.1 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. 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.

18. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

19. THE PUBLIC INTEREST

The proposal is considered to be in the public interest.

20. CONCLUSION

The proposal is acceptable against the relevant considerations under Section 4.15.

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 documentation submitted by the applicant under Clause 4.6 of the Woollahra Local Environmental Plan 2014 in relation to the Height of Building development standard under Clause 4.3 of Woollahra LEP 2014 has adequately addressed the relevant matters and the proposed development will be in the public interest because it is consistent with the relevant objectives of the particular standard and the zone.

AND

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, grant development consent to Development Application No.143/2024/1 for alterations and additions including a new garage with roof terrace on land at 144 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
	 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 may order. This consent and this specific advice will be tendered to the Court way order. 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 <i>Act</i> , the <i>Regulations</i> , the <i>Development Certification and Fire Safety Regulations</i> and the <i>Interpretation Act 1987</i> as in force at the date of consent.
	Applicant means the applicant for this consent.
	<i>Approved Plans</i> mean the plans endorsed by Council referenced by this consent as amended by conditions of this consent.
	<i>Local native plants</i> 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 <i>Act</i> , 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.
	<i>Site work</i> 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
	<i>Work</i> 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 earning out of any work
	 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.

A. 3.	Approved Plans and Supporting Documents					
	Those with the benefit of this consent must carry out all work and maint works in accordance with both the architectural plans to which is affixed stamp "Approved" and supporting documents listed below unless modifi- following condition.					
	Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.					
	Reference	Description	Author	Date		
	2308/DA01B 2308/DA04	Architectural Plans	Kenström Design Pty Ltd	Jul 2024		
	A1744322	BASIX Certificate	NSW Department of Planning and Environment	19 Apr 2024		
	2308/DA03 144 Glenmore Rd, Paddington	Landscape Plan Materials & Finishes	Kenström Design Pty Ltd office@kenstrom.com.au	Jun 2024 Undated		
	Condition Reas	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 works encroaching the side bou into the adjoining properties.					
	Condition Reas granted consent.	on: To ensure all parties	s are aware of works that hav	e not been		
A. 5.	Ancillary Aspec	ts of Development (se	ction 4.17(2) of the Act)			
	The Owner must procure the repair, replacement or rebuilding of all rockerb, gutter, footway, footpaths adjoining the site or damaged as a result this consent or as a consequence of work under this consent. Such woundertaken to Council's satisfaction in accordance with Council's Spect Roadworks, Drainage and Miscellaneous Works (2012) unless express otherwise by these conditions at the Owner's expense.					
	this consent or a undertaken to Co Roadworks, Drai	way, footpaths adjoining s a consequence of wo buncil's satisfaction in a nage and Miscellaneou	g the site or damaged as a res rk under this consent. Such w ccordance with Council's Spe s Works (2012) unless expres	sult of work und ork must be cification for		

		Condition Reason: To ensure all parties are aware of works required to public infrastructure and to ensure payment for works.
A. 6.		No Underpinning works
		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.
		Condition Reason: To ensure all works are located within the boundaries of the site and to confirm that no consent is granted for underpinning works to any structures on adjoining properties.

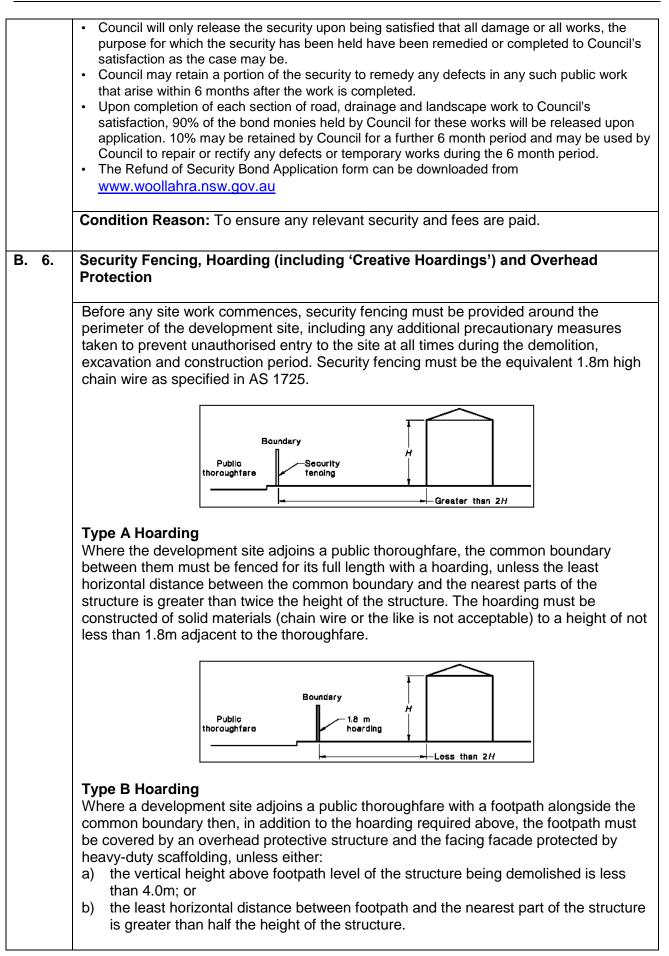
DEMOLITION WORK

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 existi 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 certificateBefore 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 			

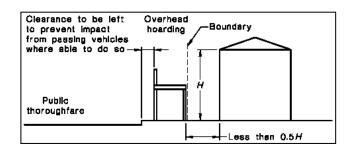
	www.woollahra.nsw.gov.au and The Blue Book is available at
	www.environment.nsw.gov.au
	 A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the Protection of the Environment Operations Act
	1997 without any further 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.
	caused, permitted of allowed as the result of their occupation of the fand 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.
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	Condition Reason: To protect the health and safety of all persons while works are
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	If the required report is not submitte				
	 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 <i>Environn</i>	nental Planning a	and Assessment A	ct 1979	
	Property Damage Security Deposit -making good any damage caused to any property of the Council	\$21,435.00	No	T115	
	INSPECTION FEES under section 608 of the <i>Local Gover</i>	nment Act 1993			
	Security Deposit Administration Fee	\$225.00	No	T16	
	TOTAL SECURITY AND FEES	\$21,660.00			
	 credit card payment with Counci bank cheque made payable to W The payment of a security may be r the guarantee is by an Australian contribution, the bank unconditionally agrees request by Council on completion from the provision of the guarantee or a bank guarantee is lodged with undertaken, and the bank's obligations are discharaccordance with the guarantee or guarantee is no longer required. 	Voollahra Munic made by a bank n bank for the a to pay the guar n of the develop tee whichever of with an expiry d anteed sum wit provided the gu her matter relat ccordance with th the Council p arged when pay or when Counci	c guarantee wher mount of the tota ranteed sum to the pment or no earli occurs first [NOTI ate is not accept hout reference to arantee and with ing to the develop the developmen prior to any site w	al outstanding the Council on writte er than 12 months E: a time limited bar able], the Applicant or out regard to any pment consent or the t consent, orks being ncil is made in	
	 Notes: An application must be made to Consecurities held under section 4.17 or The securities will not be released uncouncil, Council has inspected the been carried out to Council's required complete the works to its satisfaction 	f the Act. Intil the Occupati site and Council ements. Council	on Certificate has is satisfied that the may use part or all	been lodged with public works have of the security to	



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 <u>www.woollahra.nsw.gov.au</u>

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 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:

	 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 <u>www.woollahra.nsw.gov.au</u>
	Condition Dessen. To anours public sofety
	Condition Reason: To ensure public safety.
B. 7	. 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.
r	

		 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. 		
В.	8.	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		
		 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.		
В.	9.	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 		

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		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.		
Β.	10.	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.		
В.	11.	. Archaeological Features – Unexpected Findings		
		While site work is being carried out, if a person reasonably suspects archaeological		
		features are discovered, work must cease immediately in the affected area(s) and the		
		Heritage Council must be notified.		
		Site work may recommence at a time confirmed in writing by the Heritage Council or ite		
		Site work may recommence at a time confirmed in writing by the Heritage Council or its delegate.		
		Additional assessment and approval under the Heritage Act 1977 may be required prior		
		to works continuing in the affected area(s) based on the nature of the discovery.		
		Notes:		
		Definition of archaeological feature as per the NSW Heritage Manual: Any physical evidence		
		of past human activity.Archaeological features include buildings, works, relics, structures, foundations, deposits,		
		cultural landscapes and shipwrecks.		
		During an archaeological excavation the term 'feature' may be used in a specific sense to		
		refer to any item that is not a structure, a layer or an artefact (for example, a post hole).		
		Or witten Dessen. To waste strank as de visel for twee		
		Condition Reason: To protect archaeological features.		
B.	12.	Skeletal Remains		
Ъ.	12.	Skeletal Kelhallis		
		While site work is being carried out, if any skeletal remains suspected of being human		
		are found, work must cease immediately and no further disturbance of the site must		
		occur. The following must be notified:		
		a) NSW Police, and		
		b) The person who is the authority for the protection of Aboriginal objects under the		
		National Parks and Wildlife Act 1974, section 85.		
		Details of the remains and their preside leastion are to be provided		
		Details of the remains and their precise location are to be provided.		
		Site work may recommence at a time confirmed in writing by the NSW Police and the		
		person who is the authority for the protection of Aboriginal objects under the National		
		Parks and Wildlife Act 1974, section 85.		
		Condition Reason: To ensure the appropriate management of skeletal remains.		
В.	13.	Aboriginal Objects – Unexpected Findings		

