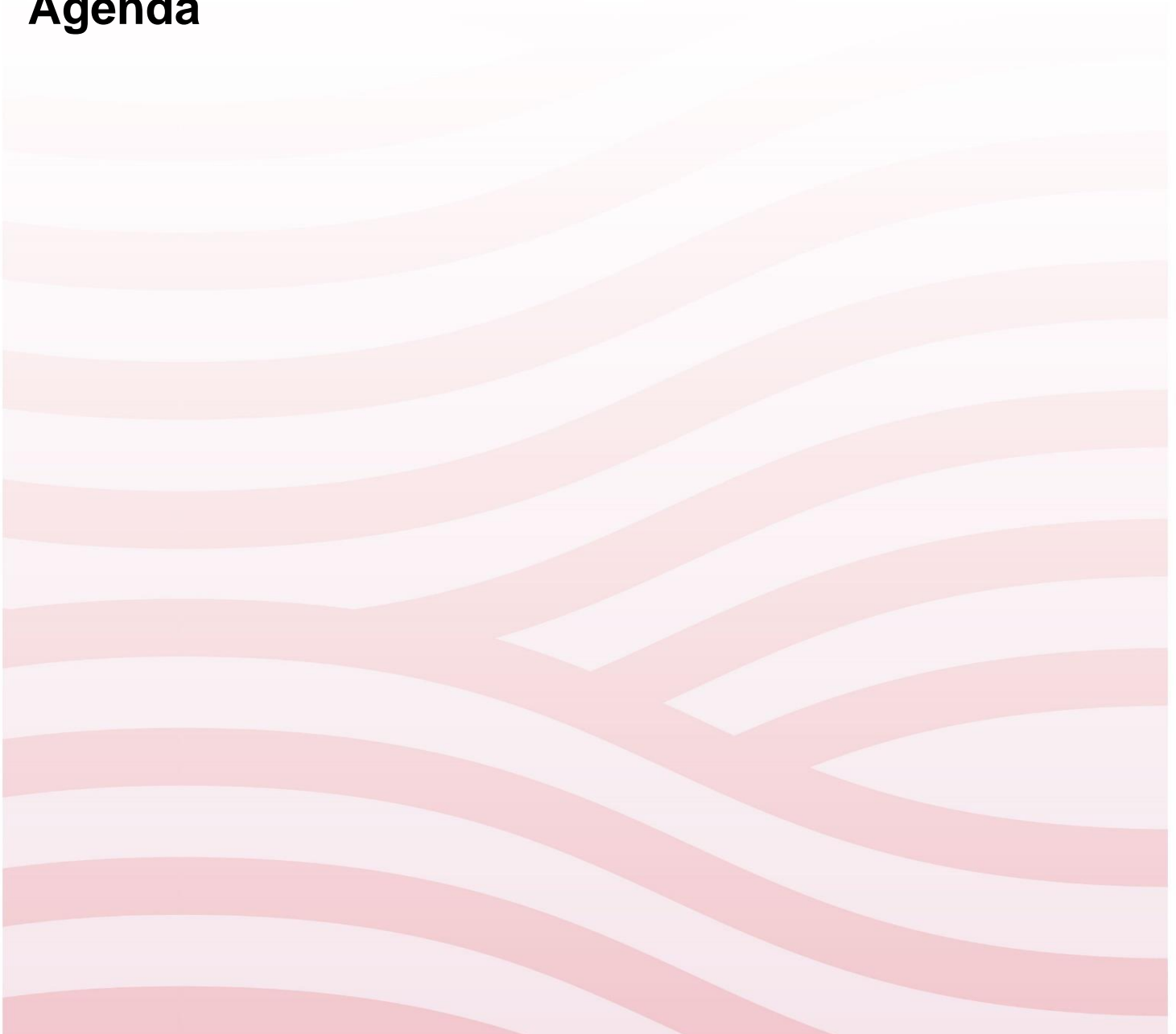




Woollahra Local Planning Panel (Electronic Meeting)

Thursday 21 November 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 records@woollahra.nsw.gov.au

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

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

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

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

Quorum: 3 Panel members

Woollahra Municipal Council

Notice of Meeting

11 November 2024

To: Woollahra Local Planning Panel Members
Chair
Experts
Community Representative

Dear Panel Members,

Woollahra Local Planning Panel (Electronic Meeting) – 21 November 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 21 November 2024 at the Conclusion of the Public Meeting.**

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

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

Members of the public are however invited to submit late correspondence for consideration by the Panel by emailing records@woollahra.nsw.gov.au by **12 noon on the day prior to the meeting.**

If you have any difficulties accessing the meeting please contact (02) 9391 7001.

Regards,

Craig Swift-McNair
General Manager

Woollahra Local Planning Panel (Electronic Meeting)

Agenda

Item	Subject	Page
1	Opening	
2	Acknowledgement of Country (Gadigal People and Birrabirragal People)	
3	Leave of Absence and Apologies	
4	Disclosures of Interest	

Items to be Decided by the Panel

D1	DA288/2024/1 - 237 Underwood Street Paddington - 24/208630.....7 *See Recommendation Page 32	
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LOCAL PLANNING PANEL DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D1
FILE No.	DA288/2024/1
ADDRESS	237 Underwood Street PADDINGTON
COUNCIL WARD	Paddington
SITE AREA	1331m ²
ZONING	R2 Low Density Residential
PROPOSAL	Erection of new structure (pergola) on the roof of existing residential flat building
TYPE OF CONSENT	Local development
COST OF WORKS	\$79,959.00
DATE LODGED	31/07/2024
	28/10/2023 – Existing Use Rights Report has been submitted.
APPLICANT	Easton Planning Consultants Pty Ltd
OWNER	The Owners - Strata Plan No. 02780
AUTHOR	Dr S Hosseinabadi
ACTING TEAM LEADER	Mr V Aleidzans
SUBMISSIONS	One (1)
RECOMMENDATION	Approval

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

The application is to be determined by the Woollahra Local Planning Panel as it falls under the category of:

- Departure from development standards
 - (a) Development that contravenes a development standard imposed by an environmental planning instrument by more than 10%

2. REASONS FOR RECOMMENDATION

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

- It is considered to be satisfactory with all relevant planning policies including the objectives of WLEP 2014 and WDCP 2015;
- It will not have adverse effects on the local built and natural environment nor any adverse social and economic impacts in the locality;
- All likely impacts to adjoining properties including any submissions made have been addressed in the report, or are considered to be satisfactory;
- The site is suitable for the proposed development;
- The proposal is in the public interest; and

- The Clause 4.6 is well-founded and as such, the exceedance of the statutory height of buildings development standard is justified.

3. LOCALITY PLAN



Note: Refer to Section 9 of this report for a complete list of objector's.



Figure 1 – 3D View to the subject site and demonstrating the context (Source: Google earth)

4. PROPOSAL

The proposal involves the following works:

- New structure (pergola) on the roof of existing Residential Flat building.

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	26.33m or 16.83m departure from the 9.5m control	Satisfactory

5.2 Primary Issues

None.

PROPERTY DETAILS AND REFERRALS

6. SITE AND LOCALITY

Physical features
The site is legally defined as SP2780 and is commonly known as 237 Underwood Street, Paddington. The site is located on the northern side of Underwood Street, with a southern frontage length of 22.82m, and a northern rear boundary length of 22.83m to Caledonia Street. The site's side boundaries measure 58.3m and 58.2m in length, respectively. The site is a quadrilateral shape with a total site area of 1331m ² .
Topography
The site falls from the front footpath of Underwood Street, which has an approximate level of RL 69.27, to Caledonia Street at the rear, which has an approximate level of RL 66.98.
Existing buildings and structures
The site is currently occupied by an 8-storey brick residential flat building and associated car and motorcycle parking. The front of the site comprises a driveway, open air parking and landscaping. The rear of the site, towards Caledonia street comprises two car parking spaces.
Surrounding Environment
The site is located within the Paddington Heritage Conservation Area. The immediate locality is characterised by residential uses surrounding the site. The site is in close proximity to Oxford Street which contains numerous commercial and retail spaces.

7. RELEVANT PROPERTY HISTORY

Current use
Residential flat Building
Relevant Application History
DA2019/335/1 – Ancillary structure/landscaping replacement with an L shape planter box and provision of motorbike parking (unauthorised work) – Refused 24/02/2020
Relevant Compliance History
<u>Customer Request Management Enquiry: 17773/2016 – Building Control Illegal Unauthorised Works</u> - Request received 25 October 2016 from Senior Tree Officer in response to TPO application 382/2016. Application refused 16 December 2016 for the removal of a tree in the front west garden bed.
<u>Notice/Order: 291/2016</u> - Issued 30 August 2018 by Team Leader Compliance, detailing observed completed unauthorised works to the south-east corner of the subject site, and ordering the following:
<ol style="list-style-type: none"> 1. <i>Demolish the unauthorised masonry retaining wall that has been constructed approximately 1m north of the existing masonry retaining wall located on the southern boundary of the subject premises.</i>

2. *Restore the deep soil landscape area at the south eastern corner of the property. Single specimen of *Caesalpinia ferrea* (Leopard tree). The tree shall be a minimum pot size of 75 litre at the time of planting.*

Reason(s) for the Order:

1. *The masonry retaining wall that has been constructed approximately 1m north of the existing southern boundary masonry retaining wall has been constructed without prior consent where prior consent is required.*
2. *The deep soil landscaped area at the south eastern corner of the property has been removed without prior consent where prior consent is required.*
3. *A tree at the south eastern corner of the property has been removed without prior consent where prior consent is required.*

The unauthorised removal of the deep soil landscape area and the existing tree do not comply with objective O2 of C1.3.6 of Chapter 1 of the Woollahra Development Control Plan (WDPC) 2015 which states: "O2 To mitigate the effect of intrusive residential flat building and multi dwelling housing development".

Requests for Additional Information and Replacement Applications

An existing use rights assessment was requested on 08 October 2024 and an additional assessment was received dated 28 October 2024.

An amended Clause 4.6 request was submitted on 08/11/2024.

Land and Environment Court Appeal(s)

N/A

8. REFERRALS

Referral	Summary of Referral Response	Attachment
Technical Services	Satisfactory. Subject to standard conditions recommended at the Development Application Review Committee (DARC) stage.	No formal referral.
Trees and Landscaping	Satisfactory. Subject to a standard condition recommended at the Development Application Review Committee (DARC) stage.	No formal referral.
Heritage	Satisfactory.	Attachment 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 21/08/2024 to 05/09/2024 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. Submissions were received from:

1. Lindsay Amor – Underwood Street, Paddington.

The submission raised the following issues:

- Noise, loud music, talking, and objects tossed over the side.

Comment: The subject site is 8 storey residential flat building with ground floor level car parking noting that the neighbouring properties are between 2 to 4 storeys height. This assessment determines that there would be no unreasonably adverse visual or acoustic impacts given the level differences between the location of the proposed pergola structure and neighbouring properties. Nevertheless, a condition of consent has been included in this report to ensure that the use of the roof and associated noise is reasonable and controlled.

In case of rubbish disposal, it is considered that this would be managed by the buildings management and users of the area.

- Policing access to the roof.

Comment: This is considered to be a matter for building management and Strata body to determine.

- Rubbish removal.

Comment: This is considered to be a matter for the users of the roof area along with building management and Strata body to determine.

- Lack of toilets.

Comment: This is deemed to be outside the scope of assessment. It is considered that residents would likely need to utilise the facilities in their own apartments. Guests of residents to the building would likely utilise the same.

- Emergency access.

Comment: It is considered that the roof can be readily accessed via the existing circulation core.

9.2 Statutory Declaration

The applicant has completed the statutory declaration dated 06/09/2024 declaring that the site notice for DA288/2024/1 was erected and maintained during the notification period in accordance with Schedule 1 of the Woollahra Community Participation Plan 2019.

EXISTING USE RIGHTS

10. EXISTING USE RIGHTS ASSESSMENT

The use of the subject land as a residential flat building is prohibited under the R2 Low Density Residential Zone. The application therefore relies upon the site benefiting from existing use rights (EUR) as regulated under Section 4.11 of the Environmental Planning and Assessment Act 1979 (EPA Act 1979) and Part 7 of the Environmental Planning and Assessment Regulation 2021 (EPA Regulations 2021). As such, it must be established that the subject land benefits from EUR for development consent to be granted.

The relevant matters for consideration under the EPA Act and EPA Regulations are assessed under the following headings:

10.1 Does the existing use satisfy the definition of "existing use" under the Act?

Section 4.65 (previously Section 106) states:

4.65 Definition of "existing use"

In this Division, existing use means:

- (a) *the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and*
- (b) *the use of a building, work or land:*
 - (i) *for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
 - (ii) *that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.*

Section 4.66 (previously Section 107) states:

4.66 Continuance of and limitations on existing use

- (1) *Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.*
- (2) *Nothing in subsection (1) authorises:*
 - (a) *any alteration or extension to or rebuilding of a building or work, or*
 - (b) *any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or*
 - (c) *without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or*
 - (d) *the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 4.17 (1) (b), or*
 - (e) *the continuance of the use therein mentioned where that use is abandoned.*
- (3) *Without limiting the generality of subsection (2) (e), a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.*

This necessarily requires the following questions to be answered.

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?
2. Was the use of the building, work or land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?
3. Has the use of the building, work or land been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

The existing residential flat building use of the site is currently prohibited under the R2 Low Density Residential zoning under the Woollahra LEP 2014 which commenced on 23 May 2015.

The original approval has been identified under DA1155/65 which involved the erection and completion of a block residential flats at the subject site.

The granting of these consents indicates that Council is satisfied that the current building was not unlawfully constructed. There is no evidence that the building has not been continually occupied since its construction nor is there evidence that the use has ever been abandoned.

The Applicant provided, in part, the following justification with regards to Existing Use Rights. Reference should also be made to Attachment 4 for the Applicants assessment.

A review of the archives available on the City of Sydney Archives show a building inspection card dated 1965. It appears the DA referenced is 1155/65. However, due to the age of the documents, the legibility is limited.

CITY BUILDING SURVEYOR'S DEPARTMENT		APPLICATION No. 1509
		YEAR 1965
Applicant: <i>G. Maher & Associates</i>	Location: <i>23 Underwood St, Paddington</i>	Description: <i>Residential</i>
Architect: <i>G. Maher & Associates</i>	Class: <i>Residential</i>	Nature of Foundation:
Engineer: <i>John Mangano</i>	Live Load:	Depth of Footings:
Builder: <i>Loca Construction</i>	Foundation Pressure:	Checked by: <i>J. Mangano</i>
Alignment: <i>2113907</i>		Estimate: <i>100,000</i>
D.A. <i>1155/65</i>	<i>127083</i>	

DATE	HISTORY
<i>9.7.65</i>	<i>Block of Flats</i>
<i>27.7.65</i>	<i>Approved PLANS & SPECN. ON JOB CHECKED</i>
<i>18.8.65</i>	<i>Not started</i>
<i>1.9.65</i>	<i>Not started (1)</i>
<i>1.10.65</i>	<i>Not started</i>
<i>1.11.65</i>	<i>Not started Demolition work in progress</i>
<i>19.11.65</i>	<i>No further progress</i>
<i>8.12.65</i>	<i>Not started</i>
<i>21.12.65</i>	<i>Not started</i>
<i>21.1.66</i>	<i>Not started</i>
<i>15.3.66</i>	<i>Work started. Excavation & levelling of site carried out. Foreman advised re</i>

Figure 1 City of Sydney archive search
 Woollahra Council

A GIPA request was subsequently submitted to Council which shows the following results:



Figure 2 GIPA from Council's Records team

Woollahra Council did not identify any earlier files on site. Easton Planning Consultants are not aware of why previous approvals were not on Council's records.

Timeline

The building was built circa 1965 with the letter found referencing BA1509/65 and the archive file referencing DA1155/65.

We note that these dates are consistent with the other information reviewed including registration of strata plan in 1967.

Review of building applications available

Subsequently, Easton Planning Consultants have reviewed the earlier files available from 1973 and 1975. In the documents reviewed, Woollahra Council conducted a compliance check of existing roof on site.

In the letter submitted with the documents, we note that the Strata identifies that the roof on Caledonia Street side as being a trafficable roof for use by residents (see below). We also note that the letter notes "BA1509/65" seemingly referencing a building approval.

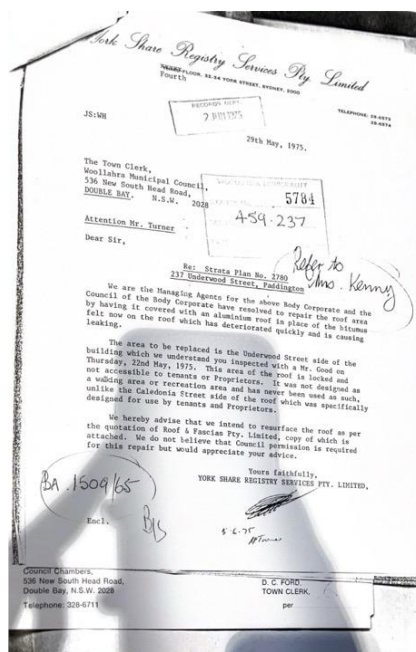


Figure 3 Extract from Council file

Continuing use as residential flat building

Pertaining to the enquiry whether existing use has not been abandoned, we provide a registration of the strata scheme as evidence. We note that registered strata plan is dated 1967 and is still operating on site (see below).

Figure 4 Registration of existing strata plan in 1967

Council’s records adequately establish that the subject site does benefit from existing use rights as a residential flat building and there is no evidence that those existing use rights pertaining to the site have lapsed. Therefore, the following existing use rights assessment is provided.

4.67 Regulations respecting existing use (previously Section 108)

- (1) *The regulations may make provision for or with respect to existing use and, in particular, for or with respect to:*
 - (a) *the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use, and*
 - (b) *the change of an existing use to another use, and*
 - (c) *the enlargement or expansion or intensification of an existing use.*
- (2) *The provisions (in this section referred to as the incorporated provisions) of any regulations in force for the purposes of subsection (1) are taken to be incorporated in every environmental planning instrument.*
- (3) *An environmental planning instrument may, in accordance with this Act, contain provisions extending, expanding or supplementing the incorporated provisions, but any provisions (other than incorporated provisions) in such an instrument that, but for this subsection, would derogate or have the effect of derogating from the incorporated provisions have no force or effect while the incorporated provisions remain in force.*

The proposal satisfies the abovementioned provisions.

Clause 163 of the Environmental Planning and Assessment Regulation 2021 stipulates the following restrictions in relation to existing use rights applications:

163 Certain development allowed

- (1) *An existing use may, subject to this Part -*
 - (a) *be enlarged, expanded or intensified, or*
 - (b) *be altered or extended, or*
 - (c) *be rebuilt, or*
 - (d) *be changed to another use, but only if that other use is a use that may be carried out with or without development consent under the Act, or*
 - (e) *if it is a commercial use—be changed to another commercial use, including a commercial use that would otherwise be prohibited under the Act, or*
 - (f) *if it is a light industrial use—be changed to another light industrial use or a commercial use, including a light industrial use or commercial use that would otherwise be prohibited under the Act.*

The subject proposal is therefore permissible with consent and does not involve a change of use.

Clause 164 of the Environmental Planning and Assessment Regulation 2021 stipulates the following in relation to existing use rights applications:

164 Enlargement, expansion and intensification of existing uses

- (1) *Development consent is required for any enlargement, expansion or intensification of an existing use.*
- (2) *The enlargement, expansion or intensification must be—*
 - (a) *for the existing use and for no other use, and*
 - (b) *carried out only on the land on which the existing use was carried out immediately before the relevant day.*

The proposal satisfies the abovementioned provisions.

Clause 165 of the Environmental Planning and Assessment Regulation 2021 stipulates the following in relation to existing use rights applications:

165 Alteration of buildings and works

- (1) *Development consent is required for an alteration of a building or work used for an existing use.*
- (2) *The alteration must be—*
 - (a) *for the existing use of the building or work and for no other use, and*
 - (b) *erected or carried out only on the land on which the building or work was erected or carried out immediately before the relevant day.*

The proposal satisfies the abovementioned provisions.

What is “the land on which the building or work was erected or carried out” for the purposes of cl 164(2)(b) of the Environmental Planning and Assessment Regulation 2021 (“the EP&A Regulation”)?

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: “*that if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose*”.

Having regard to the above case law, it is considered that as the residential flat building is the sole use of the subject land, the existing use rights apply to the whole of the subject site.

The proposal is for a new pergola on the roof resulting in no change of the existing use. The proposal is therefore consistent with and satisfies the abovementioned provisions.

10.2 ENVIRONMENTAL IMPACTS

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles which should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights. The four principles adopted by the court in this case have general application in dealing with DAs that rely on existing use rights.

The four principles are:

1. ***How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?***

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Applicant's response: *The existing bulk and scale of the development is inappropriate within the area. However, the proposed development is contained wholly within the existing building envelope on site. Therefore, the reliance on existing use rights will not negatively impact on existing site conditions.*

Assessment officer's response: The assessment of this applicant concurs with the applicant's response.

2. ***What is the relevance of the building in which the existing use takes place?***

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Applicant's response: *The building is existing within the area and has been since circa 1965. There are no proposed changes to its use or building envelope. The works are contained within existing building envelope and will have minimal impacts on surrounding neighbours.*

Assessment officer's response: The assessment of this applicant concurs with the applicant's response.

Note: These principles were clarified in the *Stromness* case. In this regard, the following is a quote from the Chief Judge:

In Stromness Pty Ltd v Woollahra Municipal Council [2006] NSWLEC 587 the planning principles in Fodor were considered and confirmed by Pain J at pars 83-89. Principle 2 was specifically supported in paragraph 87 and principles 1, 3 and 4 were specifically supported in paragraph 89. Her Honour states in para 89 that care must be exercised in the application of the principles to ensure that there is not a de facto application of standards in environmental planning instruments as that is prohibited by s 108(3) of the Environmental Planning and Assessment Act.

Recent legal advice provided to Council qualifies the above stating:

In Saffioti v Kiama Municipal Council [2017] NSWLEC 65 the LEC considered the issue of whether the controls in a DCP could be considered in assessing the merits of an application for development consent for development with existing use rights. The LEC decided that the relevant controls in the DCP could be considered notwithstanding section 4.67(3) of the Environmental Planning and Assessment Act 1979. That section provides that any provisions of an environmental planning instrument which would derogate from the provisions in the Environmental Planning & Assessment Regulation 2000 regarding existing uses (the incorporated provisions), have no effect.

The LEC found that as a DCP is not an environmental planning instrument, s4.67(3) does not apply. DCP provisions can therefore continue to apply and be considered in assessing an application relying on existing use rights.

The LEC also considered provisions of the applicable local environmental plan (LEP) and found that a number of provisions, such as those dealing with biodiversity, applied to the development and did not derogate from the incorporated provisions. The LEC considered that only those provisions of the LEP which could have the effect of prohibiting the development derogated from the incorporated provisions and could not be taken into account.

Notwithstanding the above, a further judgement *Modog Pty Limited v North Sydney Council [2018] NSWLEC 120* has established that any DCP objectives, or controls that mirror controls of an Environmental Planning Instrument would not apply, where they would derogate from the existing use right provisions. However, in the instance where the DCP controls do not derogate, they can factor into the merit assessment of the application under section 4.15.

The following environmental assessment of the proposal takes into consideration the above-mentioned principles established under *Fodor* and all of the relevant provisions of relevant statutory planning policies which do have the effect of prohibiting the development and all of the provisions of the *Woollahra DCP 2015* that are relevant to the scope of the proposed development.

The subject proposal involves a new pergola structure at the roof level. It is acknowledged that the overall building envelope and sitting of the existing residential flat building remains unchanged. There are no other works proposed that would alter the current configuration or operation of the subject site.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Applicant's response: *The potential impacts on adjoining land will be minimal. The site already has a roof terrace which was constructed with the original building and being used as a trafficable area (see evidence above). The proposed works for a pergola will only enhance the useability of roof terrace area and will not result in any significant changes to it. The impacts of existing roof terrace will be similar to proposed roof terrace with pergola structure.*

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Applicant's response: *There will be no changes to existing internal amenity. The usability of and external roof terrace will increase with the proposed pergola.*

An assessment of Questions 3 and 4 is undertaken in the section of the assessment report below with reference to Chapter C1 of the Woollahra DCP 2015.

Chapter C1: Paddington Heritage Conservation Area

Section C1.2.4: Desired Future Character

The proposal is consistent with Paddington's residential character, and will achieve the desired future character of the Paddington Heritage Conservation Area.

Section C1.3.6: Residential Flat Buildings and Multi Dwelling Housing

Controls C1, C2, C3, C4, C5, C15,
Objections O1, O2, O3

The proposal involves erection of new pergola on the north side of the roof to the existing residential flat building.

The proposed pergola is to the rear tower and would not impact on significant fabric or be visible from Underwood Street. It is possible that it would be visible from Caledonia Street, however, due to the height of the tower and the setback of the structure, this visual impact would be minimal.

Therefore, the proposal is acceptable with regard to Section C1.3.6.

Section C1.3.14: Intrusive Buildings

Controls C1, C2, C3
Objections O1, O2

The existing residential flat building on the subject site is an intrusive built form.

The proposed pergola is set back by approximately 2.1m from the roof edge (refer to figure 2) and will not change the existing site context.

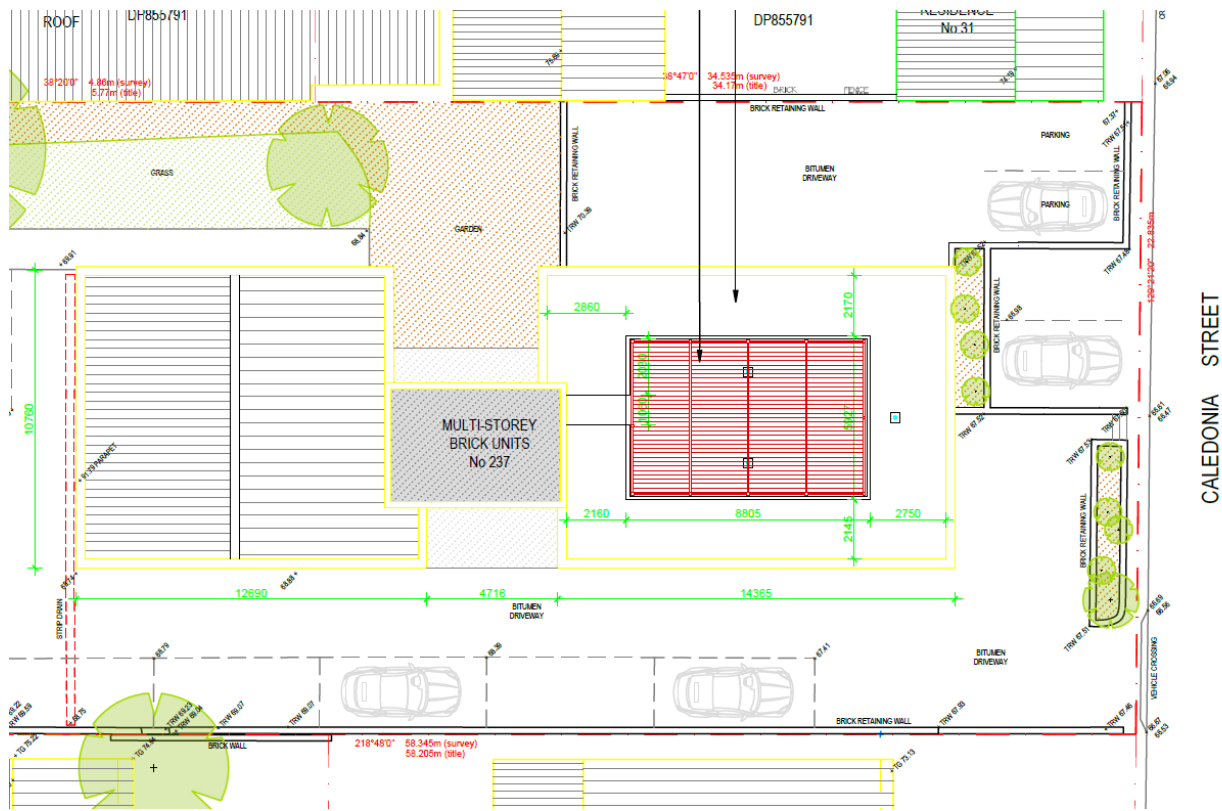


Figure 2 - Roof plan demonstrating the location of proposed work and the setbacks (Source: Studiobad)

The proposed work is not visible from the public domain and will not add to the bulk and scale of the existing intrusive building.

Therefore, proposal will comply with controls and relevant objectives of this section.

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

Controls C1, C2
 Objections O1, O2, O3

As mentioned above the location of the new structure is at the rear of the subject site towards Caledonia Street. Due to its centralised location at the roof level it will not be visible from the public domain. There are no other works proposed to the building or the façade. The proposal therefore retains and conserves the principle building form and street front zone.

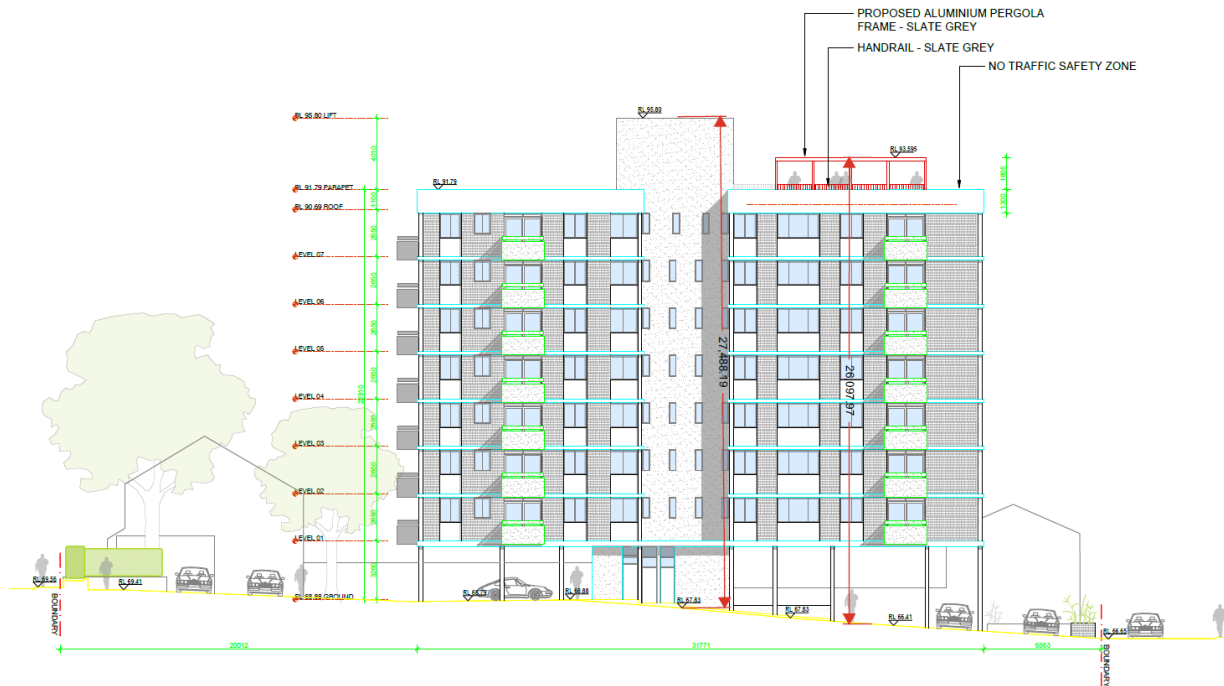


Figure 3 - East elevation showing the location of the new pergola (Source: Studiobad)

The proposal is compliant with the relevant objectives and controls of Section C1.4.1.