	While site work is being carried out, if unexpected Aboriginal objects or bones are found, 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 Land Council (LALC) on (02) 9311 4282 as soon as practicable and provide available details of the objects or remains and their location. e) Notify the person who is the authority for the protection of Aboriginal objects under the National Parks and Wildlife Act 1974, section 85. f) Not recommence any work at the particular location unless authorised in writing by the police (in the case of human remains) and the person who is the authority for the protection of Aboriginal objects under the National Parks and Wildlife Act 1974, section 85. Additional assessment and approval under 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.
	 Notes: The Definition of Aboriginal object, as per the National Parks & Wildlife Act 1974, is 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.
	Condition Reason: To protect Aboriginal objects
B. 14.	Aboriginal Heritage Due Diligence Responsibilities
	While site work is being carried out, 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.
	Condition Reason: To protect Aboriginal heritage.
B. 15.	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.142 Glenmore Road PADDINGTON b) No.146 Glenmore Road PADDINGTON
	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 		
	 Council will not be neid 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. 16.	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. 17.	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 				
		mini	imise traffic	disruption.		
В.	18.	Esta	ablishment	t Tree Protection Measu	ires	
		 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). a) Trunk protection must be installed around the trunks of the following trees: 				
			Council Ref No	Species		Location
			1	<i>Tristaniopsis laurina</i> (Wate Gum)	er	Street tree on Glenmore Road footpath, in front of property
			underlay w must be pl centres. Th protection	vrapped around the trunk aced over the padding an he planks must be secure	. Hard nd arou ed with height	g material such as hessian or thick carpet wood planks (50mm x100mm or similar) and the trunk of the tree at 150mm 8 gauge wire at 300mm spacing. Trunk of 2 metres or to the maximum possible
		 b) Signs identifying the Tree Protection Zone area must be erected on each side of the trunk protection indicating the existence of a TPZ area. 				
		c)	stockpiling	•	repara	e changes, storage of materials, tion of mixes or cleaning of tools is
		d)	associated site persor	with these conditions of	conse	of all tree protection requirements nt by the project arborist. Any subsequent must be made aware of all tree protection
		Condition Reason: To ensure the protection of existing trees				

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 proposed glass privacy screens to the Eastern side of the Ground Floor and First Floor balconies must be deleted and replaced with timber privacy screens designed with regard of the architectural style of the building. Furthermore the abovementioned privacy screens must have a height of 1.6m from the balconies measured from the Finished Floor Levels.
	This condition is imposed due to insufficient information and to achieve compliance with: Woollahra DCP 2015, Chapter C1, Part C1.4.10, control C6. Woollahra DCP 2015, Chapter C1, Part C1.5.8, objective O2, control C5.
	 b) All bottom panels of the proposed Ground Floor side window to the "casual dining" area (labelled as W3) and the proposed First Floor bathroom window (labelled as W6) must be fixed.
	This condition is imposed to achieve compliance with: Woollahra DCP 2015, Chapter C1, Part C1.4.10, objective O1, controls C3 and C4.
	 c) One medium sized tree of a species suitable for a Paddington Garden must be planted in the deep soil area.
	This condition is imposed to achieve compliance with: Woollahra DCP 2015, Chapter C1, Part C1.4.8, objective O9. Woollahra DCP 2015, Chapter C1, Part C1.5.10, controls C4 and C5.
	Amended documentation demonstrating compliance with Conditions D.1 must be submitted and approved by Council prior to the issue of the Construction Certificate.
	 Notes: Clause 20 of the Development Certification and Fire Safety Regulations prohibits <i>the</i> 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.	BASIX Commitments
	Before the issue of any construction certificate, BASIX Certificate No.A1744322 must be submitted to the Principal Certifier with any application for a construction certificate.

 All commitments in the BASIX Certificate must be shown on the construction certificate plans and specifications prior to the issue of any construction certificate. Notes: Where there is any proposed change in the BASIX commitments the Applicant must submit a new BASIX Certificate to the Principal Certifier and Council. If any proposed change in the BASIX commitments are inconsistent with development consent (see: clauses 19 and 20 of the Development Certification and Fire Safety Regulation) the Applicant will be required to
• Where there is any proposed change in the BASIX commitments the Applicant must submit a new BASIX Certificate to the Principal Certifier and Council. If any proposed change in the BASIX commitments are inconsistent with development consent (see: clauses 19 and 20 of the Development Certification and Fire Safety Regulation) the Applicant will be required to
 submit an amended development application to Council under section 4.55 of the Act. Clause 19(1)(a) of the Development Certification and Fire Safety Regulation 2021 provides: a certifier must not issue a construction certificate for building work unless: the relevant building work plans and specifications include the matters required by a relevant BASIX certificate, if any.
Condition Reason: To ensure all commitments in the BASIX Certificate are incorporated into the development.
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.
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 gualified 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 D

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. 5.	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. 6.	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. 7.	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:
	• The removal of the existing layback crossing including gutter and the construction of a new layback crossing including all necessary road restoration in accordance with Council's Crossing Specification, standard driveway drawing RF2_D and to the satisfaction of Council's Assets Engineers. The new 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 garage door. Design longitudinal surface profiles along <u>each</u> side/edge for the proposed driveway,

starting from the road centreline to the parking slab must be submitted for assessment,

- For any proposed stormwater outlet pipe, it must be made by using 152mm x 76mm galvanised rectangular hollow section (RHS) and be located at a minimum distance of 0.5m from the layback crossing in accordance with Council's Specification for Roadworks, Drainage and Miscellaneous Works and to the satisfaction of Council's Assets Engineers,
- The reinstatement of any damaged kerb and gutter, footpath and road pavement within the frontage and vicinity of the site as a result of construction works to Council's Specification for Roadworks, Drainage and Miscellaneous Works and to the satisfaction of Council's Assets Engineers,
- 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 Pla	SECURITY under section 4.17(6) of the <i>Environmental Planning and Assessment Act</i> 1979			
Infrastructure Works Bond - completing any public work required in connection with the consent.	\$ Nil	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	\$ 674	No	T45	
TOTAL SECURITY AND FEES	\$ 674			

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 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. 8.	Engineer Certification
	Before the issue of any construction certificate, engineer certification must be submitted to the Principal Certifier confirming that the structural design does not incorporate any temporary or permanent underpinning works or ground anchors, bolts, etc. which encroach outside the boundaries of the subject property. 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.
	Condition Reason: To ensure certification is provided that demonstrates all structural works are located within the boundaries of the site and do not include underpinning works to any structures on adjoining properties.
D. 9.	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 showing the following: a) The dimensions of the single garage and the design envelope around the parked vehicle as per Figure 5.2 of AS2890.1 are to be clearly depicted on the drawings, b) Finished floor level on both sides of the garage entry shall be clearly depicted on the drawings. Since there is quite a longitudinal fall on the frontage road pavement with no garage setback, the applicant must ensure that the finished level of the parking entry slab is tapered so that it is parallel to the longitudinal fall of the gutter invert to prevent car scraping,

1	(\cdot) is order to ensure that us biguides access (\cdot, \cdot) if the maximum $(\cdot, t, t, 0, 0, 0, 0, 1)$
	c) In order to ensure that vehicular access meets all the requirement of AS 2890.1 in terms of car scraping, longitudinal profiles (scale 1:20) along <u>each</u> side/edge of the proposed driveway must be submitted to Council for further assessment. The driveway profile along each side/edge of the proposed driveway is to start from the road centreline which includes the Council's Standard layback and gutter into the parking slab. Gradients and transitions must be in accordance with Clause 2.5.3 of AS2890.1. The driveway profiles shall be prepared by a suitably qualified and experienced civil engineer and submitted to Council in Scale 1:20 (for template checking purposes) which contain all relevant details: reduced levels in AHD for <u>both</u> existing and proposed finished levels, depth of cut/fill, grades representing in percentage and horizontal distances representing in chainages. Council's standard layback is 450mm wide and back of layback is 70mm above the gutter invert. Note that finished level of the existing gutter must remain unaltered. All driveway grades and transitions must comply with AS2890.1-2004 and Council's specifications.
	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. 10.	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 and certified 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.
	 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) For the discharge of stormwater from the site to the street kerb, such connection must be 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 approximately the charter 52.5 of Council's DCP. Notation to this requirement must be approximately approximately approximately designed such that subsoil drainage/seepage water is NOT discharged to the kerb and gutter to approximately charter 52.5 of Council's DCP. Notation to the kerb and gutter to be approximately designed such that subsoil drainage/seepage water is NOT discharged to the kerb and gutter to be approximately designed such that subsoil drainage/seepage water is NOT discharged to the kerb and gutter to be approximately designed such that subsoil drainage/seepage water is NOT discharged to the kerb and gutter to be approximately designed such that subsoil drainage/seepage water is NOT discharged to the kerb and gutter to be approximately designed such that subsoil drainage/seepage water is NOT discharged to the kerb and gutter to be approximately designed such that subsoil drainage/seepage water is NOT discharged to the kerb and gutter to be approximately designed such that such that such approximately designed such that such approximately designed such that such approximately designed such approximately
	comply with Chapter E2.2.5 of Council's DCP. Notation to this requirement must be clearly depicted on the drawings.

Woollahra Local Planning Panel (Electronic Meeting) Agenda Interceptor drain(s) at the site boundary to prevent stormwater flows from the site h) crossing the footpath; and General compliance with the Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management. General compliance with the Woollahra DCP 2015 Chapter E2 – Stormwater and i) 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: All pipe layouts, dimensions, grades, lengths and material specification, a) 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. Point and method of connection to Councils drainage infrastructure, and e) Overland flow paths over impervious areas. f) Rainwater Reuse System details: a) Any potential conflict between existing and proposed trees and vegetation, Internal dimensions and volume of the proposed rainwater storage, b) Plans, elevations and sections showing the rainwater tanks, finished surface level c) and adjacent structures, Details of access and maintenance facilities, d) Construction and structural details of all tanks and pits and/or manufacturer's e) specifications for proprietary first flush products, Details of the emergency overland flow-path (to an approved Council drainage f) point) in the event of a blockage to the rainwater tanks, 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).

Condition Reason: To ensure that site stormwater is disposed of in a controlled and sustainable manner.

D. 11. Electric vehicle circuitry and electric vehicle charging point requirements

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 an accurate electrical plan of all off-street car parking spaces, prepared by a suitably qualified person, which includes details and specifications to illustrate how the off-street car parking spaces will be constructed with the capacity to install at a minimum, a 'Level 2' (single phase, 7Kw power) electric vehicle charger point.

Condition Reason: To ensure the provision of electric vehicle circuitry to enable the future installation of electric vehicle charging point(s).