Section C1.4.2: Side Elevations to Streets and Lanes

The proposed works are contained to the roof level and would not alter the side elevations of the existing residential flat building. The proposal is consistent with the relevant objectives and controls under Section C1.4.2.

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

As detailed above the proposed work would alter any of the existing buildings elevations. The proposal is consistent with the relevant objectives and controls under Section C1.4.3.

Section C1.4.4: Roofs and Roof Forms

The proposed works would alter the roof area of the existing residential flat building by erecting a new pergola structure. However, the residential flat building does not contribute to a significant roof form pattern which is acceptable having regard to Controls C2 and C11. The proposal would not remove or alter any significant fabric or roofing elements.

The pergola will not affect the primary use of the residential flat building or significantly alter existing building envelope. The proposal is considered minor.



Figure 4 - Photomontage showing the new open pergola on the roof of the subject site (Source: SEE prepared by Easton Planning Consultants)

The proposal is consistent with the relevant objectives and controls under Section C1.4.4.

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

C3 specifies that the height, bulk, form and scale of infill and new development must be consistent with the predominant height, bulk, form and scale of appropriate adjoining buildings. Conformity with adjoining buildings is not appropriate in circumstances where the development site adjoins a building which is a substantially taller landmark building, or is a building considered to be intrusive due to its excessive height and incompatible design.

The existing residential flat building is substantially taller than the adjacent buildings. It is the only building of its height (8 storey with a parking level on the ground) and it is not part of a group or building type.

The proposed new pergola on the roof will be well-integrated with the existing form and it is not visible from the public domain.

The proposal is consistent with the relevant objectives and controls under Section C1.4.5.

Section C1.4.6: Site Coverage, Setbacks and Levels

The proposed additions will maintain the existing building footprint and setbacks. The proposal achieves the relevant objectives and controls of Section C1.4.6.

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

The proposed work does not include any changes to the existing provision of private open space or landscaping. However, will contribute to the provision of communal open space at the site for beneficial residential amenity. The proposal is considered to be acceptable with regard to Section C1.4.8.

Section C1.4.10: Acoustic and Visual Privacy

Due to the height of the existing residential flat building, the context of the site (see Figure 5) and scope of works, the proposal would not contravene any of the controls or objectives under Section C1.4.10.

This assessment determines that there would be no unreasonably adverse visual or acoustic impacts given the level differences between the location of the proposed pergola structure and neighbouring properties. Nevertheless, a condition of consent has been included in this report to ensure that the use of the roof and associated noise is reasonable and controlled.

In addition the proposed pergola is located within the rear roof perimeter that is setback by approximately 2.1m from the buildings extremities. This location would further limit opportunities for visual and acoustic privacy impacts upon neighbouring properties.



Figure 5 - Aerial view to the subject site (Source: Google earth)

The proposal achieves the relevant objectives and controls of Section C1.4.10.

4.1.1 Section C1.5.9: Exterior Colours

The proposed colour scheme is appropriate for the site and is not deemed obtrusive. The proposal achieves the relevant objectives and controls of Section C1.5.9.

OTHER CONSIDERATIONS

The following matters for consideration are based on the provisions of environmental planning instruments and policies that do not derogate (detract) from the existing use rights provisions.

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

11.1 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.

11.2 Chapter 4 Remediation of Land

Under Clause 4.6(1)(a) of SEPP (Resilience and Hazards) 2021, consideration has been given as to whether the subject site on which the development is occurring is contaminated.

Despite the land being identified as potentially contaminated on Council's internal mapping system, as demonstrated in the existing use rights assessment, the site has a long history of residential use. Furthermore, the works pertain to a new pergola at the roof level which would not include any disturbance of the existing ground level at the subject site.

Given the history of the site and the scope of works 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.

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

12.1 Chapter 2 Vegetation in non-rural areas

Council's Tree and Landscaping Officer has raised no objections to the proposal subject to the recommended Condition of consent. The proposal is considered to be acceptable having regard to Chapter 2 of the SEPP.

12.2 Chapter 6 Water Catchments

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

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

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

The proposal will have no significantly adverse impacts on the Sydney Harbour Catchment, subject to standard conditions.

13. 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.

Noting that the cost of works is greater than \$50,000, the proposal is considered to be BASIX excluded development per the definition contained Schedule 7 of the Environmental Planning and Assessment Regulation 2021 as copied below.

BASIX excluded development means the following development—

- (a) *development for the purposes of a garage, storeroom, carport, gazebo, verandah or awning,*
- (b) *development that involves the alteration of a building listed on the State Heritage Register under the Heritage Act 1977,*
- (c) *development that involves the alteration of a building resulting in a space that cannot be fully enclosed, other than a space that can be fully enclosed but for a vent needed for the safe operation of a gas appliance,*

Example—

A verandah that is open or enclosed by a screen, mesh or other material that permits the free and uncontrolled flow of air.

- (d) *development that involves the alteration of a building declared by the Planning Secretary, by order published in the Gazette, to be BASIX excluded development.*

In accordance with (c), the development involves a pergola to a roof space that cannot be fully enclosed thereby permitting the free and uncontrolled flow of air.

14. STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021

As per Clause (144), Application of chapter:

(3) *This chapter applies to development only if—*

- a) *the development consists of —*
 - i) *the erection of a new building, or*
 - ii) *the substantial redevelopment or the substantial refurbishment of an existing building, or*
 - iii) *the conversion of an existing building, and*
- b) *the building is at least 3 storeys, not including underground car parking storeys, and*
- c) *the building contains at least 4 dwellings.*

The proposed development does not involve the substantial redevelopment or refurbishment of the subject building and such, no further assessment is required.

15. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

15.1 Part 1.2: Aims of Plan

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

15.2 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	27.55m	26.33m	9.5m	No*

- *Existing non-compliance.*

The proposal does not comply with Part 4.3 of Woollahra LEP 2014 as detailed and assessed in Part 14.3 below.

15.3 Part 4.6: Exceptions to Development Standards

Departure

With a height of 26.33m, the proposal involves a 16.83m (177%) non-compliance with the 9.5m height of buildings statutory control under section 4.3 of the Woollahra LEP 2014. Notably the existing departure equals 190%.

Notably, the existing built form exceeds this development standard and no further increases to the maximum height are sought.

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

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

The applicant has provided the following written request in relation to the departure:

"This request has been prepared in support of a development application (DA) for 237 Underwood Street, Paddington (SP2780). The proposed works are described as: "erection of new structure (pergola) on the roof of existing Residential Flat Building".

The variation request is made pursuant to Clause 4.6 Exceptions to development standards of the Woollahra Local Environmental Plan 2014 (Woollahra LEP 2014). Clause 4.6 Exception to development standards of the Woollahra LEP 2014 provides flexibility in the application of planning provisions.

Clause 4.6 Exceptions to development standard allows a development application to be approved despite non-compliance with Local Environmental Plan (LEPs) development standards.

This can be achieved where the applicant can demonstrate that flexibility in the particular circumstances of the case would achieve better outcome for the site and would not have adverse impacts on surrounding environment and built form.

Easton Planning Consultants provide this written request pursuant to Clause 4.6 Exceptions to development standards to justify the contravention of development standard pertaining to Clause 4.3 Height of Buildings. This Variation request is to be read in conjunction with the Statement of Environmental Effects."

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?

- *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 written request has accurately referenced Clause 4.3 Height of Buildings and the associated objectives under 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 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. These arguments are 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 request 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.

- To establish building heights that are consistent with the desired future character of the neighbourhood*
- To establish a transition in scale between zones to protect local amenity*
- To minimise the loss of solar access to existing buildings and open space*
- To minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion*
- 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:

- It is considered that the building achieves an appropriate bulk and scale when viewed from the streetscape.
- The proposal is consistent with the desired future character. The non-compliance occurs below the existing maximum height of the building and would not contribute any adverse bulk or scale impacts.
- The new pergola on the roof is setback from the extremities of the building which minimises the visual impact.
- The bulk and scale of the proposed works would not impact the neighbouring properties and is in keeping within the existing scale of the built form. Therefore, it is consistent with the existing and desired future character of development within the streetscape and the immediate locality.
- The height non-compliance does not result in any adverse impacts upon the neighbouring properties with regard to privacy, solar access, visual amenity and sense of enclosure.

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:

- 23 *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 submitted Clause 4.6 request contains an explanation of the environmental planning grounds. The environmental planning grounds established by the applicant are specific to the proposed variation of Clause 4.3 Height of Buildings. The Applicant lists the environmental planning grounds as:

- There being minor impacts associated with the proposed development.
- The existing maximum height of the building remains unchanged.
- The site and subject development are subject to existing use rights.

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 aims (c) and (g) of Section 1.3 of the Act.

There are sufficient 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 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.

15.4 Part 5.10: Heritage Conservation

The site is located in the Paddington Heritage Conservation Area and contains an existing intrusive residential flat building. There are no adverse heritage impacts deemed to result upon the conservation area nor any nearby heritage items.

The proposed development is acceptable with regard to the objectives in Part 5.10 of the Woollahra LEP 2014.

15.5 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.

16. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

16.1 Chapter E2: Stormwater and Flood Risk Management

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

16.2 Chapter E3: Tree Management

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

16.3 Chapter E4: Contaminated Land

As detailed under Section 11.2 of this report, the proposal is acceptable with regard to the objectives and controls in Chapter E4 of the Woollahra DCP 2015.

16.4 Chapter E5: Waste Management

The applicant has not provided a SWMMP with the development application. However, given the extensive scope and construction works, it is necessary in this instance, as detailed in **Condition D.6**.

16.5 Chapter E6: Sustainability

The proposal would result in neutral sustainability outcome which is acceptable with regard to the objectives and controls in Chapter E6 of the Woollahra DCP 2015.

17. DRAFT AMENDMENTS TO POLICIES AND PLANS

None relevant.

18. CONTRIBUTION PLANS

18.1 Section 7.12 Contributions Plan

A levy applies with the monies being used for a variety of works as outlined in Schedule 1 of the Section 7.12 Contributions Plan 2011. Refer to **Condition D.5**.

19. APPLICABLE ACTS/REGULATIONS

19.1 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.

20. 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.

21. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

22. THE PUBLIC INTEREST

The proposal is considered to be in the public interest.

23. CONCLUSION

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

24. 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.

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

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, is satisfied that the written request from the applicant under Part 4.6 of the Woollahra Local Environmental Plan 2014 to the Height of Buildings development standard under Clause 4.3 of Woollahra LEP 2014 has adequately addressed the relevant matters and the proposed development will be in the public interest because it is consistent with the relevant objectives of the particular standard and the zone. The Panel assumes the concurrence of the Secretary, Department of Planning and Environment.

AND

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, grant development consent to Development Application No. 288/2024/1 for Erection of new structure (pergola) on the roof of existing residential flat building on land at 237 Underwood Street Paddington, subject to the following conditions:

ALL DEVELOPMENT TYPES

A. GENERAL CONDITIONS

A. 1.	Conditions
	<p>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.</p> <p>Notes:</p> <ul style="list-style-type: none">• 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:<ul style="list-style-type: none">a) Issue Penalty Infringement Notices (On-the-spot fines);b) Issue notices and orders;c) Prosecute any person breaching this consent; and/ord) 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.

	<p>Condition Reason: To ensure all parties are aware of the relevant legislation that applies to the development.</p>
A. 2.	<p>Definitions</p> <p>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.</p> <p>Applicant means the applicant for this consent.</p> <p>Approved Plans mean the plans endorsed by Council referenced by this consent as amended by conditions of this consent.</p> <p>Local native plants means species of native plant endemic to Sydney's eastern suburbs.</p> <p>Owner-builder has the same meaning as in the <i>Home Building Act 1989</i>.</p> <p>PC means the Principal Certifier under the <i>Act</i>.</p> <p>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.</p> <p>Professional engineer has the same meaning as in the <i>BCA</i>.</p> <p>Public place has the same meaning as in the <i>Local Government Act 1993</i>.</p> <p>Road has the same meaning as in the <i>Roads Act 1993</i>.</p> <p>SEE means the final version of the Statement of Environmental Effects lodged by the Applicant.</p> <p>Site means the land being developed subject to this consent.</p> <p>Site work means any work that is physically carried out on the land to which the development the subject of this development consent is to be carried out, including but not limited to building work, subdivision work, demolition work, clearing of vegetation or remediation work.</p> <p>Woollahra LEP means <i>Woollahra Local Environmental Plan 2014</i></p> <p>Woollahra DCP means <i>Woollahra Development Control Plan 2015</i></p> <p>Work for the purposes of this consent means:</p> <ul style="list-style-type: none">• 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, piercing, 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

	<ul style="list-style-type: none"> 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								
	<p>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.</p> <p>Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.</p> <table border="1"> <thead> <tr> <th>Reference</th> <th>Description</th> <th>Author</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td>A01.3 Rev.02 A02.1 Rev.02 A02.2 Rev.02 A02.3 Rev.02 A02.5 Rev.02 A02.6 Rev.02</td> <td>Architectural Plans</td> <td>STUDIOBAD</td> <td>13/09/2024</td> </tr> </tbody> </table> <p>Notes:</p> <ul style="list-style-type: none"> 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. 	Reference	Description	Author	Date	A01.3 Rev.02 A02.1 Rev.02 A02.2 Rev.02 A02.3 Rev.02 A02.5 Rev.02 A02.6 Rev.02	Architectural Plans	STUDIOBAD	13/09/2024
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A01.3 Rev.02 A02.1 Rev.02 A02.2 Rev.02 A02.3 Rev.02 A02.5 Rev.02 A02.6 Rev.02	Architectural Plans	STUDIOBAD	13/09/2024						
	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 other structure or mechanical plant and equipment on the roof level of the subject site.								
	Condition Reason: To ensure all parties are aware of works that have not been granted consent.								
A. 5.	Ancillary Aspects of Development (section 4.17(2) of the Act)								
	The Owner must procure the repair, replacement or rebuilding of all road pavement, kerb, gutter, footway, footpaths adjoining the site or damaged as a result of work under this consent or as a consequence of work under this consent. Such work must be undertaken to Council's satisfaction in accordance with Council's Specification for Roadworks, Drainage and Miscellaneous Works (2012) unless expressly provided otherwise by these conditions at the Owner's expense.								