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) 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 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 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
	 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.
E. 4.	 Notification of Home Building Act 1989 requirements Residential building work within the meaning of the Home Building Act 1989 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: a) 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, b) 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. 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 relates (not being the Council) has given the Council written notice of the updated information. 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. 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 Acts 1989

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 dat 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.
In this clause, a reference to the BCA is a reference to that Code as in force on the dat 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.
 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.
 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.
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 satisfie 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 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 <u>www.epa.nsw.gov.au/noise/nglg.htm</u>
Condition Reason: To mitigate the impact of work upon the amenity of the
neighbourhood.
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.

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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
 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.
 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.
 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 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.
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,

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	f) ablutions.
	Condition Peacons To ansure that environmental controls are maintained during
	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: "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 (temporary) or the like within or under any road.
	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.
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.
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 and steel fixing prior to pouring of any concrete for 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 driveway 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.
	 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, 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.
1	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 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-of-practice or

	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	Site Cranes
	While site work is being carried out, 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 relevant approvals have been obtained 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.
	 Notes: Where it is proposed to swing a crane over a public place a separate application to Council must be made under section 68 of the Local Government Act 1993 and obtain activity approval from Council prior to swinging or hoisting over the public place. Where it is proposed to swing a crane over private land the consent of the owner of that private land is required. Alternatively, 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 must be obtained. 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.
	Condition Reason: To ensure site cranes are used safely with the relevant approvals.
F. 22.	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:
	 Protect and support the adjoining premises from possible damage from the excavation.
	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. 23.	Tree Preservation
	While site work is being carried out, all persons must comply with Chapter E.3 – <i>Tree Management</i> 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.

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.	Fulfilment of BASIX Commitments – Clause 44 of the Development Certification and Fire Safety Regulation
	Before the issue of any occupation certificate, all BASIX commitments must be effected in accordance with the BASIX certificate No.A1744322.
	Notes:
	 Clause 44 of the Development Certification and Fire Safety Regulation applies to an occupation certificate if a relevant BASIX certificate requires a certifier to monitor fulfilment of a commitment listed in the certificate in relation to a building. The certifier must not issue an occupation certificate for the building unless the commitment has been fulfilled.
	Condition Reason: To ensure that sustainable building commitments, to reduce water and energy consumption, are fulfilled prior to the occupation.
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.	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. 5.	Works within Public Land (including Council, State or Federal owned land or property)
	 Before the issue of any occupation certificate, the following works within public land, whether new/existing/renewed 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 person with the benefit of this consents expense: a) stormwater pipes, pits, structures and connections to public stormwater systems within the road, b) driveways and vehicular crossings, c) renew/new retaining structures, d) overhang structures, e) encroachments or occupation or alienation of public land or property, f) removal of redundant driveways and any other structure, g) new footpaths, pathways, walkways, or dunny lanes, h) relocation of existing power/light pole, if applicable,

	 i) relocation/provision of street signs, if applicable, j) new or replacement street trees, if applicable, k) verge landscape items, 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, l) new or reinstated kerb and guttering within the road, and m) new or reinstated road surface pavement within the road. Notes: 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. Security held by Council under section 4.17(6) of the Act will not be released until compliance has been achieved with this condition. An application for the refund of security must be submitted with the 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. Condition Reason: To ensure road, drainage and miscellaneous works are completed
	to the satisfaction of Council prior to occupation.
G. 6.	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 chartered professional engineer with works-as-executed drawings prepared by a registered surveyor and submitted for approval by the Principal Certifier detailing:
	 a) compliance with conditions of development consent relating to stormwater, b) that subsoil drainage/seepage water is NOT collected and discharged into the kerb and gutter, c) that only one stormwater outlet pipe to kerb has been constructed within the frontage of the site, d) that the works have been constructed in accordance with the approved design, e) pipe invert levels and surface levels to Australian Height Datum, and 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.
	Condition Reason: To ensure the certification and ongoing maintenance of the stormwater system prior to the occupation of the whole building.
G. 7.	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.

G. 8. Certification of Electric Vehicle Charging System

Before the issue of any occupation certificate, 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 D.11**, must be submitted to the satisfaction of the Principal Certifier.

Condition Reason: To ensure the certification of the electric vehicle charging system.

H. OCCUPATION AND ONGOING USE

H. 1.	Maintenance of BASIX Commitments
	During the occupation and ongoing use, all BASIX commitments must be maintained in accordance with the BASIX Certificate No.A1744322.
	This condition affects successors in title with the intent that environmental sustainability measures must be maintained for the life of development under this consent.
	Condition Reason: To ensure the approved environmental sustainability measures are maintained for the life of development.
H. 2.	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. Further, drought proof vegetation being native species endemic to the immediate locality is encouraged. Suggested native species endemic to the immediate locality are listed in the brochure "Local Native Plants for Sydney's Eastern Suburbs" published by Woollahra, Waverley, Randwick and Botany Bay Councils.
	Condition Reason: To ensure that the landscaping design intent is not eroded over time by the removal of landscaping or inappropriate exotic planting.
H. 3.	Outdoor Lighting – Residential
	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.
	Condition Reason: To protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting.

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

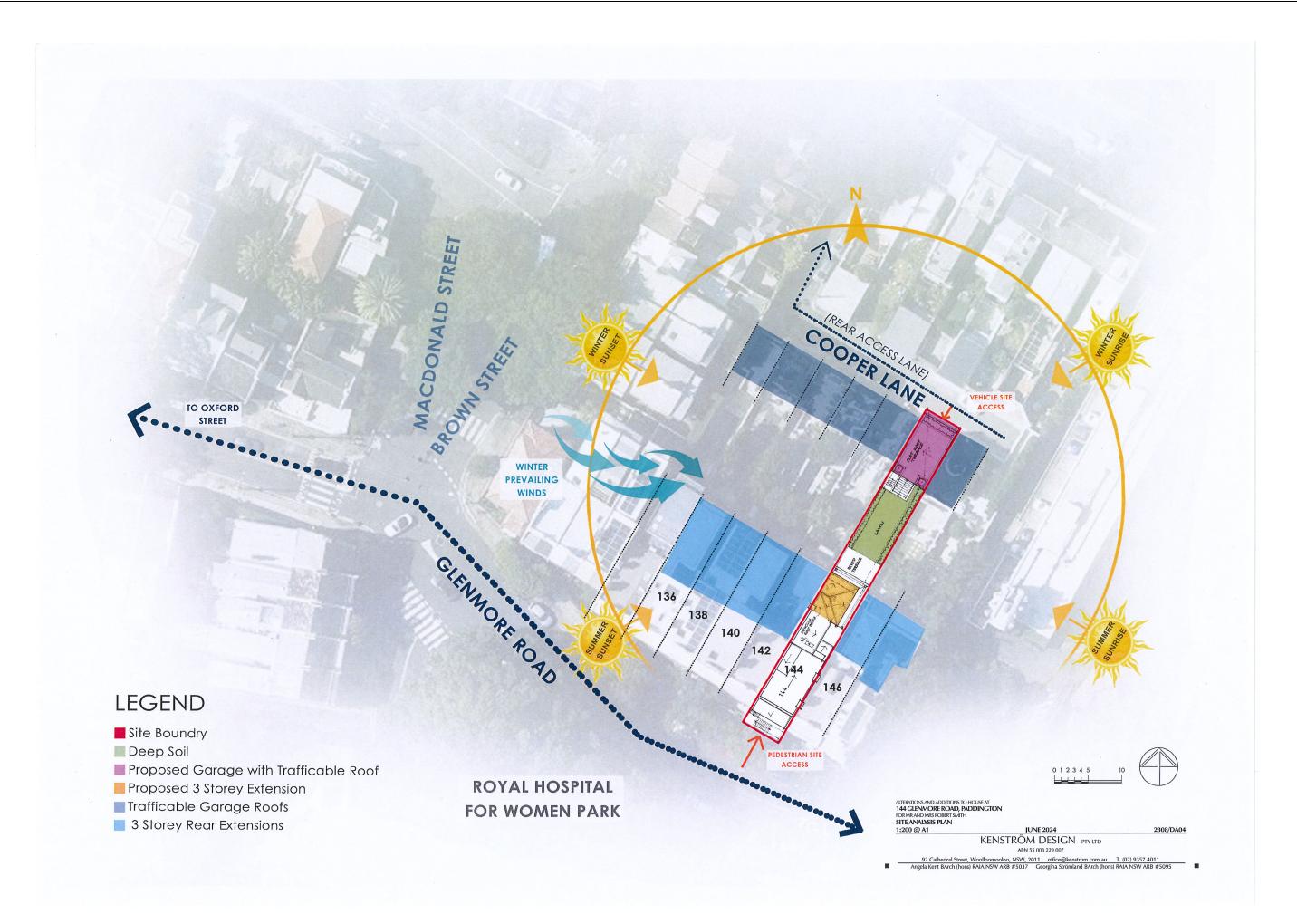
STRATA SUBDIVISION

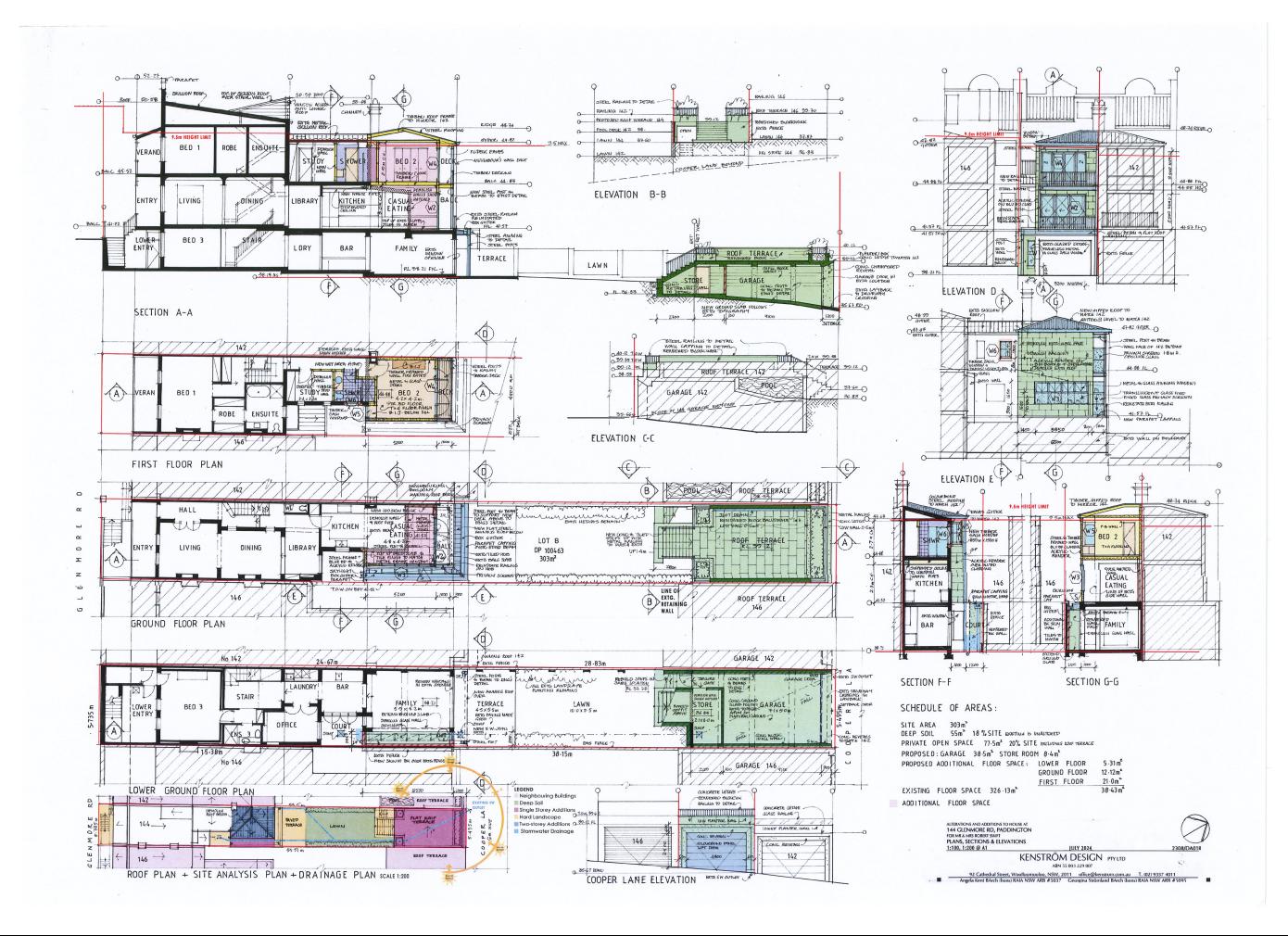
M. BEFORE ISSUE OF A STRATA CERTIFICATE

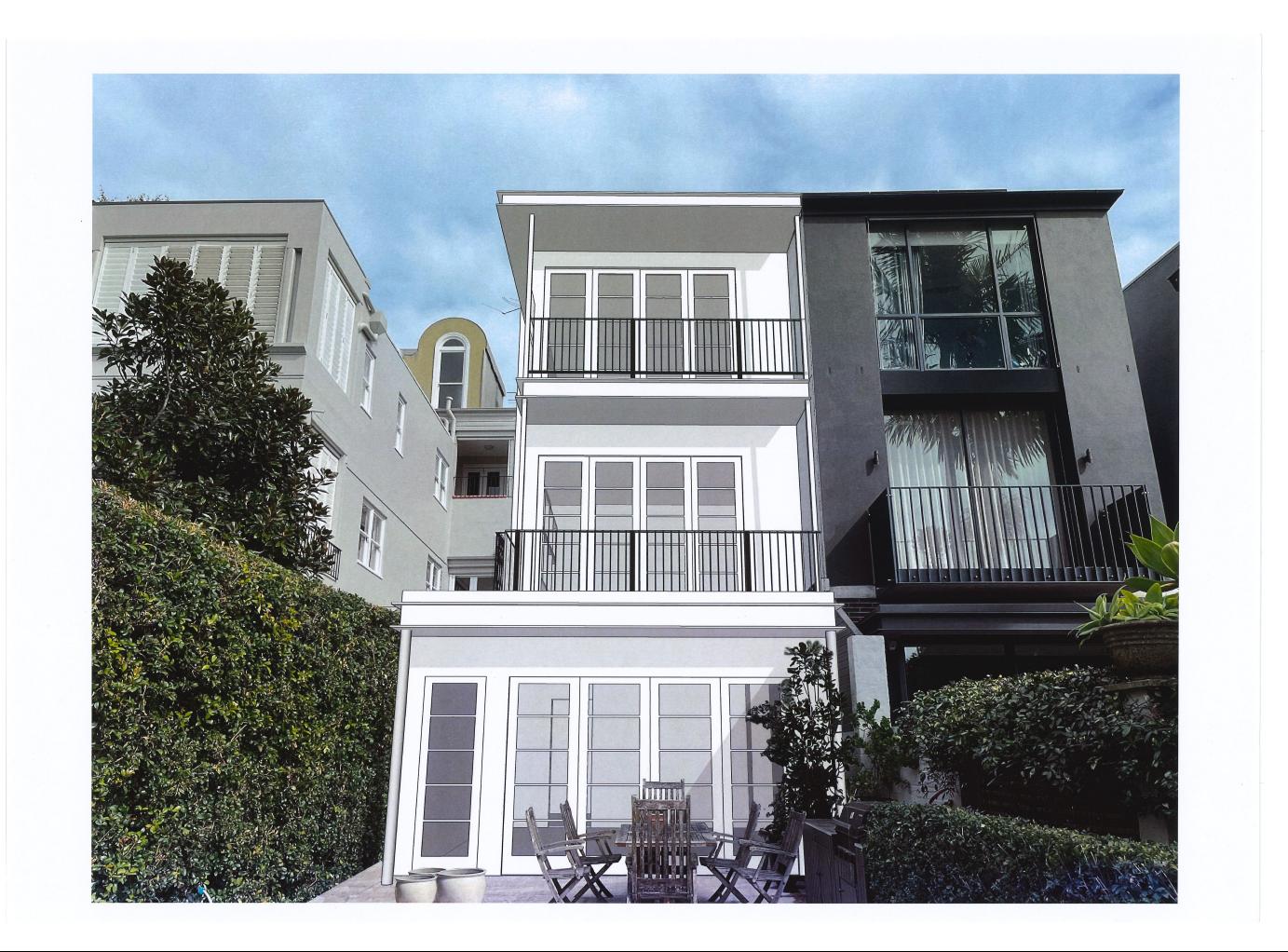
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Attachments

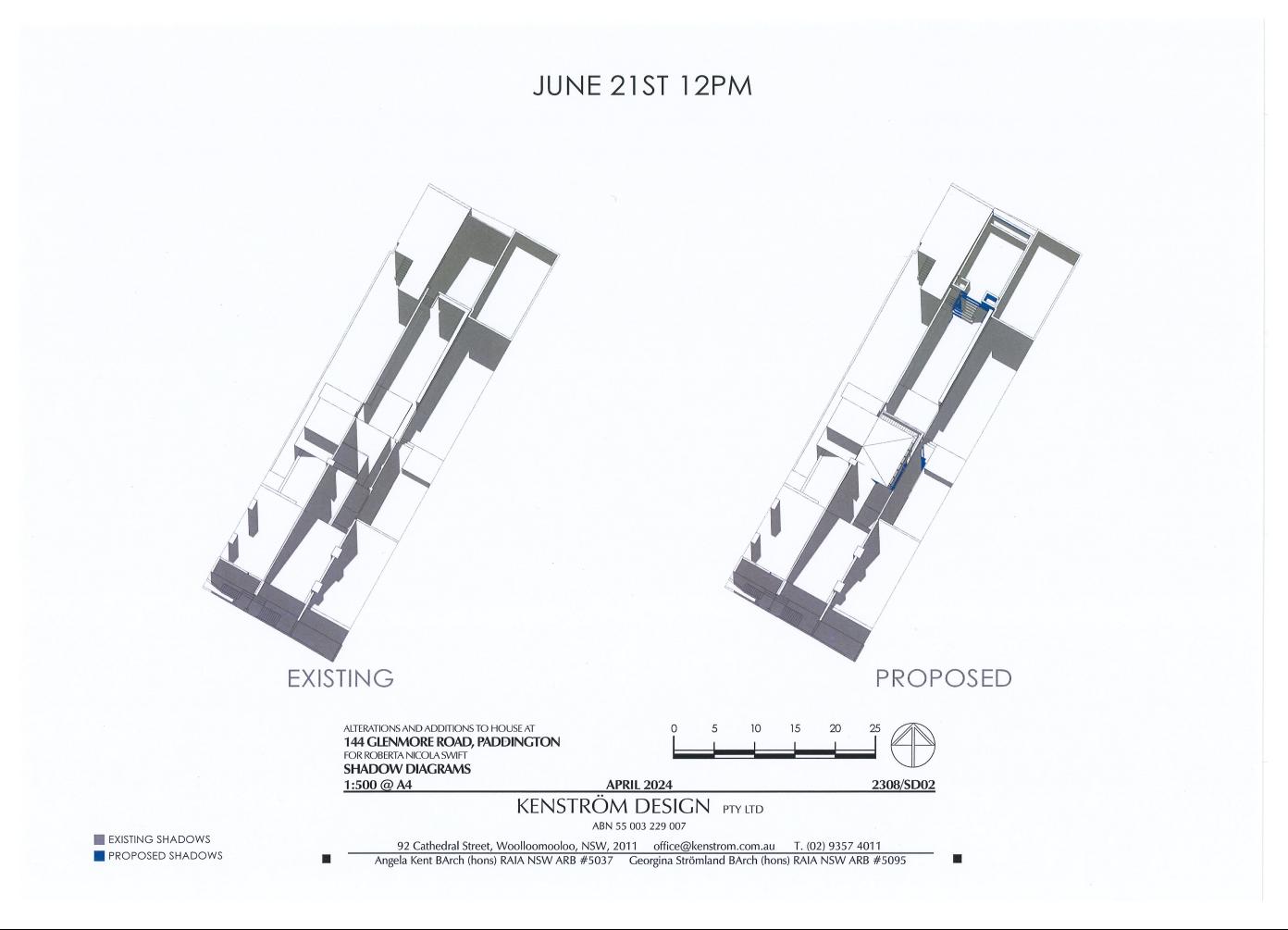
- 1. Architectural Drawings, photomontage, shadow diagrams, external materials, landscape plan and survey <u>J</u>
- 2. Clause 4.6 Variation Request Height of Building 😃 🛣
- 3. Referral Response Heritage 🕂 🛣
- 4. Referral Response Trees and Landscaping <u>U</u>