Notes:

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

Condition Reason: To ensure all parties are aware of works required to public infrastructure and to ensure payment for works.

DEMOLITION WORK

B. BEFORE DEMOLITION WORK COMMENCES

B. 1.	<p>Construction Certificate Required Prior to Any Demolition</p> <p>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.</p> <p>In such circumstance all conditions included at the following development stages of this consent must be satisfied prior to any demolition work:</p> <ul style="list-style-type: none"> • Before issue of a construction certificate • Before building work commences <p>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.</p> <p>Note:</p> <ul style="list-style-type: none"> • See Over our Dead Body Society Inc v Byron Bay Community Association Inc [2001] NSWLEC 125. <p>Condition Reason: To ensure appropriate conditions are complied with for development for the alteration and extension of an existing building.</p>
B. 2.	<p>Identification of Hazardous Material</p> <p>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.</p> <p>In this regard, prior to any site works, Council must be provided with a written report prepared by a suitably qualified competent person detailing:</p> <ul style="list-style-type: none"> • 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. <p>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.</p>

B. 3.	<p>Public Road Assets Prior to Any Work/Demolition</p> <p>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.</p> <p>The report must include photographs and/or CCTV footage showing the current condition and any existing damage fronting and adjoining the site to the:</p> <ul style="list-style-type: none"> • 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). <p>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.</p> <p>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.</p> <p>Condition Reason: To clarify the condition of the existing public infrastructure prior to the commencement of any site works.</p>																								
B. 4.	<p>Payment of Security and Fees</p> <p>Prior to any site works, the following security and fees must be paid in full:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;">Description</th> <th style="width: 15%;">Amount</th> <th style="width: 15%;">Indexed</th> <th style="width: 20%;">Council Fee Code</th> </tr> </thead> <tbody> <tr> <td colspan="4">SECURITY under section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i></td> </tr> <tr> <td>Property Damage Security Deposit - making good any damage caused to any property of the Council</td> <td style="text-align: center;">\$5,737</td> <td style="text-align: center;">No</td> <td style="text-align: center;">T115</td> </tr> <tr> <td colspan="4">INSPECTION FEES under section 608 of the <i>Local Government Act 1993</i></td> </tr> <tr> <td>Security Deposit Administration Fee</td> <td style="text-align: center;">\$225.00</td> <td style="text-align: center;">No</td> <td style="text-align: center;">T16</td> </tr> <tr> <td>TOTAL SECURITY AND FEES</td> <td style="text-align: center;">\$ 5,962</td> <td></td> <td></td> </tr> </tbody> </table> <p>How must the payments be made? Payments must be made by:</p> <ul style="list-style-type: none"> • cash deposit with Council, • credit card payment with Council, or • bank cheque made payable to Woollahra Municipal Council. <p>The payment of a security may be made by a bank guarantee where:</p> <ul style="list-style-type: none"> • the guarantee is by an Australian bank for the amount of the total outstanding contribution, 	Description	Amount	Indexed	Council Fee Code	SECURITY under section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i>				Property Damage Security Deposit - making good any damage caused to any property of the Council	\$5,737	No	T115	INSPECTION FEES under section 608 of the <i>Local Government Act 1993</i>				Security Deposit Administration Fee	\$225.00	No	T16	TOTAL SECURITY AND FEES	\$ 5,962		
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- the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable],
- the bank agrees to pay the guaranteed sum without reference to the Applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent,
- the bank guarantee is lodged with the Council prior to any site works being undertaken, and
- the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

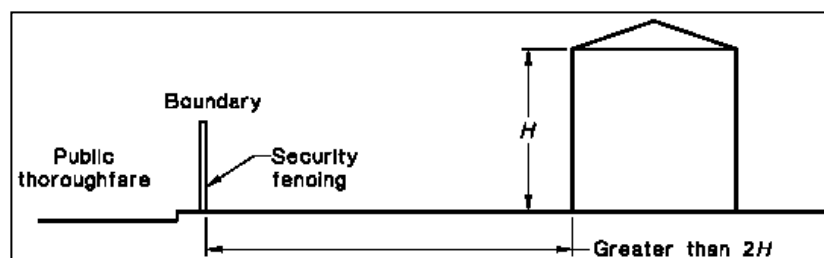
Notes:

- An application must be made to Council by the person who paid the security for release of the securities held under section 4.17 of the Act.
- The securities will not be released until the Occupation Certificate has been lodged with Council, Council has inspected the site and Council is satisfied that the public works have been carried out to Council's requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council's requirements.
- Council will only release the security upon being satisfied that all damage or all works, the purpose for which the security has been held have been remedied or completed to Council's satisfaction as the case may be.
- Council may retain a portion of the security to remedy any defects in any such public work that arise within 6 months after the work is completed.
- Upon completion of each section of road, drainage and landscape work to Council's satisfaction, 90% of the bond monies held by Council for these works will be released upon application. 10% may be retained by Council for a further 6 month period and may be used by Council to repair or rectify any defects or temporary works during the 6 month period.
- The Refund of Security Bond Application form can be downloaded from www.woollahra.nsw.gov.au

Condition Reason: To ensure any relevant security and fees are paid.

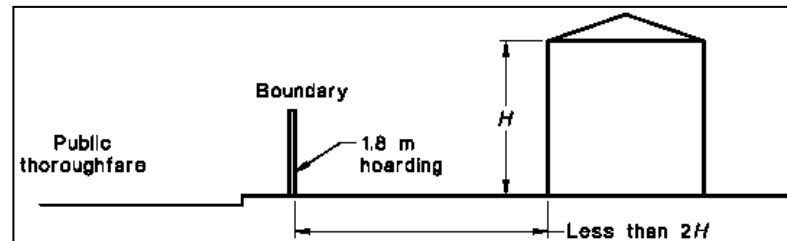
B. 5. Security Fencing, Hoarding (including 'Creative Hoardings') and Overhead Protection

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



Type A Hoarding

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



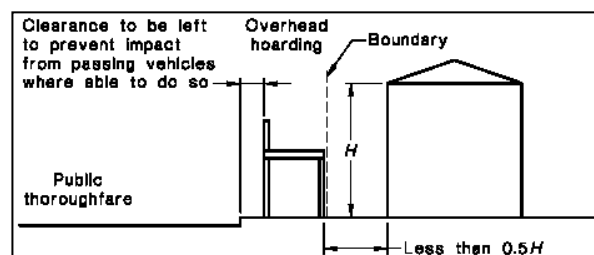
Type B Hoarding

Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure and the facing facade protected by heavy-duty scaffolding, unless either:

- a) the vertical height above footpath level of the structure being demolished is less than 4.0m; or
- b) the least horizontal distance between footpath and the nearest part of the structure is greater than half the height of the structure.

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

- a) extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary,
- b) have a clear height above the footpath of not less than 2.1m,
- c) terminate 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than 0.5m above the platform surface, and
- d) together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa.



The overhead protective structures must be installed and maintained in accordance with the NSW "Code of Practice - Overhead Protective Structures 1995". This is code available at www.safework.nsw.gov.au/__data/assets/pdf_file/0008/52883/Overhead-protective-structures-Code-of-practice.pdf

All Hoardings

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

Hoardings on Public Land including ‘Creative Hoardings’

All fees associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection must be paid in full.

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

Notes:

- A minimum of two (2) weeks from the date of making a hoarding application to determination must be allowed. Any approval for a hoarding or overhead protection under the Roads Act 1993 will be subject to its own conditions and fees.
- Council seeks to increase public art in the public domain by requiring artwork or historic images on hoardings located on public land. Under the Creative Hoardings Policy an application for a hoarding proposed on public land will require an approved artwork or historic image affixed to the hoarding if the hoarding meets the criteria in section 3 of the Policy:
 - A. Hoardings proposed on land zoned E1 Local Centre, or MU1 Mixed Use, or SP2 Infrastructure under Woollahra Local Environmental Plan 2014 AND erected for 8 weeks or more
OR
 - B. Hoardings proposed on land located along a State classified road (regardless of the zone) AND erected for 8 weeks or more
OR
 - C. Hoardings proposed in any other location than that referred to in A. and B. above AND erected for 12 weeks or more, except where:
 - 1. the capital investment value of the work to which the hoarding relates is less than \$1 million, or
 - 2. the land is zoned R2 Low Density Residential, or
 - 3. the land is zoned R3 Medium Density Residential and the hoarding is located in a lane or street that does not have through traffic (e.g. a cul-de-sac or no through road).
- Artwork and historic images for the hoardings are assessed and approved in accordance with the Creative Hoardings Policy. Details of the artwork or images proposed to be affixed to the hoardings must be submitted with Council’s form “Application for a permit to use a footpath for the erection of a hoarding/scaffolding”. The Creative Hoardings Policy can be downloaded from www.woollahra.nsw.gov.au

Condition Reason: To ensure public safety.

B. 6. Site Signs

Before any site work commences, the sign/s required by clauses 70 of the Regulation and 75 of the Development Certification and Fire Safety Regulation must be erected and maintained at all times.

Clause 70 of the Regulation provides:

Erection of signs

- For the purposes of section 4.17(11) of the Act, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - a) showing the name, address and telephone number of the principal certifier for the work, and

- b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- c) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- This clause does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the Act, to comply with the Building Code of Australia.

Clause 75 of the Development Certification and Fire Safety Regulation provides:

Signs on development sites

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

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

Notes:

- Clause 75 of the Development Certification and Fire Safety Regulations imposes a maximum penalty of 55 penalty units if these requirements are not complied with.
- If Council is appointed as the Principal Certifier it will provide the sign to the Principal Contractor or Owner-builder who must ensure that the sign is erected and maintained as required by clause 70 of the Regulation and clause 75 of the Development Certification and Fire Safety Regulation.

Condition Reason: To ensure that contact details for the principal certifier and principal contractor are provided on a sign at the development site.

B. 7. 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.

	<p>Notes:</p> <ul style="list-style-type: none"> • 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. <p>Condition Reason: To ensure toilet facilities are provided for workers at the work site.</p>
<p>B. 8.</p>	<p>Establishment of Boundary Location, Building Location and Datum</p> <p>Before any site work commences, a surveyor registered under the Surveying and Spatial Information Act 2002 must:</p> <ol style="list-style-type: none"> set out the boundaries of the site by permanent marks (including permanent recovery points), 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, establish a permanent datum point (bench mark) within the boundaries of the site relative to AHD, and 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. <p>Notes:</p> <ul style="list-style-type: none"> • 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. <p>Condition Reason: To ensure that the boundary locations, building location, and a datum point is established by a surveyor.</p>
<p>B. 9.</p>	<p>Works (Construction) Zone – Approval and Implementation</p> <p>If the Construction Management Plan relies upon a Works Zone, before any site work commences, a Works Zone application must be made.</p> <p>If the works zone is approved, all fees for the Works Zone must be paid before it can be installed.</p> <p>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.</p> <p>Notes:</p> <ul style="list-style-type: none"> • 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.

	<p>Condition Reason: To facilitate the efficient operation of construction projects and to minimise traffic disruption.</p>
B. 10.	<p>Erosion and Sediment Controls – Installation</p> <p>Before any site work commences, water pollution, erosion and sedimentation controls must be installed and maintained in accordance with:</p> <p>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</p> <p>b) “Managing Urban Stormwater - Soils and Construction” 2004 published by the NSW Government (The Blue Book).</p> <p>Where there is any conflict The Blue Book takes precedence.</p> <p>Notes:</p> <ul style="list-style-type: none"> • 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. <p>Condition Reason: To prevent potential water pollution and dust nuisance.</p>

REMEDIATION WORK

C. ON COMPLETION OF REMEDIATION WORK

Nil.

BUILDING WORK

D. BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

D. 1.	<p>Payment of Long Service Levy</p> <p>Before the issue of any construction certificate, the original receipt(s) for the payment of the following levy must be provided to the Principal Certifier:</p>
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Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under <i>Building and Construction Industry Long Service Payments Act 1986</i>			
Long Service Levy www.longservice.nsw.gov.au/bci/levy/other-information/levy-calculator	Contact LSL Corporation or use online calculator	No	
<p>Building and Construction Industry Long Service Payment</p> <p>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.</p> <p>How must the payments be made?</p> <p>Payments must be made by:</p> <ul style="list-style-type: none"> • cash deposit with Council, • credit card payment with Council, or • bank cheque made payable to Woollahra Municipal Council. <p>Condition Reason: To ensure any relevant levy is paid.</p>			
D. 2.	Structural Adequacy of Existing Supporting Structures		
<p>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.</p>			
<p>Condition Reason: To ensure that the existing structure is able to support the additional loads proposed.</p>			
D. 3.	Professional Engineering Details		
<p>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.</p> <p>Detailed professional engineering plans and/or specifications must be submitted to the Principal Certifier with the application for any construction certificate.</p> <p>Notes:</p> <ul style="list-style-type: none"> • This does not affect the right of the developer to seek staged construction certificates. 			
<p>Condition Reason: To ensure professional engineering details and technical specifications are provided.</p>			

<p>D. 4.</p>	<p>Erosion and Sediment Control Plan – Submission and Approval</p> <p>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:</p> <p>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</p> <p>b) “Managing Urban Stormwater - Soils and Construction” 2004 published by the NSW Government (The Blue Book).</p> <p>Where there is any conflict The Blue Book takes precedence.</p> <p>The Principal Certifier must be satisfied that the erosion and sediment control plan complies with the publications above prior to issuing any construction certificate.</p> <p>Notes:</p> <ul style="list-style-type: none"> • 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. <p>Condition Reason: To prevent potential water pollution and dust nuisance.</p>
<p>D. 5.</p>	<p>Payment of S7.12 Contributions Levy</p> <p>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.</p> <p>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.</p> <p>The cost estimate report must be in the form of:</p> <ul style="list-style-type: none"> • A cost summary report, prepared by the applicant or a suitably qualified person for a development up to \$749,999; or • A quantity surveyor’s report, for development over \$750,000. <p>The applicable levy rate is to be calculated using the summary schedule below.</p>

Summary Schedule	
Development Cost	Levy Rate
<ul style="list-style-type: none"> Up to and including \$100,000 	Nil
<ul style="list-style-type: none"> More than \$100,000 and up to and including \$200,000 	0.5% of the cost
<ul style="list-style-type: none"> 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. 6.	<p>Submission of a Site Waste Minimisation and Management Plan</p> <p>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.</p> <p>Notes:</p> <ul style="list-style-type: none"> • 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. <p>Condition Reason: To ensure that the Waste Minimisation and Management Plan is assessed and approved by Council.</p>
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E. BEFORE BUILDING WORK COMMENCES

E. 1.	<p>Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989</p> <p>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:</p> <ol style="list-style-type: none"> 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. <p>This condition does not apply:</p> <ol style="list-style-type: none"> 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. <p>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.</p> <p>Notes:</p> <ul style="list-style-type: none"> • 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. <p>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.</p>
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<p>E. 2.</p>	<p>Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 of the Act)</p> <p>Building work must not commence, until:</p> <ul style="list-style-type: none">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, andb) The person having the benefit of the development consent has:<ul style="list-style-type: none">• 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, andc) The Principal Certifier has, no later than 2 days before the building work commences:<ul style="list-style-type: none">• 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, andd) The person having the benefit of the development consent, if not carrying out the work as an Owner-builder, has:<ul style="list-style-type: none">• 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. <p>Notes:</p> <ul style="list-style-type: none">• 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: <i>Over our Dead Body Society Inc v Byron Bay Community Association Inc</i> [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. <p>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.</p>
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E. 3.	<p>Erosion and Sediment Controls – Installation</p> <p>Before any building work commences, water pollution, erosion and sedimentation controls must be installed and maintained in accordance with:</p> <ol style="list-style-type: none"> 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). <p>Where there is any conflict The Blue Book takes precedence.</p> <p>Notes:</p> <ul style="list-style-type: none"> • 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. <p>Condition Reason: To prevent potential water pollution and dust nuisance.</p>
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F. DURING BUILDING WORK