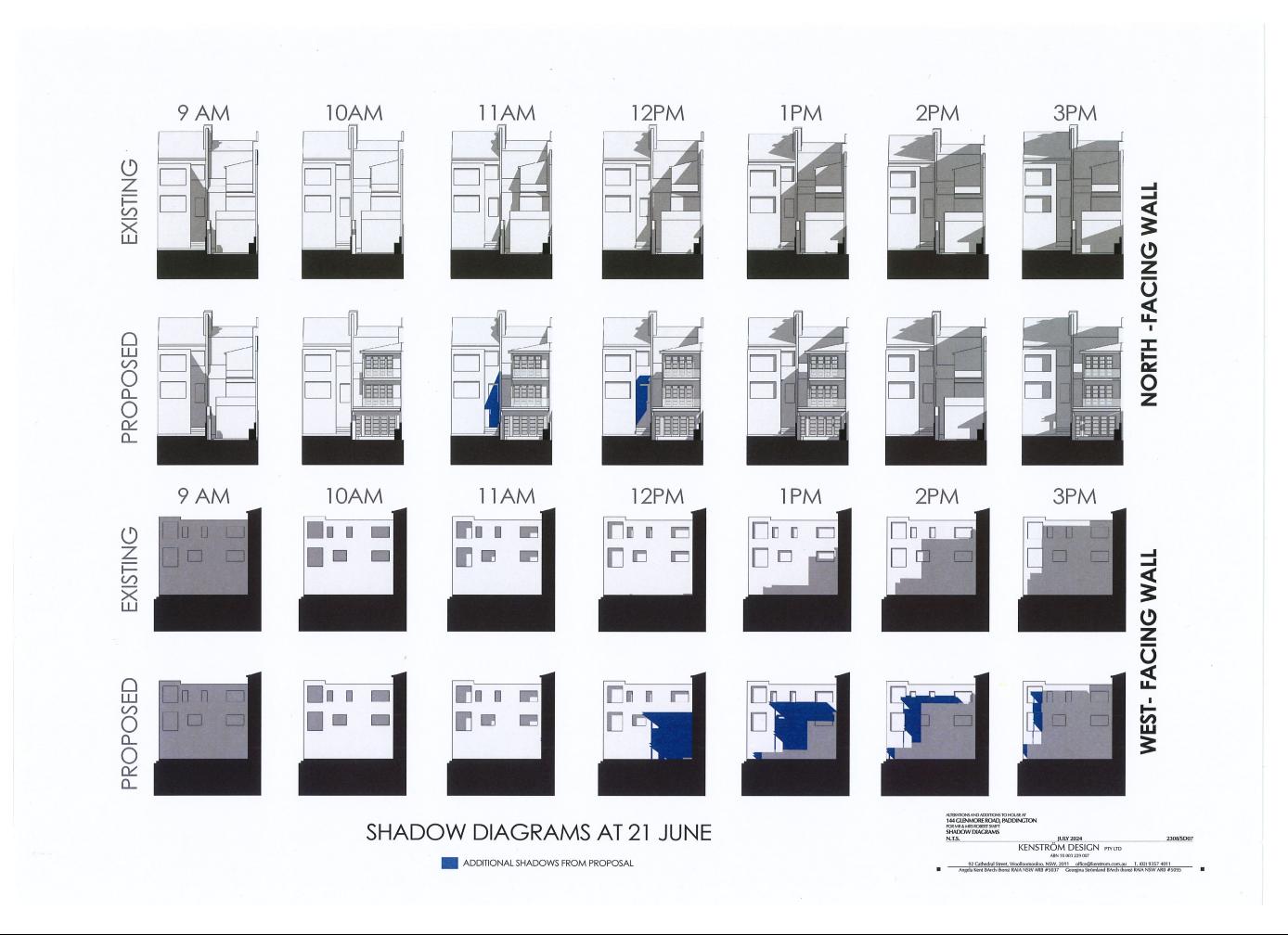










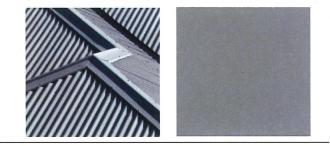


144 GLENMORE RD, PADDINGTON

MATERIALS & FINISHES

Materials & Finishes Palette 144 GLENMORE ROAD, PADDINGTON

New Roof: Custom orb profile in Colorbond 'Windspray'



New Acrylic Render: Dulux 'China White Half'

New Steel Beams, Railings, Posts: Dulux Ferrodor 'Natural Grey'

New Metal Windows: Dulux Ferrodor 'Natural Grey'









in Colourbond Monument

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144 GLENMORE RD, PADDINGTON

New Roof Terrace Tiles: Limestone Mid Grey MATERIALS & FINISHES



New Timber Sash Windows Dulux 'Lexicon' gloss enamel

Obscure Glass Privacy Screen

100



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GLENMORE ROAD



EXISTING MURRAYA HEDGE HEIGHT: 1.2m

EXISTING SWEET VIBURNUM HEDGE HEIGHT: 2.5m

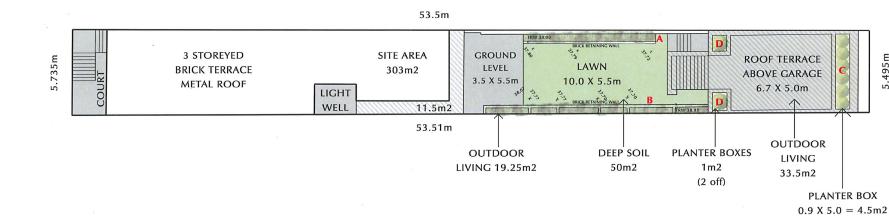
PLANT SPECIES

- A:Established Murraya hedge 1.2m high, with Star Jasmine Creeper
- B: Established Sweet Viburnum hedge 2.5m high
- C: Trailing Rosemary 'Rosmarinus Prostratus' with Liriope Muscari 'Monroe White'
- D: Gardenia Augusta 'Florida'



'ROSMARINUS PROSTAUS'





DEEP SOIL LANDSCAPED AREA

The Woollahra DCP C1.4.8 C4 states that our site requires 18% of the total site area to be deep soil landscaped area. With a site area of 303m2 we require a minimum of 54.54m2 to comply.

The proposal will retain all existing deep soil landscaped area which exists at 55m2 and therefore complies with deep soil landscaped area requirements of the WDCP 2015.



SOFT LANDSCAPE **DEEP SOIL**

EXISTING BUILT AREA





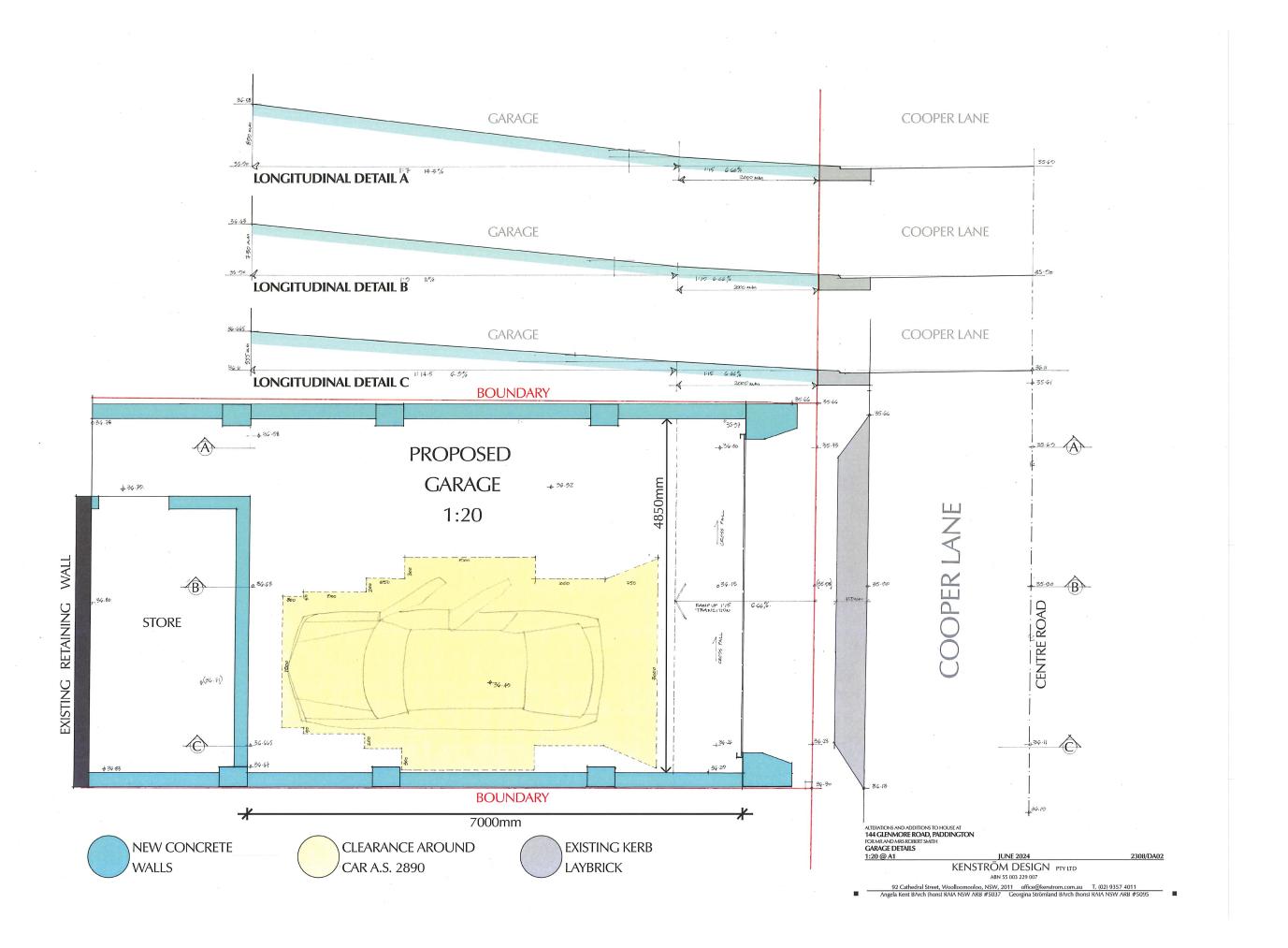


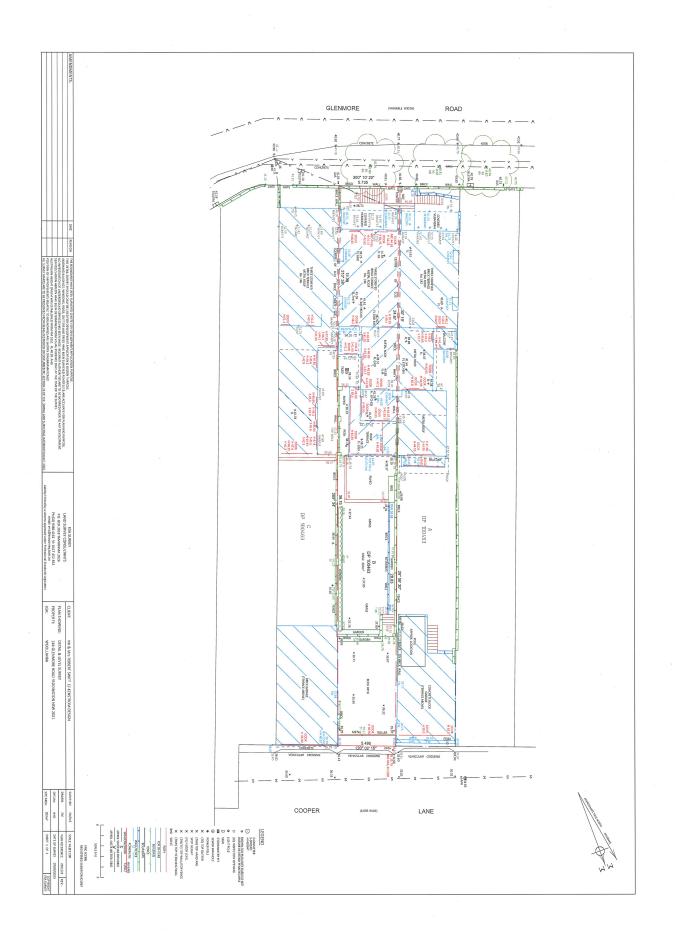
GARDENA AUGUSTUS LIRIOPE MUSCARI 'FLORIDA' 'MONRO WHITE'

5.495m

COOPER LANE

2 ATTRATIONS AND ADDITIONS TO HOUSE AT 144 GLENNAORE ROAD, PADDINGTON	10 19	15
FOR MR & MRS ROBERT SWIFT	11.11.17.000.1	
<u>1:100@A1</u> KEN	JUNE 2024 STRÖM DESIGN PTY LT	2308/DA03
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92 Cathedral Street, Woolloomo Angela Kent BArch (hons) RAIA NSW	oloo, NSW, 2011 office@kenstrom.co ARB #5037 Georgina Strömland BArd	m.au T. (02) 9357 4011 h (hons) RAIA NSW ARB #5095





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2308

CLAUSE 4.6 REQUEST TO VARY A DEVELOPMENT STANDARD

144 Glenmore Road, Paddington 22 April 2024 (UPDATED 14/08/2024)



KENSTRÖM DESIGN PTY LTD

92 Cathedral Street, Woolloomooloo NSW 2011 P: 02 9357 4011 Nominated Architect Georgina Strömland (5095) www.kenstrom.com.au

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1. Introduction

This report has been prepared to request a variation to clause 4.3 of the Woollahra Council Local Environmental Plan 2014 (2015 EPI 20) pertaining to the proposed development at 144 Glenmore Road, Paddington 2021. This Clause 4.6 Request for Exception to Development Standards supports and should be read in conjunction with the Statement of Environmental Effects prepared by Kenström Design as part of the Development Application.

The proposed development application seeks to alter and add to an existing terrace house, to align it with the bulk & character of neighbouring properties. The purpose of this report is to justify the request to exceed the prescribed maximum Height of Building of 9.5m by 1.06m or 11.15% for this lot as outlined in Clause 4.3 of the WLEP 2014 (2015 EPI 20)

In our assessment, the proposed variation aligns with the objectives of the zone and the relevant development standards in the WLEP, and we have established sufficient environmental planning justifications for the requested change.

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2. Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the WLEP 2014 (2015 EPI 20) provides an avenue for applicants to seek variation to development standards outlined in the LEP. The objectives of this clause as stated in subclause (1) aim to:

- (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.

Subclause (2) and (3) sets out the conditions under which development consent may be granted despite contravening a development standard:

- (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.
- (3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—
 - (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
 - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

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3. Development standard to be varied

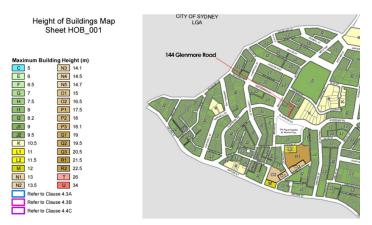
The environmental planning instrument that is being varied is the 9.5m height of building development standard – Clause 4.3 of the Woollahra Local Environment Plan 2014 (2015 EPI 20). The project lot is located in the R2 Low Density Residential zone and the Paddington Heritage Conservation area

3.1 Height of Buildings - standard to be varied

Subclause 2 outlines the limits of building heights and states:

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the *Height of Buildings Map*.

Therefore, the prescribed <u>maximum height of our lot is 9.5m</u> as can be seen in the diagram below taken from the Height of Building Map from the Woollahra Council.



Height of Building Map specifying maximum height

3.2 Definition – Height of Building

As defined by the WLEP 2014, building height of height of building means:

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

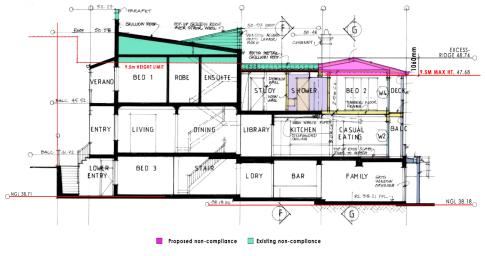
including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

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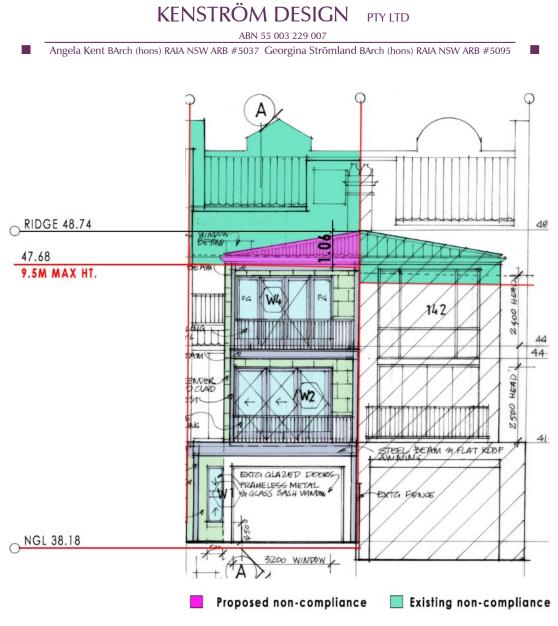
As per the definition, the following section illustrates the building height limitation detailed by the horizontal red line set at RL46.68 being 9.5m above the existing ground level of RL38.18 taken off the survey. The proposed new ridge of the rear addition is set to match that of the twinned adjacent property, being RL48.74 or a maximum of 10.56m above natural ground.



Existing and proposed non-compliance.

The section above shows the portions of the proposal that exceed the height limit of 9.5m. The green portions are the original heritage terrace with both principal and secondary forms higher than 9.5m. The purple portion is the proposed height excess of the rear addition.

The proposed additional height of 1.06m is an excess of 11.15%. The proposed bulk remains, however, relatively minor and subservient to the existing principal terrace form which is well above the maximum height.

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Existing and proposed noncompliance as seen from short section

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4. Extent of Variation

Relative to the existing non-compliance of the original grand terrace structure, which uses the natural fall of the land to build three storeys, the proposed first floor addition at the rear is consistent with the attached house and suitably subservient to the principal form. A 1.06m excess of height represents 11.15% of the permitted height and can be considered a minor deviation.

Additionally, the proposed development aims to align our terrace with the architectural character of neighbouring properties, specifically matching the roof line, and building height of the terrace at 142 Glenmore Road. It is in matching the roof line and building height of the neighbouring terrace at 142 Glenmore Road, that our proposal exceeds the 9.5m limitation. As seen in the below photomontage of the proposed development, the extent of non-compliance begins at the gutter of level one. As the ground level drops at 142 Glenmore Road, the addition to 142 Glenmore Road exceeds the 9.5m limitation to a much greater extent yet was approved by Woollahra Council.



Photomontage: Left: 144 Glenmore Road, Right: 142 Glenmore Road

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4.1 Calculation – Extent of variation

The natural ground below the non-compliant roof is **RL 38.18** as indicated by the survey provided as part of the development application. With a limitation outlined by Clause 4.3 of 9.5m, the maximum permissable building height prescribed by the LEP for this area is **RL 47.68**.

The ridge of the proposed steel roofing above this area is **RL 48.74**. This results in a maximum non-compliance of **1.06m** or **11.15%** above the permissible height.