F. 1.	<p>Compliance with BCA and Insurance Requirements under the Home Building Act 1989</p> <p>While site work is being carried out:</p> <ol style="list-style-type: none"> 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. <p>This condition does not apply:</p> <ol style="list-style-type: none"> 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. <p>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.</p>
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	<p>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.</p> <p>Notes:</p> <ul style="list-style-type: none"> All new guttering is to comply with the provisions of AS 3500. <p>Condition Reason: To ensure compliance with the BCA and Home building Act 1989.</p>
F. 2.	<p>Requirement to Notify about New Evidence</p> <p>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.</p> <p>Condition Reason: To ensure Council and the Principal Certifier are made aware of new information.</p>
F. 3.	<p>Critical Stage Inspections</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>Notes:</p> <ul style="list-style-type: none"> 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. <p>Condition Reason: To ensure that building work progresses in accordance with the approved plans, conditions of consent, and requirements of the act.</p>
F. 4.	<p>Hours of Work –Amenity of the Neighbourhood</p> <p>While site work is being carried out:</p> <ol style="list-style-type: none"> No work must take place on any Sunday or public holiday. No work must take place before 7am or after 5pm any weekday. No work must take place before 7am or after 1pm any Saturday. The following work must not take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday: <ol style="list-style-type: none"> piling, piering, rock or concrete cutting, boring or drilling,

<p>iv. rock breaking, v. rock sawing, vi. jack hammering, or vii. machine excavation.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>Notes:</p> <ul style="list-style-type: none"> • The use of noise and vibration generating plant and equipment and vehicular traffic, including trucks in particular, significantly degrade the amenity of neighbourhoods and more onerous restrictions apply to these activities. This more invasive work generally occurs during the foundation and bulk excavation stages of development. If you are in doubt as to whether or not a particular activity is considered to be subject to the more onerous requirement (9am to 4pm weekdays and 9am to 1pm Saturdays) please consult with Council. • Each and every breach of this condition by any person may be subject to a separate penalty infringement notice or prosecution. • The delivery and removal of plant, equipment and machinery associated with wide loads subject to Transport for NSW and NSW Police restrictions on their movement outside the approved hours of work will be considered on a case by case basis. • Compliance with these hours of work does not affect the rights of any person to seek a remedy to offensive noise as defined by the Protection of the Environment Operations Act 1997, the Protection of the Environment Operations (Noise Control) Regulation 2017. • NSW EPA Noise Guide is available at www.epa.nsw.gov.au/noise/nqlg.htm <p>Condition Reason: To mitigate the impact of work upon the amenity of the neighbourhood.</p>
<p>F. 5. Public Footpaths – Safety, Access and Maintenance</p> <p>While site work is being carried out, any person acting with the benefit of this consent must:</p> <p>a) Not erect or maintain any gate or fence that swings out, or encroaches upon the road or the footway.</p> <p>b) Not use the road or footway for the storage of any article, material, matter, waste or thing.</p> <p>c) Not use the road or footway for any work.</p> <p>d) Keep the road and footway in good repair free of any trip hazard or obstruction.</p> <p>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.</p> <p>f) Not stand any plant and equipment upon the road or footway.</p>

- 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 obstruction or danger to traffic or for any temporary purpose.
- Section 138 of the Roads Act 1993 provides that a person must not:
 - erect a structure or carry out a work in, on or over a public road, or
 - dig up or disturb the surface of a public road, or
 - remove or interfere with a structure, work or tree on a public road, or
 - pump water into a public road from any land adjoining the road, or
 - connect a road (whether public or private) to a classified road,
 - otherwise than with the consent of the appropriate roads authority.
- Section 68 of the Local Government Act 1993 provides that a person may carry out certain activities only with the prior approval of the Council including:
 - Part C Management of waste:
 - a) For fee or reward, transport waste over or under a public place
 - b) Place waste in a public place
 - c) Place a waste storage container in a public place.
 - Part E Public roads:
 - a) Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway
 - b) Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.

Condition Reason: To ensure safe access is maintained to footpaths and roads during building works.

F. 6. Tree Preservation

While site work is being carried out, all persons must comply with Chapter E.3 – *Tree Management* of Council’s Development Control Plan (DCP) 2015, other than where varied by this consent. The DCP applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.

General Protection Requirements:

- a) The tree protection measures must be maintained during all development work unless otherwise specified within these conditions of consent.

	<p>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.</p> <p>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.</p> <p>Trees must be pruned in accordance with Australian Standard AS 4373 “Pruning of Amenity Trees” and WorkCover NSW Code of Practice Amenity Tree Industry.</p> <p>Condition Reason: To protect trees during the carrying out of sitework.</p>
<p>F. 7.</p>	<p>Maintenance of Environmental Controls</p> <p>While site work is being carried out, the following monitoring, measures and controls must be maintained:</p> <ul style="list-style-type: none"> a) erosion and sediment controls, b) dust controls, c) dewatering discharges, d) noise controls, e) vibration monitoring and controls, and f) ablutions. <p>Condition Reason: To ensure that environmental controls are maintained during building works to protect the public and surrounding environment.</p>
<p>F. 8.</p>	<p>Disposal of Site Water During Construction</p> <p>While site work is being carried out:</p> <ul style="list-style-type: none"> 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. <p>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.</p>
<p>F. 9.</p>	<p>Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum</p> <p>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.</p>

	<p>Work must not proceed beyond each of the following critical stages until compliance has been demonstrated to the Principal Certifier's satisfaction:</p> <ol style="list-style-type: none"> 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. 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. 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. 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. 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. Stormwater drainage Systems are in place prior to back filling over pipes confirming location, height and capacity of works. Flood protection measures are in place confirming location, height and capacity. <p>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.</p>
<p>F. 10.</p>	<p>Placement and Use of Skip Bins</p> <p>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:</p> <ol style="list-style-type: none"> 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 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. <p>Notes:</p> <ul style="list-style-type: none"> 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. <p>Condition Reason: To ensure waste storage containers are appropriately located.</p>
<p>F. 11.</p>	<p>Prohibition of Burning</p> <p>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.</p> <p>Notes:</p> <ul style="list-style-type: none"> 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. <p>Condition Reason: To ensure no burning of waste occurs.</p>

<p>F. 12.</p>	<p>Dust Mitigation</p> <p>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.</p> <p>This generally requires:</p> <ol style="list-style-type: none"> 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. <p>Notes:</p> <ul style="list-style-type: none"> • “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. <p>Condition Reason: To mitigate the impact of dust upon the amenity of the neighbourhood and prevent water pollution.</p>
<p>F. 13.</p>	<p>Site Waste Minimisation and Management – Construction</p> <p>While site work is being carried out, in order to maximise resource recovery and minimise residual waste from construction activities:</p> <ol style="list-style-type: none"> 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

	<p>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.</p> <p>Condition Reason: To maximise resource recovery and minimise residual waste from construction activities.</p>
<p>F. 14.</p>	<p>Asbestos Removal</p> <p>While site work is being carried out, all asbestos removal work must be carried out safely according to NSW work health and safety legislation.</p> <p>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:</p> <ol style="list-style-type: none"> a) Be undertaken by contractors who hold a current SafeWork NSW “demolition licence” and a current SafeWork NSW “Class A licence” for friable asbestos removal. b) Be carried out in accordance with the relevant SafeWork NSW codes of practice. c) No asbestos products may be reused on the site. d) No asbestos laden skip or bins must be left in any public place. <p>Notes:</p> <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> - 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 call 131 050 <p>Condition Reason: To ensure the safe removal of asbestos and protect the health and safety of persons working on the site and the public.</p>
<p>F. 15.</p>	<p>Classification of Hazardous Waste</p> <p>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.</p> <p>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.</p>

<p>F. 16.</p>	<p>Disposal of Asbestos and Hazardous Waste</p> <p>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.</p> <p>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.</p>
<p>F. 17.</p>	<p>Asbestos Removal Signage</p> <p>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.</p> <p>Condition Reason: To ensure awareness of any hazard to the health and safety of persons working on the site and public.</p>
<p>F. 18.</p>	<p>Notification of Asbestos Removal</p> <p>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.</p> <p>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.</p> <p>Condition Reason: To ensure that local residents are informed and have adequate contact details for incidents of asbestos removal.</p>
<p>F. 19.</p>	<p>Support of Adjoining Land and Buildings</p> <p>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).</p> <p>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.</p> <p>Notes:</p> <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> - 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.

	<ul style="list-style-type: none"> • 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. <p>Condition Reason: To ensure that the support of adjoining land is not removed.</p>
<p>F. 20.</p>	<p>Erosion and Sediment Controls – Maintenance</p> <p>While site work is being carried out, water pollution, erosion, and sedimentation controls must be maintained in accordance with:</p> <ol style="list-style-type: none"> 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). <p>Where there is any conflict The Blue Book takes precedence.</p> <p>Notes:</p> <ul style="list-style-type: none"> • 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. <p>Condition Reason: To prevent potential water pollution and dust nuisance.</p>
<p>F. 21.</p>	<p>Site Waste Minimisation and Management – Demolition</p> <p>While site work is being carried out, in order to maximise resource recovery and minimise residual waste from demolition activities:</p> <ol style="list-style-type: none"> 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,

<p>d) the purpose and content of the bins and/or storage areas are to be clearly 'signposted',</p> <p>e) measures to prevent damage by the elements, odour, health risks and windborne litter are to be implemented, and</p> <p>f) site disturbance must be minimised, and unnecessary excavation limited.</p> <p>When implementing the SWMMP the Applicant must ensure:</p> <p>a) footpaths, public reserves and street gutters are not used as places to store demolition waste or materials of any kind without Council approval,</p> <p>b) any material moved offsite is transported in accordance with the requirements of the Protection of the Environment Operations Act 1997,</p> <p>c) waste is only transported to a place that can lawfully be used as a waste facility,</p> <p>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</p> <p>e) evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained.</p> <p>Notes:</p> <ul style="list-style-type: none"> 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. <p>Condition Reason: To maximise resource recovery and minimise residual waste from demolition activities.</p>

G. BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

<p>G. 1.</p>	<p>Occupation Certificate (section 6.9 of the Act)</p> <p>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.</p> <p>Notes:</p> <ul style="list-style-type: none"> New building includes an altered portion of, or an extension to, an existing building. <p>Condition Reason: To ensure the building is suitable to occupy.</p>
<p>G. 2.</p>	<p>Commissioning and Certification of Systems and Works</p> <p>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.</p> <p>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:</p> <p>a) All structural work.</p> <p>b) Such further matters as the Principal Certifier may require.</p>

	<p>Notes:</p> <ul style="list-style-type: none"> 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.
	<p>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.</p>
<p>G. 3.</p>	<p>Removal of Ancillary Works and Structures</p>
	<p>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:</p> <ol style="list-style-type: none"> the site sign, ablutions, hoarding, scaffolding, and waste materials, matter, article or thing.
	<p>Condition Reason: To ensure that all ancillary matter is removed prior to occupation.</p>

H. OCCUPATION AND ONGOING USE

<p>H. 1.</p>	<p>Outdoor Lighting – Residential</p> <p>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.</p> <p>Condition Reason: To protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting.</p>
<p>H.. 2.</p>	<p>Outdoor Lighting – Roof Terraces</p> <p>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.</p> <p>All lighting to be installed on the roof terrace will be recessed lights or will be surface wall/balustrade mounted lights at a maximum height of 600mm above the finished floor level of the roof terrace.</p> <p>Notes:</p> <ul style="list-style-type: none"> Council may consider, subject to an appropriate Section 4.55 Application, relaxation of this condition where it can be demonstrated, by expert report, that the level of lighting in the existing area already exceeds the above criteria, where physical shielding is present or physical shielding is reasonably possible.

	Condition Reason: To protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting.
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: <ul style="list-style-type: none">• 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:<ul style="list-style-type: none">- 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.

SUBDIVISION WORK

I. BEFORE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

Nil.

J. BEFORE SUBDIVISION WORK COMMENCES

Nil.

K. BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

Nil.

LAND SUBDIVISION

L. BEFORE ISSUE OF A SUBDIVISION CERTIFICATE





Nil.

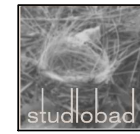
STRATA SUBDIVISION

M. BEFORE ISSUE OF A STRATA CERTIFICATE

Nil.

Attachments

1. Architectural Plans [↓](#) 
2. Clause 4.6 - Height of Buildings [↓](#) 
3. Heritage Referral Response [↓](#) 
4. Applicant's Existing Use Rights Assessment [↓](#) 



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02	DIMENSIONS AND SECTION ADDED	JB	13.09.2024
01	DA SUBMISSION	JB	15.06.2024
REV	AMENDMENT DETAILS	BY	DATE