5. Justification of Variation to Development Standard 5.1 Objectives of Clause 4.3 Height of Buildings

- (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.

a) The proposed hipped roof form of the first floor addition is to mirror the existing contemporary roof form of the adjacent neighbour. The typical terrace typology twins the original secondary skillion roofs of attached pairs of houses, as is the case here. It is consistent with the character of this terrace row to match the bulk and form of the rear form additions. Thus the proposal meets this objective.

b) The transition from grand and tall principal form of the terrace row onto Glenmore Rd and the subservient and lower secondary forms toward the rear lane has been matched with this proposal. Thus the proposal meets this objective.

c) The favourable orientation of a north east facing rear yard, means that increased bulk at the rear of this house does not overshadow the solar access of its neighbours. The proposed addition matches the rear setback at first floor level of every other house in the row and thus matches any shadows of neighbouring properties. The proposal complies with this objective.

d) The impact on neighbours of this proposed addition is minimal or negligible. There are no view affected. Privacy concerns have been addressed with privacy screens on both rear balconies to the eastern side, and the rear wall is setback relative to the western neighbour. Any new windows to the eastern neighbour in the addition have obscure glass up to 1.6m high off finished floor level. There is no significant visual intrusion as the rear setback on each level matches that of all neighbouring properties. Thus the proposal complies with this objective.

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View of first-floor similar additions at 140 & 142 Glenmore Rd from Cooper Lane

e) The proposed addition can barely be seen from Cooper Lane on the back boundary due to the steep fall of the land front to back, and no public views are affected. Furthermore, due to the length of the lot and placement of the private outdoor space, the rear building line remains a considerable 28m from Cooper Lane. Thus the proposal complies with this objective.

5.2 Unreasonable or Unnecessary in the Circumstances of the Case

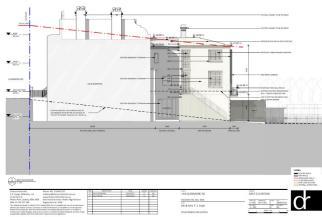
Given that all the objectives of Clause 4.3 in WLEP can be met by the proposal, as discussed above, we submit that it is unreasonable and unnecessary to insist on height compliance in the circumstances of the case.

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There is a history of approved DAs for similar rear additions to 144 Glenmore Rd. DA20/2018 for 144 and DA264/2018 for 142 Glenmore Rd were approved as twinned rear additions, with the currently proposed height and roof form. Council clearly thought the proposed character and height non-compliance justifiable at that time. 142 Glenmore Rd completed their build, whereas 144 Glenmore Rd allowed the approval to lapse, and sold the house to the current owners as unrenovated.



Architectural drawings from 2018 DA submission outlining area of non-compliance (Author: Dickson Rothschild)

There are two groups, each with four grand terraces facing this section of Glenmore Rd. All seven remaining terraces with rear access from Cooper Lane have completed similar alterations and additions which exceed the maximum permissible height.

144 Glenmore Rd is the only terrace to not yet build out over all levels to the rear setback line. Strict adherence to the height clause would be of no benefit to the heritage streetscape, the rear lane streetscape, the amenity for neighbours or the public realm. Instead, it could be argued that this proposed non-compliance contributes positively to the architectural consistency of the row when viewed from Cooper Lane, by aligning itself with the character and bulk of the other seven terrace additions completed in the immediate area.

As previously outlined, the extent of variation is minor in comparison to the existing non-compliance and heritage grandeur. The proposed addition extends rearward to meet the existing rear building line of 142 Glenmore Road. The creation of a desirable roof form that mirrors the attached terrace, makes up the bulk of the noncompliance. To not do so would be detrimental to the character of the row. This allows for visual coherence and uniformity or architectural form when looking from Cooper Lane.

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5.2 Sufficient Planning Grounds

5.2.1 In relation to Objectives of Clause 4.3 Height of Building

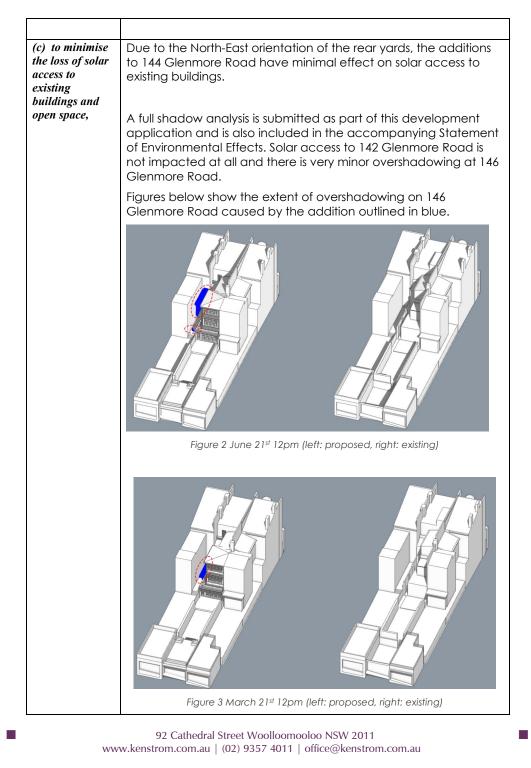
Objective	Discussion
(a) to establish building heights that are consistent with the desired	The proposed non-compliance is only visible from Cooper Lane as the existing non-compliant parapet blocks the view of the new addition from Glenmore Road.
future character of the neighbourhood,	As seen in Figure 1, all other terrace houses, from 148 Glenmore Road to 130 Glenmore Road can be seen to have a uniform roofline with the exception of 142 Glenmore Road which has been renovated since to also match the pattern of terrace house additions.
	The approval of these renovations and additions reflects the desired character of the local area and neighbourhood as approved by Woollahra council. The proposed renovation to match the existing building heights therefore do not impede on the achievement of this objective.
	Image: state of the state
(b) to establish a transition in scale between zones to protect local amenity,	Considering the heights of neighbouring zones and their respective building scales surrounding our proposal, the non- compliance will not disrupt the transition in scale between zones.
	The proposed development aligns with existing building scales on both sides, ensuring unity of the streetscape and preserves local amenity. Therefore, the non-compliance should be justified, as it maintains the desired transition in scale without compromising neighbourhood character or amenity.

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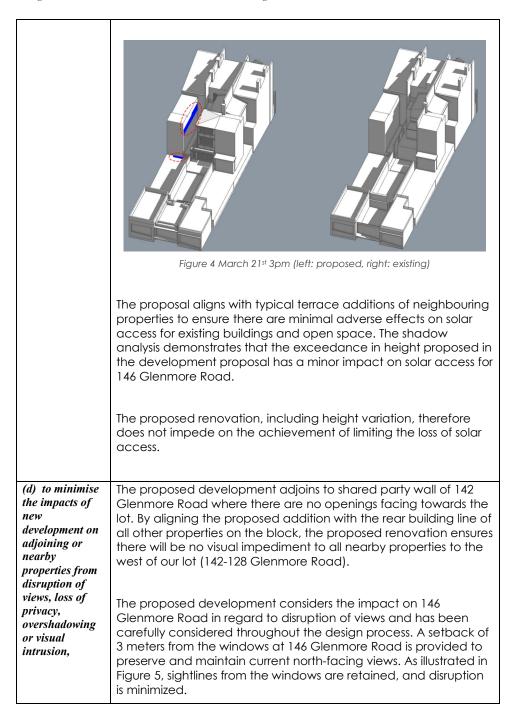
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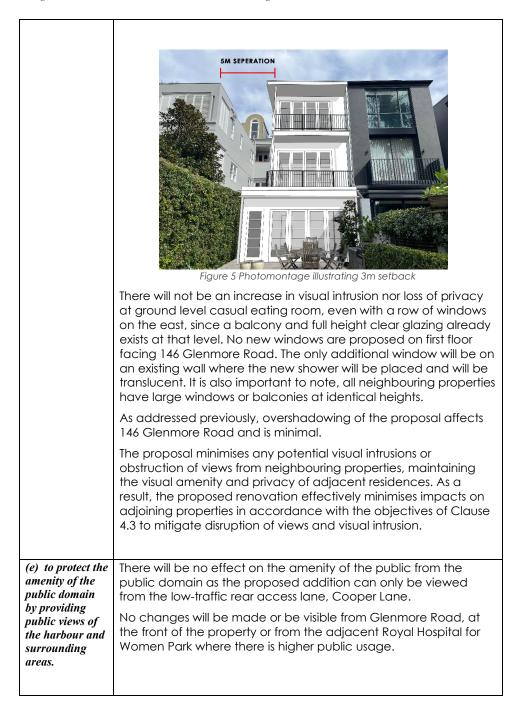
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5.2.2 In relation to Objectives of R2 Low Density Residential Zone

Objective	Discussion
To provide for the housing needs of the community within a low- density residential environment.,	The non-compliance does not adversely affect other's ability to create low density housing within the area. The proposal does however increase the amount of usable floorspace and amenity for dwelling occupants. This supports the housing needs for occupants.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	Being a residential project, the ability to provide facilities or services for residents is not a relevant consideration in the context of this proposal.
To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.	The building façade facing Glenmore Road contributes greatly to the local heritage and should be preserved to meet the objectives of the Paddington Heritage Conservation Area. However, the proposed additions are at the rear of the residence where all other terraces from 128-148 Glenmore Road have built additions similar in massing and style. The proposed works will unify the architectural character of the properties on the block.
To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.	As previously mentioned, the additions aim to replicate the renovations made to all other properties on the block. This includes maintaining a consistent roofline, scale, balcony heights and rear boundary alignment with neighbouring properties. Previous approvals for similar developments on the block reflect the desired future character of the area. Approval of this proposal will contribute to completing the cohesive rear façade language throughout the block
To ensure development conserves and enhances tree canopy cover.	No tree canopies will be affected in proposed development.

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Attachment 2 Clause 4.6 Variation Request - Height of Building

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6. Conclusion

In relation to the objectives of Clause 4.3 - Height of Buildings and R2 Zone in the WLEP we find that there are sufficient planning grounds to approve this minor deviation from the 9.5m building height limitation. All objectives are achieved notwithstanding the proposed variation. Strict adherence to the 9.5m height limit from the ground line is unreasonable and unnecessary in the circumstances of the case. The slight deviation does, however, unify the architectural language of the rear of the residences as viewed from Cooper Lane.

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6 September 2024

REFERRAL RESPONSE - HERITAGE

FILE NO:	Development Applications: 143/2024/1
ADDRESS:	144 Glenmore Road PADDINGTON 2021
PROPOSAL:	Alterations and additions including a new garage with roof terrace
FROM:	Tristan Ryan – Senior Strategic Heritage Officer
<u>TO:</u>	Ms F Stano

1. DOCUMENTATION

The following documentation provided by the applicant has been examined for this referral response:

- Drawing set by Kenstrom Design, dated November 2023
- Heritage Impact Statement by Kenstrom Design, dated 24 February 2024
- Statement of Environmental Effects by Kenstrom Design, dated 27 March 2024

2. SITE INSPECTION / RESEARCH

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

• The site was inspected on the 28 June 2024, including the general locality. An interior inspection was not considered necessary in this instance.

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.
- Previous referral response for this property relating to DA2018/90/1, prepared by Catherine Colville, Strategic Heritage Officer.
- 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

5. SIGNIFICANCE OF SUBJECT PROPERTY/TO THE CONSERVATION AREA

144 Glenmore Road is a terrace within the Paddington Heritage Conservation Area. It is a contributory building within the HCA.

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National Parks and Wildlife Act 1974

The site is not in an area of Potential Aboriginal Heritage Sensitivity. Therefore, no Aboriginal Heritage Impact Assessment was required as part of the DA.

Ordinary precautions are sufficient to protect any potential Aboriginal heritage.

Woollahra LEP 2014

The subject site is not a heritage item in Woollahra Local Environment Plan 2014 'the LEP' but is within the Paddington heritage conservation area.

Clause 1.2 Aims of Plan Subclause 1.2. (2) (f) – to conserve built and natural environmental heritage

The proposed works alter the interior and rear elevation of the building. They do not impact significantly on the principal building form, and at the rear are extensions and alterations to existing extensions.

Clause 5.10 Heritage Conservation

Significance of items in the vicinity

The following listed heritage item is located in proximity of the site:

'Royal Hospital for Women Group' (No. 1244) The Royal Hospital for Women precinct has local historic, associative, aesthetic, social and representative heritage significance at local level. There is no impact on this site resulting from the proposed works.

Woollahra DCP 2015

The subject site is within the Paddington Heritage Conservation Area, and is considered a contributory item.

Part C – Heritage Conservation Areas – C1 Paddington HCA DCP

BUILDING TYPES

Clause 1.3.4 Multi-storey terrace style housing Objectives O1, O4, O5 Controls

- The proposal retains and conserves the principle building form, including the chimneys;
- The proposed works retain the shared distinctive characteristics of the terrace row, adjoining row and streetscape of Cooper Lane.

GENERAL CONTROLS FOR ALL DEVELOPMENTS Clause 1.4.1 Principal building form and street front zone of contributory buildings Objectives O1, O4, O6, O7, O8, O9, O10, O11

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 Controls C1, C2, C3, C4, C5, C7, C8 The proposed works will retain and conserve the front façade and most of the principle building form; The proposed works alter the terrace substantially from the rear. However, the alterations do not affect the principal building form. The proposed works will not adversely affect or remove significant fabric.
 Clause 1.4.3 Rear elevations, rear additions, significant outbuildings and yards Objectives O1, O2, O3, O4, O5 Controls C1, C2, C4, C5, C6 The proposed additions at the rear do not dominate the existing building and are appropriately below the gutter line of the principal building form. The architectural design of the additions is not in keeping with the house or traditional forms.
 Despite this non-compliance, the design is considered acceptable due to the prevalence of similar designs along this rear lane and within this terrace group. The proposed solid-to-void ratio at the rear balcony doors goes beyond that of neighbouring houses and the masonry width must be increased.
Clause 1.4.4 Roofs and roof forms Objectives O1, O2, O3, O4 Controls C1, C6, C7, C11 • The proposed roof forms are traditional and appropriate to the surrounding properties.
 Clause 1.4.5 Building height, bulk, form and scale Objectives O1, O3, O4 Controls C3 The proposed development is consistent with the predominant height, bulk, scale and form of adjoining and surrounding development. The height of the building at the street frontage is not proposed to be increased.
SPECIFIC POLICY FOR BUILDING AND SITE ELEMENTS
Clause 1.5.2 Chimneys Objectives O1 Controls C1 • The chimney of the property is proposed to be retained.
Clause 1.5.3 Windows, doors, shutters and security Objective O1, O3 Control C4
 The proposed glazing at the rear is in line with existing recent development of the terrace rows, though it has less substantial masonry elements when viewed from the rear than some of the adjoining development. The framing of the new doors at the rear is not specified. Steel, painted in an appropriately recessive colour should be used if they are not timber-framed.
Clause 1.5.4 Verandahs and balconies Objective O3 Controls C1, C4, C5, C6 • The proposed rear balcony is larger than permitted under the objectives and

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controls of the Paddington HCA DCP. However, in this instance, the proposed balcony (and rear verandah arrangement) is very similar to the development of the other terraces and the visual character of the lanescape will be uniform. Accordingly, the non-compliance is considered acceptable and is considered satisfactory because of the altered nature of the rear wings presenting to Cooper Lane.

Clause 1.5.6 On-site vehicle parking, garages, carports, driveway access and servicing Objectives O2, O4 Controls C13

 The proposed roof is trafficable. However, adjacent roofs are also trafficable. Because of the substantial degree of change at the neighbouring properties and the presence of trafficable rooves, the non-compliance is acceptable.

Clause 1.5.8 Materials, finishes and details Objectives O2

Controls C4

 Materials for rear doors are not specified. Steel, painted in an appropriately recessive colour should be used if they are not timber-framed.

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Figure 1 The rear of the property, March 2023. The rear of the other part of the pair can be seen to the right. Source: RealEstate.com.au

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Figure 2 Upper storeys at neighbouring houses at 136-142 Glenmore Road, Paddington.



Figure 3 Garage entrances at neighbouring houses, 138-142 Glenmore Road, Paddington

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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 not unduly impact the built heritage of Woollahra.

Part 5.10

- Clause 1(a) The development does not unduly impact the heritage of Woollahra.
- Clause 1(b) The impact upon the heritage significance of the conservation area will be neutral.
- Clause 4 This referral constitutes an assessment under this clause.

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 is recommended.

Standard Conditions

8B Archaeological Features - Unexpected Findings
9B Skeletal Remains
10B Aboriginal Objects - Unexpected Findings
12B Aboriginal Heritage Due Diligence Responsibilities

Tristan Ryan Senior Strategic Heritage Officer 6 September 2024 Completion Date

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1 August 2024

REFERRAL RESPONSE – TREES AND LANDSCAPING

FILE NO:	Development Applications: 143/2024/1
ADDRESS:	144 Glenmore Road PADDINGTON 2021
PROPOSAL:	Alterations and additions including a new garage with roof terrace
FROM:	Nick Williams – Tree and Landscape Officer
то:	Ms F Stano

1. ISSUES

None

2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environmental Effects, prepared by Kenstom Design, dated 27th of March 2024.
- Survey Plan No.2951/23, drafted by Eric Scerri, dated 7/9/2023.
- Architectural Drawing No's 2308/DA01, drawn by Kenstom Design, dated November 2023
- Landscape Plan No's 2308/DA03, designed by Kenstrom Design, dated June 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 4970 – Protection of trees on development sites.

4. COMMENTS

There are no trees of any significant size (that would be large enough to be protected by Council's Tree Management DCP) located in the rear of the property. Only a small section of a 2.5 metre high hedge is likely to be removed to accommodate the works. This will result in a negligible impact on landscape amenity.

No impacts to neighbouring trees and other vegetation are envisaged due to the existence of brick boundary walls which will have acted to confine root growth and spread to within those properties.

If works extend to the front of the site it is recommended that Condition B.1 of this referral response forms part of any development consent.

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5. **RECOMMENDATIONS**

Council's Tree and Landscape Officer has determined that the following information is required before further assessment of the application can be undertaken:

Council's Tree and Landscape Officer has determined that for the development proposal to be satisfactory in terms of tree preservation and landscaping, compliance with the following Conditions of Consent are recommended.

A. GENERAL CONDITIONS

A. 1.	Approved P	ans and Supporting Docume	nts		
	use and worl affixed a Cou	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.			
		ans relate to alterations or addi hlighted are approved.	tions only those	works shown in	
	Reference	Description	Author	Date	
	2308/DA03	Landscape Plan	Kenstrom Design	June 2024	
	Council sta numbers in original cop original cop • These 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. 			
		eason: To ensure all parties are ocumentation that applies to the		pproved plans ar	
	Standard Condition	n A.2 (Autotext 2A)			

B. BEFORE DEMOLITION WORK COMMENCES

B.1 Establishment Tree Protection Measures

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).

a) Trunk protection must be installed around the trunks of the following trees:

Council Ref No	Species	Location
1	Tristaniopsis laurina (Water	Street tree on Glenmore Road
	Gum)	footpath, in front of property

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Trunk protection must consist of a padding material such as hessian or thick carpet underlay wrapped around the trunk. Hardwood planks (50mm x100mm or similar) must be placed over the padding and around the trunk of the tree at 150mm centres. The planks must be secured with 8 gauge wire at 300mm spacing. Trunk protection must extend a minimum height of 2 metres or to the maximum possible length permitted by the first branches.

- b) Signs identifying the Tree Protection Zone area must be erected on each side of the trunk protection indicating the existence of a TPZ area.
- c) No excavation, construction activity, grade changes, storage of materials, stockpiling, siting of works sheds, preparation of mixes or cleaning of tools is permitted around the base of the tree.
- d) 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.

Standard Condition B.5 (Autotext 5B)

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.		Tree Preservation
		While site work is being carried out, all persons must comply with Chapter E.3 – <i>Tree Management</i> 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

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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

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.

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)

Nil.

M. BEFORE ISSUE OF A STRATA CERTIFICATE

Nil.