PROJECT STAGE
DA SUBMISSION

PROJECT DETAILS
ALTERATIONS

**237 UNDERWOOD
 PADDINGTON**

CLIENT DETAILS
DYNAMIC PROPERTY SERVICES

DRAWING TITLE
SITE PLAN

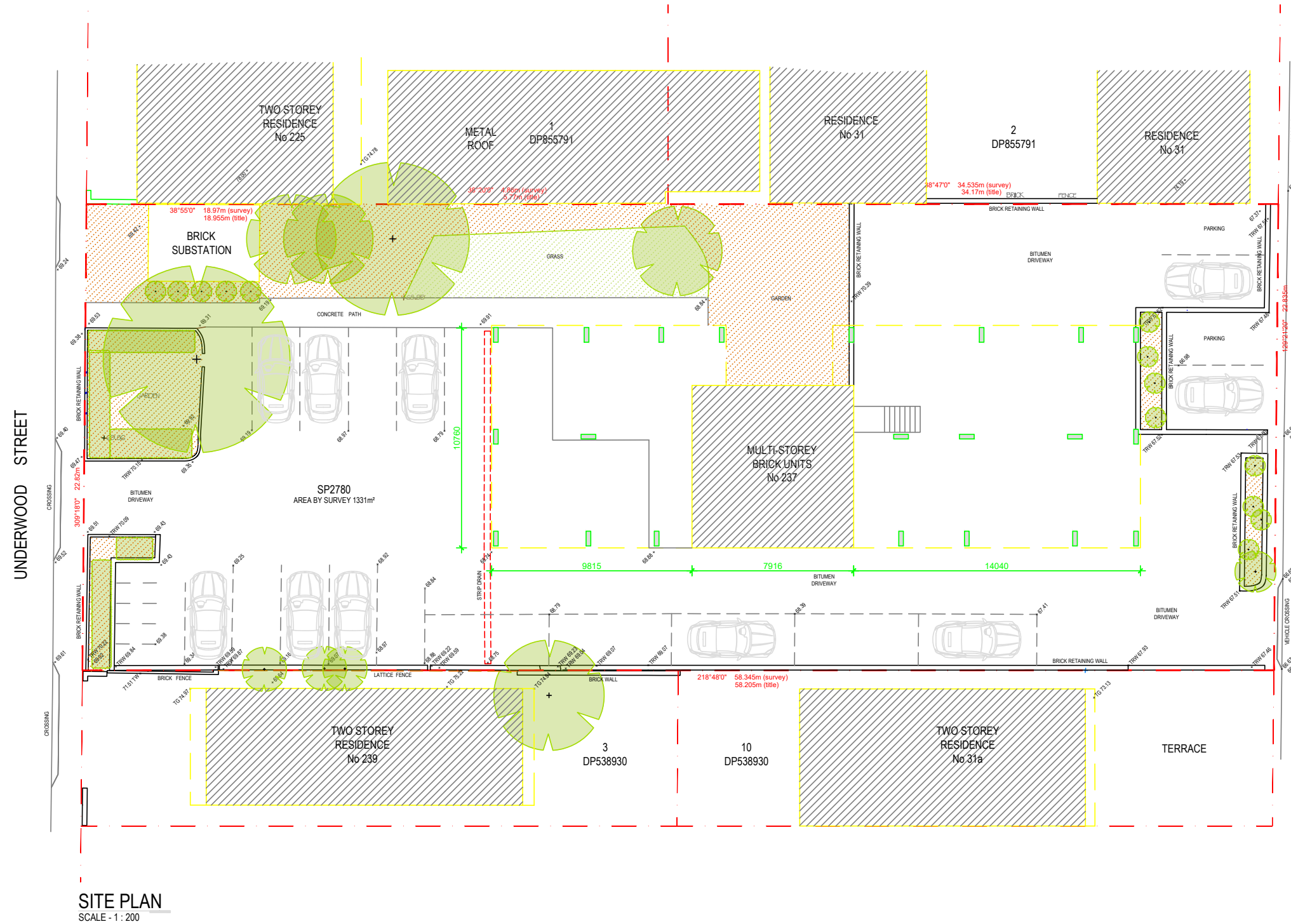
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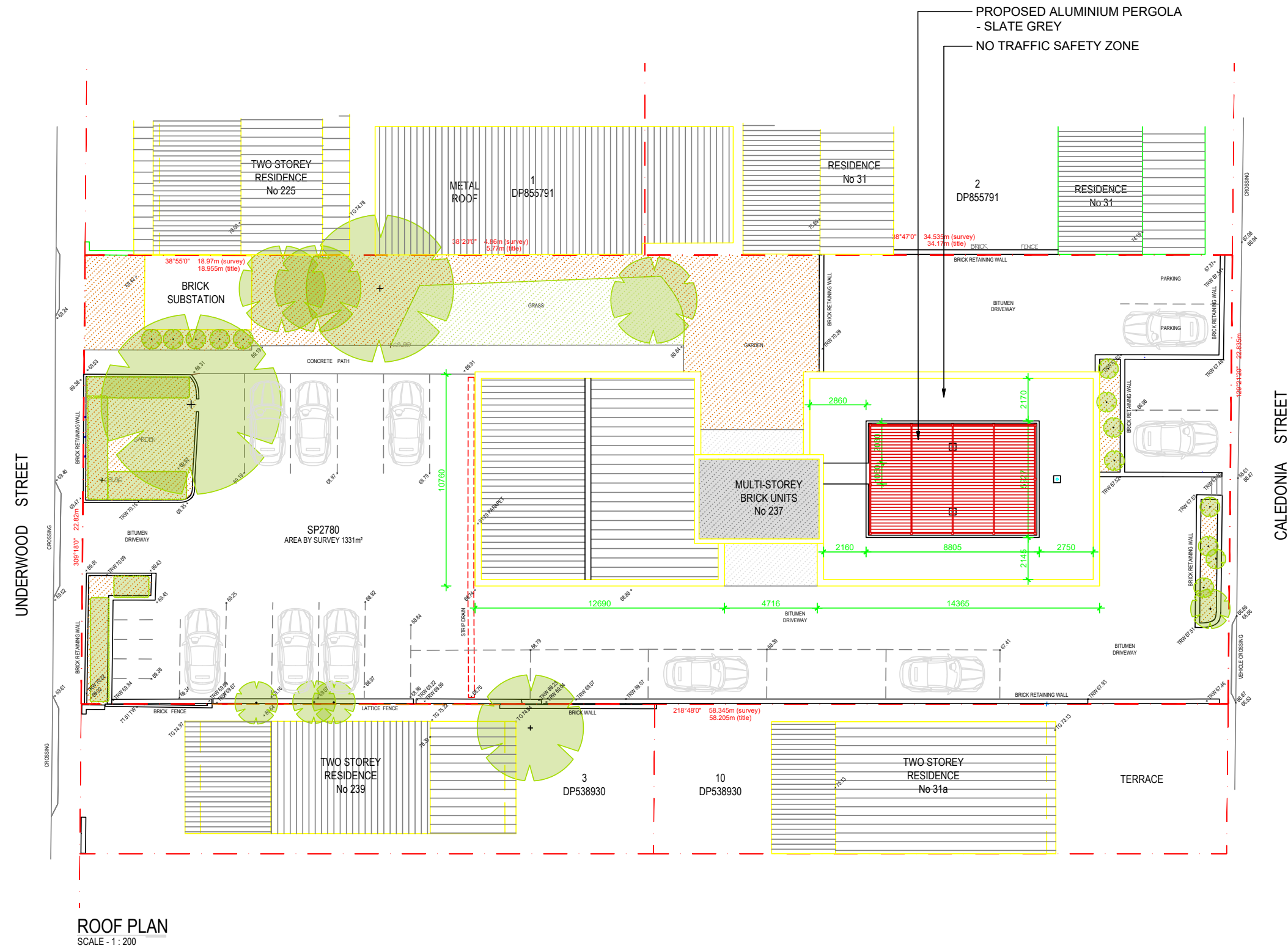
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PROJECT NUMBER **05.66** DRAWING NUMBER **A01.2** REVISION **02**



SITE PLAN
 SCALE - 1 : 200



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PROJECT STAGE
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PROJECT DETAILS
 ALTERATIONS

237 UNDERWOOD
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CLIENT DETAILS
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DRAWING TITLE
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PROJECT NUMBER 05.66	DRAWING NUMBER A01.3	REVISION 02
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237 UNDERWOOD
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CLIENT DETAILS
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ELEVATION EAST
 SCALE - 1 : 200



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**237 UNDERWOOD
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CLIENT DETAILS
DYNAMIC PROPERTY SERVICES

DRAWING TITLE
ELEVATIONS #2

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 DATE DRAWN
MAY 2024
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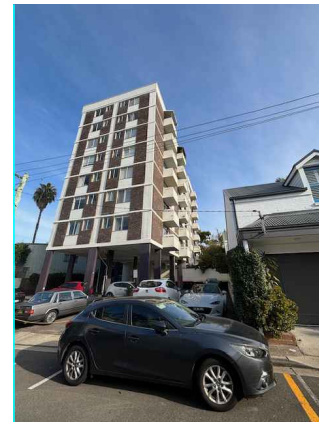
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05.66	A02.2	02



ELEVATION WEST
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South East View



North West View



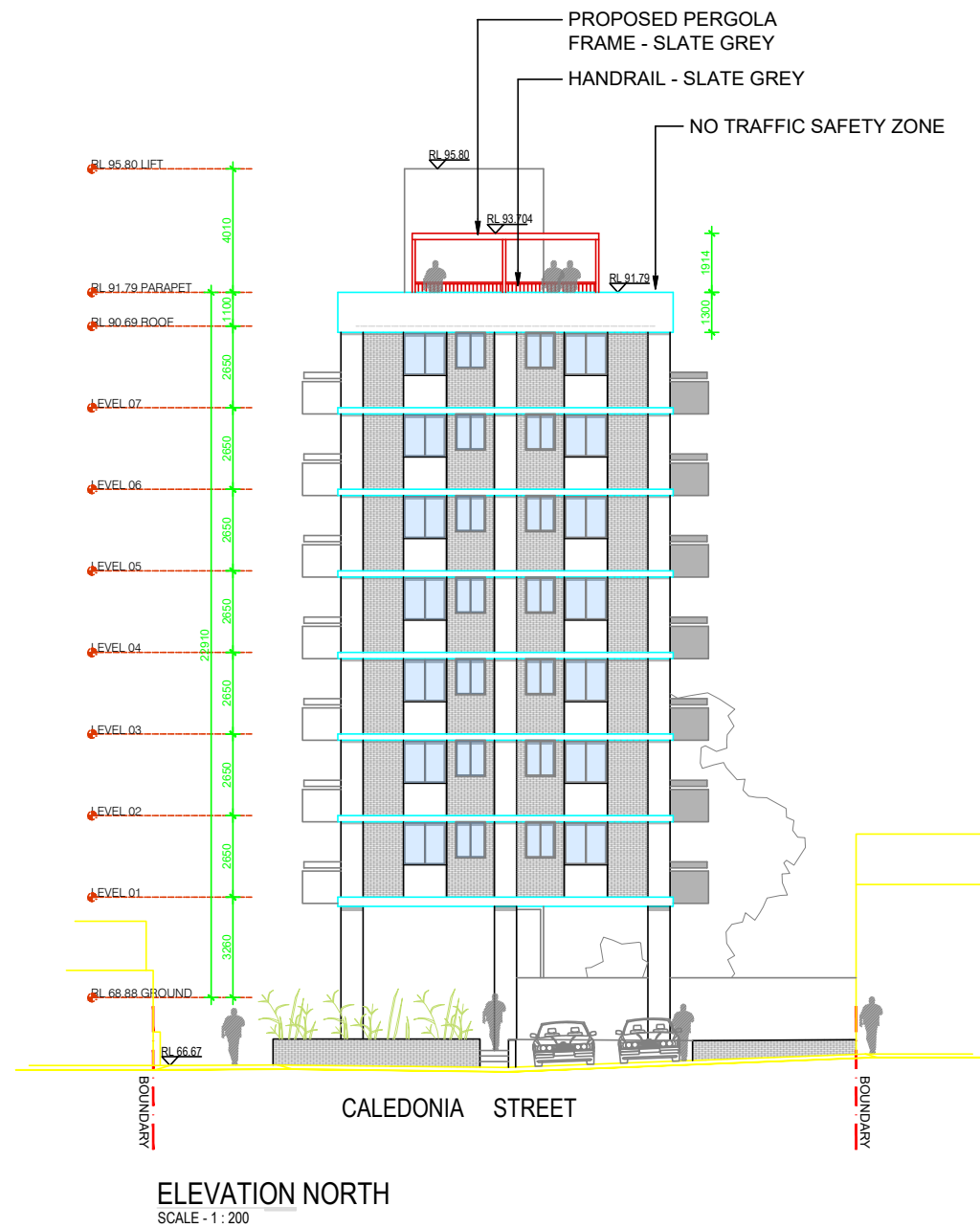
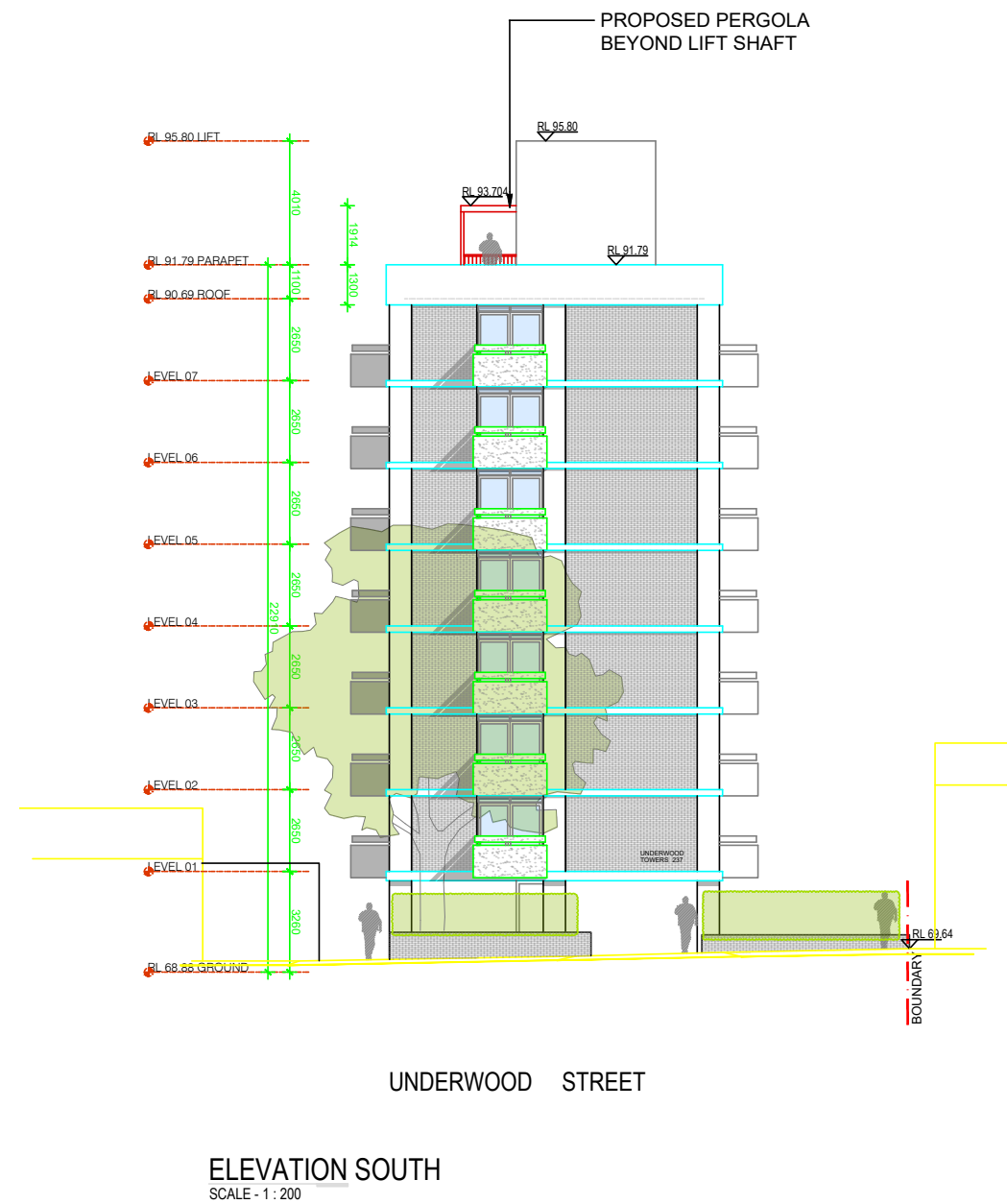
North West View of Proposed Pergola



PROPOSED PERGOLA
 FRAME - SLATE GREY
 HANDRAIL - SLATE GREY



MODWOOD DECK - SAHARA



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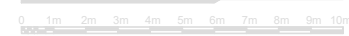
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CLIENT DETAILS
DYNAMIC PROPERTY SERVICES

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CLIENT DETAILS
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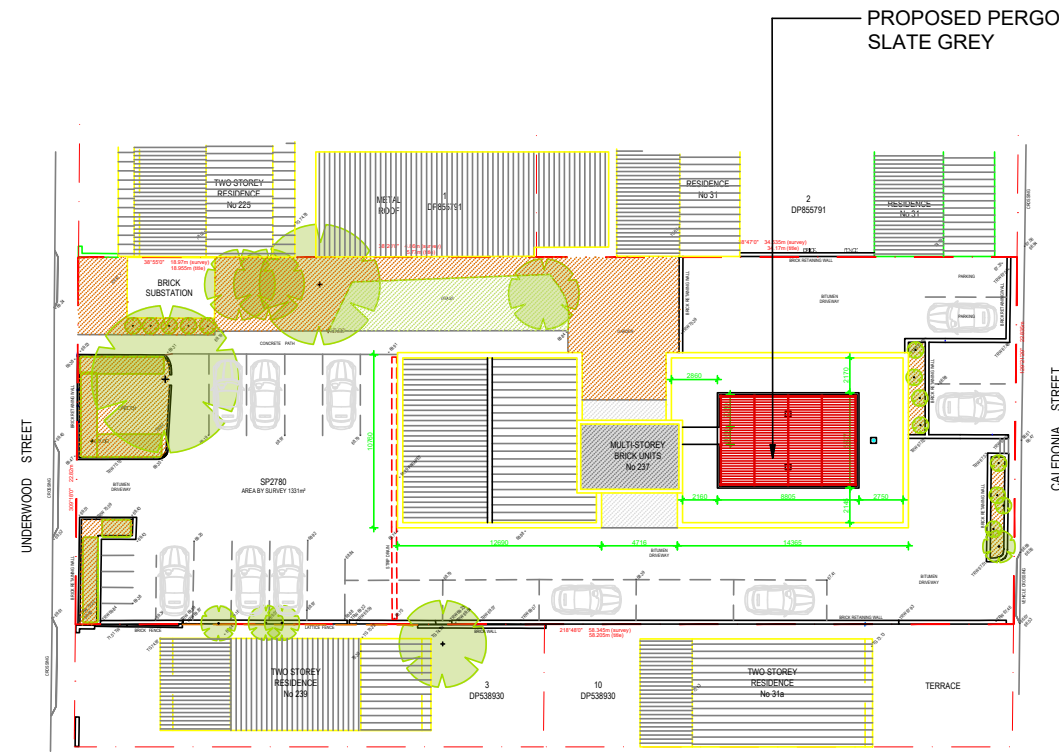
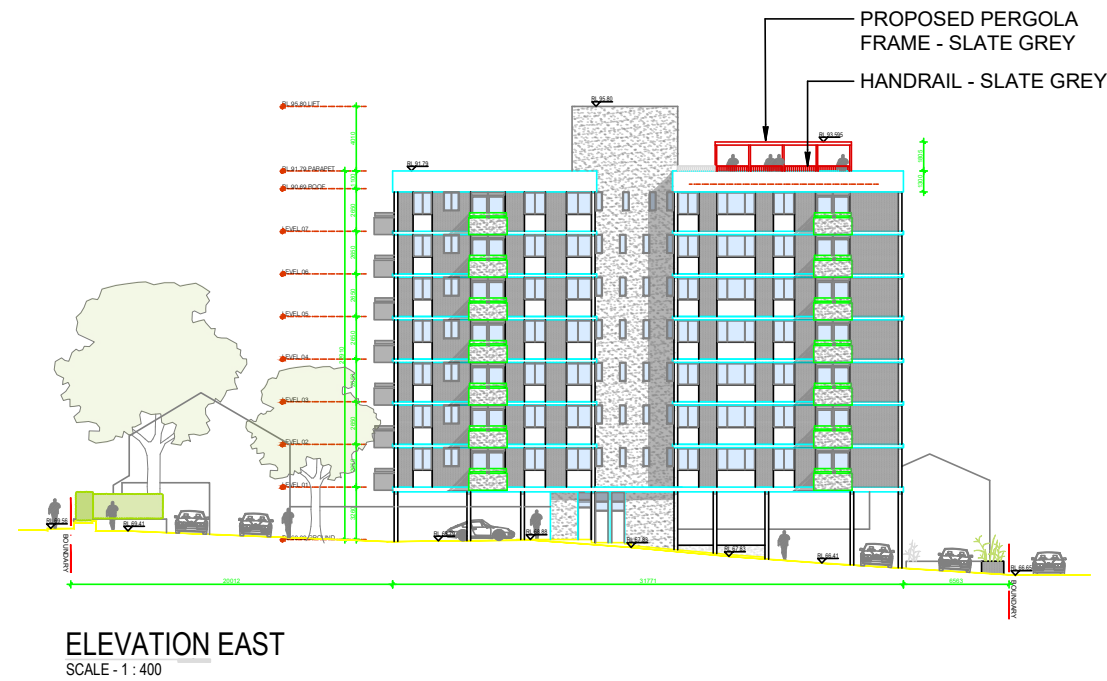
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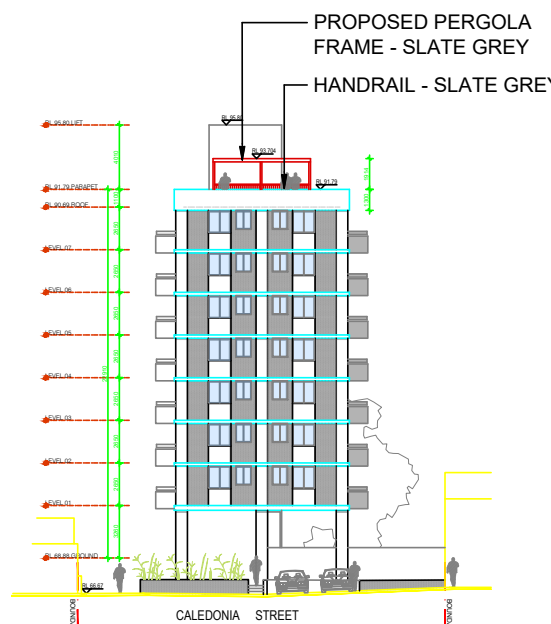
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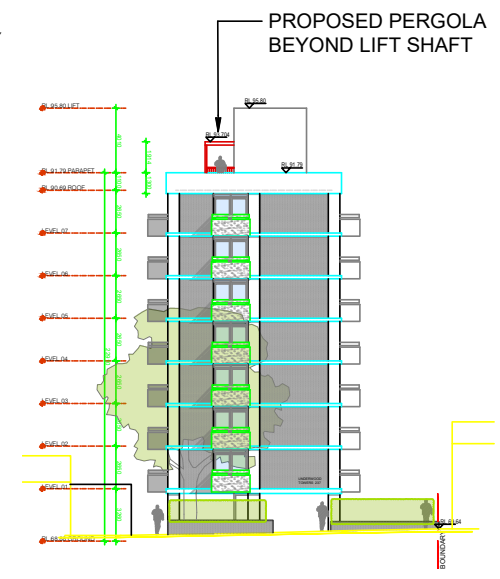
REVISION
02



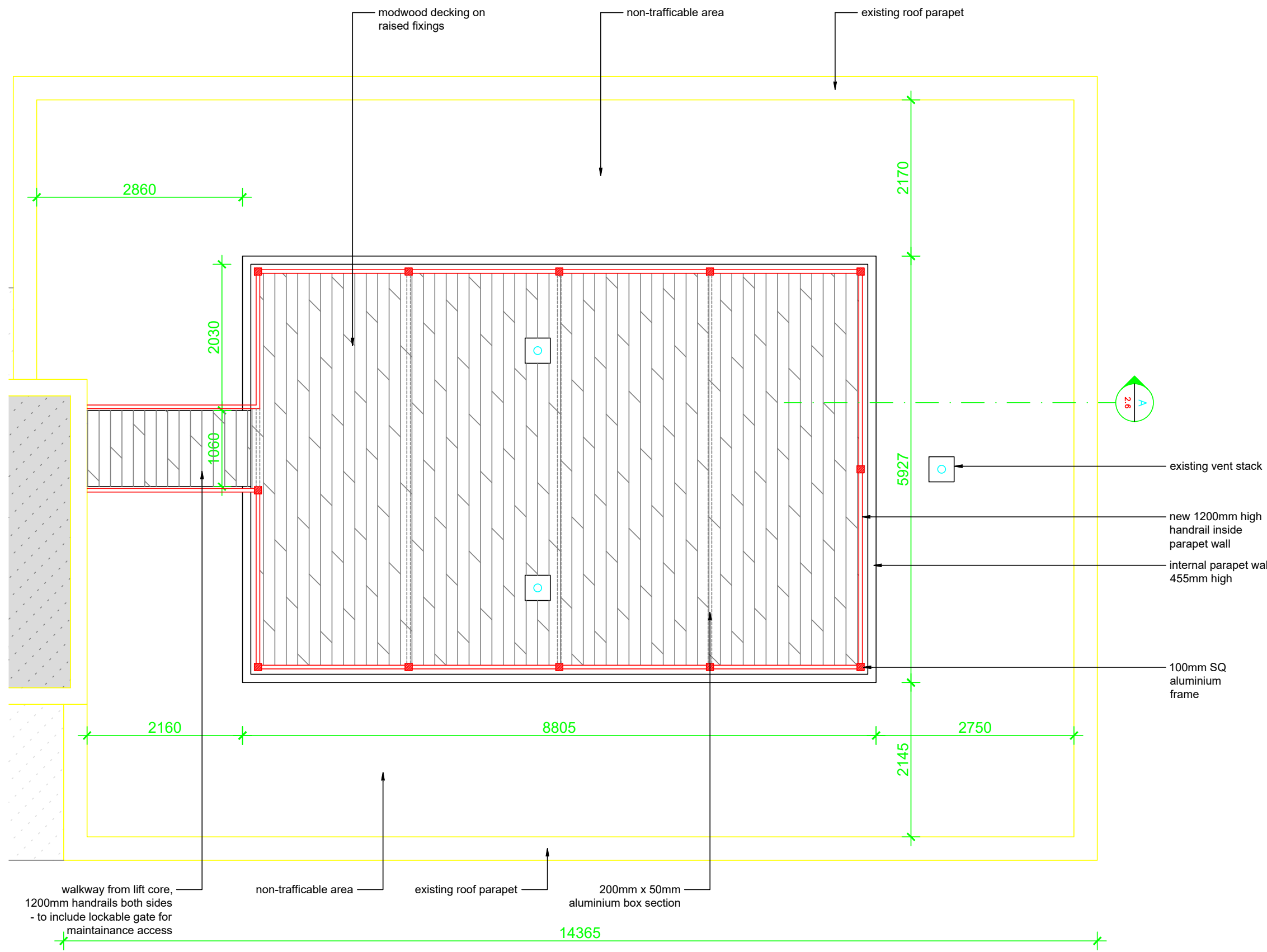
SITE PLAN
 SCALE - 1 : 400



ELEVATION NORTH
 SCALE - 1 : 400



ELEVATION SOUTH
 SCALE - 1 : 400



ROOF PLAN
 SCALE - 1 : 100



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REV	BY	DATE
02	JB	13.09.2024
01	JB	15.06.2024

PROJECT STAGE
DA SUBMISSION

PROJECT DETAILS
ALTERATIONS

**237 UNDERWOOD
 PADDINGTON**

CLIENT DETAILS
DYNAMIC PROPERTY SERVICES

DRAWING TITLE
ROOF PLAN

DRAWN
JB
 DESIGNED
JB
 CHECK
JB
 DATE DRAWN
MAY 2024
 DRAWING SCALE
1:50
 SHEET SIZE
A3

0 1m 2m 3m 4m 5m 6m 7m 8m 9m 10m
 1:100 @ A1 * 1:200 @ A3 * 1:267 @ A4

PROJECT NUMBER
05.66
 DRAWING NUMBER
A02.5
 REVISION
02



ARCHITECTURE
 INTERIORS
 PLANNING
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+61 02 8861 5668
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REV	BY	DATE
02	JB	13.09.2024
01	JB	15.06.2024
REV	AMENDMENT DETAILS	

PROJECT STAGE
 DA SUBMISSION

PROJECT DETAILS
 ALTERATIONS

237 UNDERWOOD
 PADDINGTON

CLIENT DETAILS
 DYNAMIC PROPERTY SERVICES

DRAWING TITLE
 SECTION A

DRAWN
 JB

DESIGNED
 JB

CHECK
 JB

DATE DRAWN
 MAY 2024

DRAWING SCALE
 1:20

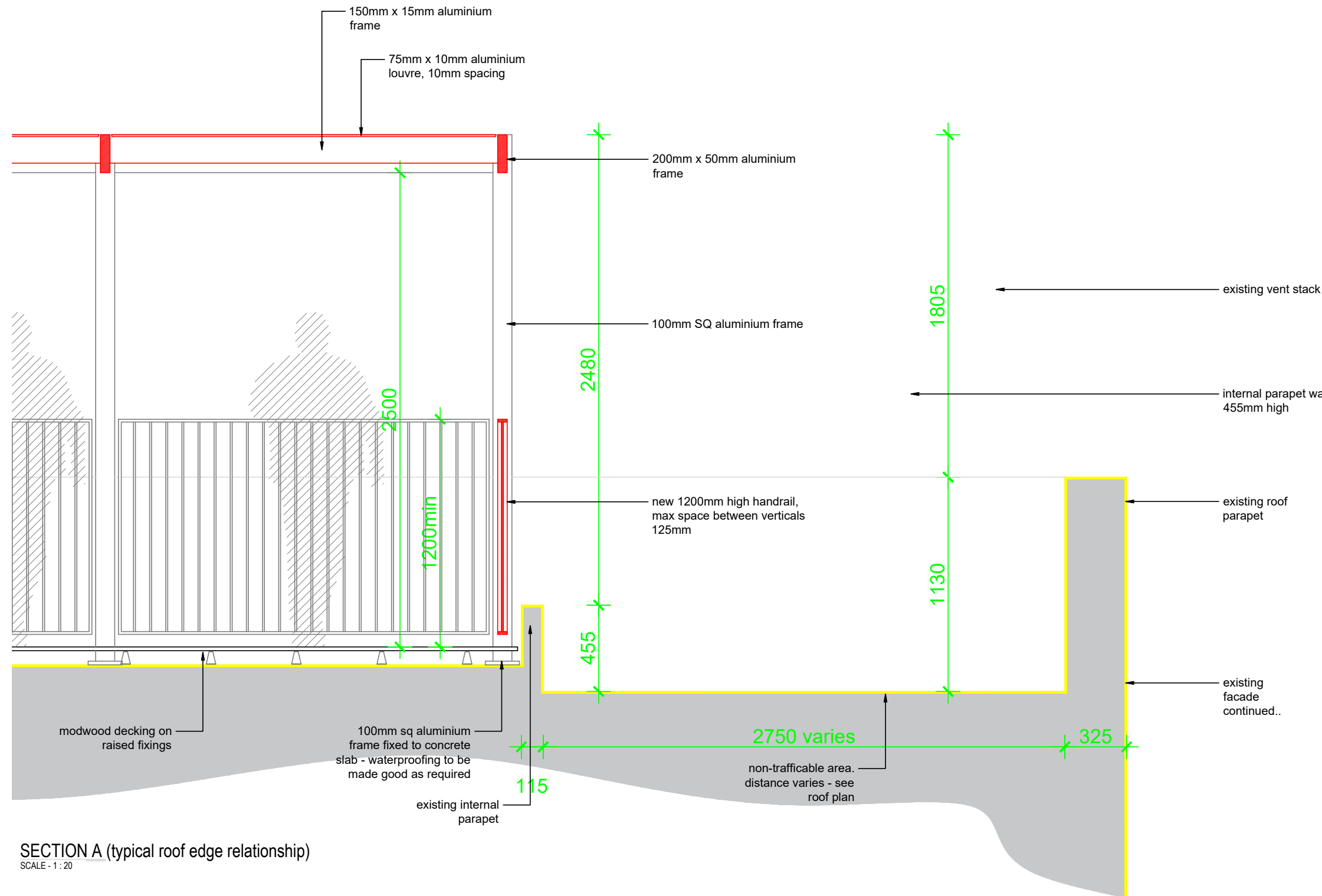
SHEET SIZE
 A3



PROJECT NUMBER
 05.66

DRAWING NUMBER
 A02.6

REVISION
 02



SECTION A (typical roof edge relationship)
 SCALE - 1:20

Easton Planning Consultants

REQUEST UNDER CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

REQUEST IS MADE TO VARY CLAUSE 4.3 HEIGHT OF BUILDINGS

1. INTRODUCTION

This request has been prepared in support of a development application (DA) for 237 Underwood Street, Paddington (SP2780). The proposed works are described as: “erection of new structure (pergola) on the roof of existing Residential Flat Building”.

The variation request is made pursuant to *Clause 4.6 Exceptions to development standards* of the *Woollahra Local Environmental Plan 2014* (Woollahra LEP 2014). *Clause 4.6 Exception to development standards* of the Woollahra LEP 2014 provides flexibility in the application of planning provisions. *Clause 4.6 Exceptions to development standard* allows a development application to be approved despite non-compliance with Local Environmental Plan (LEPs) development standards.

This can be achieved where the applicant can demonstrate that flexibility in the particular circumstances of the case would achieve better outcome for the site and would not have adverse impacts on surrounding environment and built form.

Easton Planning Consultants provide this written request pursuant to Clause 4.6 Exceptions to development standards to justify the contravention of development standard pertaining to Clause 4.3 Height of Buildings. This Variation request is to be read in conjunction with the Statement of Environmental Effects.

2. ASSESSMENT FRAMEWORK – CLAUSE 4.3 HEIGHT OF BUILDINGS

The objective of Clause 4.3 Height of Buildings under Woollahra Local Environmental Plan 2014 is prescribed below:

“4.3 Height of buildings

(1) The objectives of this clause are as follows—

- (a) to establish building heights that are consistent with the desired future character of the neighbourhood,*
 - (b) to establish a transition in scale between zones to protect local amenity,*
 - (c) to minimise the loss of solar access to existing buildings and open space,*
 - (d) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*
 - (e) to protect the amenity of the public domain by providing public views of the harbour and surrounding areas.*
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the 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 battle-axe lot on land in Zone R3 Medium Density Residential is 9.5 metres”*

Assessment

The proposed works do not further exacerbate the non-compliance as exists on site. The existing Residential Flat Building is not considered to achieve the objectives of the clause due to its exceedance of the 9.5m maximum height as applies on site. At its highest points the height is approximately 27.55m (RL68.25-RL95.8) which is a 190% breach of the development standard. The proposed pergola’s

maximum height will be at a maximum of 26.33 metres which is approximately two metres below the existing non-compliance.

3. ASSESSMENT FRAMEWORK – CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

Consideration has been given to the following matters within this assessment:

- Varying development standards: A Guide, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the Land and Environment Court

The following sections of the report provides detailed responses to the key questions required to be addressed when requesting a variation to a development standard.

3.1 CLAUSE 4.6(1) - DOES THE PROPOSAL MEET THE OBJECTIVES?

Clause 4.6 of WLEP 2014 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of WLEP 2014 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”*

Assessment

The variation for this clause will provide flexibility for the site in this particular circumstance and is deemed appropriate as there is an existing non-compliance on site. The residents of the RFB will benefit from the increased useability of the existing rooftop therefore creating a better outcome on site.

3.2 CLAUSE 4.6(2) - IS THE CONTROL, A PLANNING STANDARD WHICH CAN BE VARRIED?

“(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”

Assessment

Clause 4.3 Height of Buildings is development standard which is not excluded from Clause 4.6 Exceptions to development standards under Woollahra Local Environmental Plan 2014.

3.3 CLAUSE 4.6(3)(A) - IS COMPLIANCE WITH THE STANDARD UNREASONABLE AND UNNECESSARY?

Court precedents

Land and Environment Court (NSW LEC) planning principles and judgements have assisted in applying the variation consideration for development case. The presiding case for assessment of unreasonable or unnecessary compliance is: *Wehbe V Pittwater [2007] NSW LEC 827*.

Wehbe V Pittwater [2007] NSW LEC 827

In Wehbe V Pittwater [2007] NSW LEC 827 argued “if strict compliance with the standard, in this particular case, be unreasonable or unnecessary? Why?”

Five ways of determining whether compliance with development standard is unreasonable and unnecessary.

1. The most common way to establish whether strict compliance is to assess whether *“the proposed development proffers an alternative means of achieving the objective, strict compliance with the development standards would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”*

There are no alternative ways to achieve compliance with the standard as the height is exceeded as per existing site conditions. The RFB on site relies on existing use rights. There are no alternative means in achieving the objective therefore compliance with the development standard is unreasonable.

2. The second way is to establish that *“the underlying objective or purpose of the standard is not relevant to the development with the consequences that compliance is unnecessary”*

The RFB exceeds the height standard. Therefore, the objective of the clause to allow for low density development within the R2 zoning is unreasonable. The proposed pergola does not exacerbate existing non-compliance.

3. The Third way is to establish that *“the underlying object of purpose would be defeated or thwarted if compliance was required with the consequences that compliance is unreasonable”*

There are no alternative solutions to allow the site to achieve objectives of R2 Low Density Residential zone. Compliance is unreasonable in the circumstances of existing site conditions.

4. The fourth way 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”*

A review of the Woollahra Variation registered notes many instances of the approved variances due to existing pre-conditions. Some notable variances of height variation in R2 Low Density Residential zone include:

- DA 227/2023 – 25.8% (2023 Q3)
- DA 305/2022 – 36.6% (2023 Q1)

However, we also note the following non-compliances due to existing pre-conditions in R3 Medium Density zoning:

- DA 594/2022 – 195% (2023 Q1)
- DA 88/2021 – 700% (2021 Q4)

We note that all of the exceedance is due to the existing building envelope. The proposed works will not increase the height exceedance.

5. The fifth way is to establish that *“the zoning of a particular land was unreasonable or inappropriate so that a development standard appropriate for the zoning was also unreasonable or unnecessary as it applied to the land and that compliance with the standard in that case would be unreasonable or unnecessary”*

The site relies on existing use rights. The zoning under Woollahra LEP 2014 marks the site as being in a low-density area however the Residential Flat Building was already developed on site prior to new legislation coming into effect. Therefore, it is unreasonable to suggest that an existing RFB is appropriate in low density zoning.

3.4 CLAUSE 4.6(3)(B) - ARE THERE SUFFICIENT PLANNING GROUNDS TO JUSTIFY THE CONTRAVENING STANDARD?

Court precedents

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, Preston J observed:

“...in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and

...there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development”

Assessment

In the circumstances of this development, the non-complaint parts of the development are already existing.

This proposed pergola structure will not exacerbate existing non-compliance of the Residential Flat Building.

There are sufficient environmental planning grounds to justify contravening the development standard. These include:

- The Statement of Environmental demonstrates that any impacts associated with the proposed development are minor
- The variation does not result in a further breach of height development standard
- The site relies on existing use rights

3.5 CLAUSE 4.6 (4) – RECORD KEEPING FOR CONSENT AUTHORITIES

This written request it to be used for record keeping by consent authority.

3.6 CLAUSE 4.6(5) REPEALED

3.7 CLAUSE 4.6(6) IS THE DEVELOPMENT STANDARD FOR SUBDIVISION?

The development does not include subdivision of land.

3.8 CLAUSE 4.6(7) REPEALED

3.9 CLAUSE 4.6(8) - DOES THE DEVELOPMENT CONTRAVENE ANY STANDARDS AS PRESRIBED?

The development does not contravene any standards prescribed under Clause 4.6(8).

4. CONCLUSION

As described in the preceding sections, considering the constraints of the site and its context, strict compliance with the numerical standard in this instance is both unreasonable and unnecessary.

There is an existing non-compliance with the Height of Building standards due to the Residential Flat Building on site.

Additionally, the variation is considered acceptable for the following reasons:

- There will be no further breach in height as a result of the proposed pergola
- There is an existing breach in height due to the Residential Flat Building
- No adverse amenity impacts will arise from the proposed pergola structure

Based on the reasons outlined, it is concluded the request is well founded and the particular circumstances of the case warrants flexibility in the application of *Clause 4.3 Height of Buildings*.

Regards,



Anja Morgan
Principal town planner
BUrb&EnvPlan, MBA
Easton Planning Consultants Pty Ltd

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This report has been prepared with due care and diligence by Easton Planning Consultants Pty Ltd. All statements and opinions given in this report are given in good faith and in the reasonable belief that they are correct and not misleading, subject to the limitations above.

Document Title:	Version:	Prepared By:	Dated:
19245_Clause 4.6 FSR	A	A Morgan	June 2024
	B	A Morgan	July 2024

DARC Response – Heritage
DA2024/288/1 – 237 Underwood St PADDINGTON

Subject Property

‘Underwood Towers’ is a c1970s apartment tower. A search of the following databases yielded the following results:

- Trove – no results
- Woollahra Library – National Trust c1982 Survey Sheet
- City of Sydney Archives – Building Inspectors Cards, architectural drawings
- State Library NSW - no results
- State Archives NSW - no results

The submitted HIS also concludes that a review of the site’s history did not result in significant information regarding the site.

Therefore, it is unlikely that the subject property is of heritage significance and is therefore considered neutral to the Paddington HCA.

Paddington DCP, C1.3.6 Residential flat buildings, manor houses, multi dwelling housing and multi dwelling housing (terraces)

Control C3 Alterations and additions to intrusive development must be an appropriate response to the historic streetscape and mitigate intrusiveness

The proposed pergola is to the rear tower and would not impact on significant fabric or be visible from Underwood Street. It is possible that it would be visible from Caledonia Street, however, due to the height of the tower and the setback of the structure, this visual impact would be minimal.

Conclusion

There are no heritage objections to the proposal.

Note; the HIS cover page is to be updated to refer to the correct address

Vanessa Wood – Temporary Heritage Officer, 7.8.2024

Easton Planning Consultants

28 October 2024

ATTN: Sanaz Hosseinabadi
Woollahra Municipal Council
536 New South Head Road,
Double Bay NSW 2028

Sent via email

Dear Ms Hosseinabadi,

This letter provides a response to the request for further information pertaining to existing use rights received on 8th October 2024 in relation to DA288/2024/1 - 237 Underwood Street, Paddington. We note, some information has already been submitted with the lodged documents which can be reviewed alongside this letter.

GIPA request

City of Sydney Council

A review of the archives available on the City of Sydney Archives show a building inspection card dated 1965. It appears the DA referenced is 1155/65. However, due to the age of the documents, the legibility is limited.

DATE	HISTORY
4.7.65	Deck of flats
27.7.65	Approved PLANS & SPECK. ON JOB CHECKED
18.8.65	Not started
1.9.65	Not started (1)
1.10.65	Not started 19.10.65 Not started
1.11.65	Not started Demolition work in progress
19.11.65	The demolition progress
8.12.65	Not started 21.12.65 Not started
21.1.66	Not started
15.3.66	Work started Excavation & building of site carried out. Commencement advised re

Figure 1 City of Sydney archive search

Woollahra Council

A GIPA request was subsequently submitted to Council which shows the following results:

EASTON PLANNING CONSULTANTS PTY LTD
E: PLANNING@EASTONPC.COM.AU
A: PO BOX 395, DOUBLE BAY NSW 1360

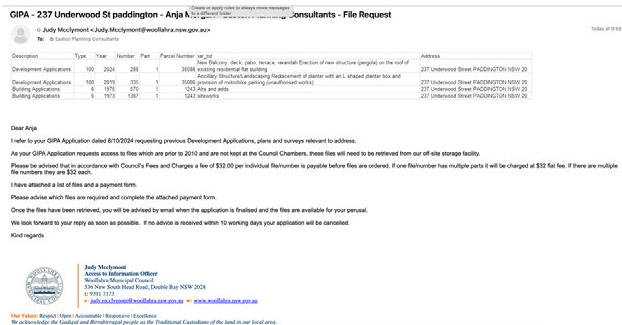


Figure 2 GIPA from Council's Records team

Woollahra Council did not identify any earlier files on site. Easton Planning Consultants are not aware of why previous approvals were not on Council's records.

Timeline

The building was built circa 1965 with the letter found referencing BA1509/65 and the archive file referencing DA1155/65.

We note that these dates are consistent with the other information reviewed including registration of strata plan in 1967.

Review of building applications available

Subsequently, Easton Planning Consultants have reviewed the earlier files available from 1973 and 1975. In the documents reviewed, Woollahra Council conducted a compliance check of existing roof on site.

In the letter submitted with the documents, we note that the Strata identifies that the roof on Caledonia Street side as being a trafficable roof for use by residents (see below). We also note that the letter notes "BA1509/65" seemingly referencing a building approval.

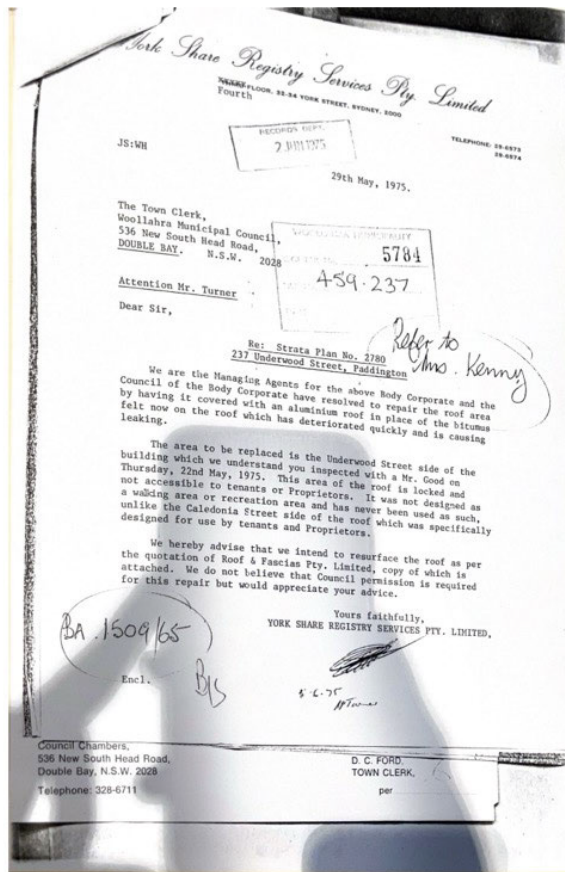


Figure 3 Extract from Council file

Continuing use as residential flat building

Pertaining to the enquiry whether existing use has not been abandoned, we provide a registration of the strata scheme as evidence. We note that registered strata plan is dated 1967 and is still operating on site (see below).

Doc: SP 0002780 P / Rev: 03-Aug-2007 / 05:10:06 / Pgs: ALL / 1st: 27-Sep-2018 09:41 / Req: 1
 Ref: 780112

Parcel comprised wholly of Lot 1, D.P. 1172018
 and Lot 2, P.P. 241816

Reference to Title Vol. 10152 Fol. 38

Municipality of HORNBY

Locality: PADDINGTON

Parish: ALEXANDRIA County: CUMBERLAND

Sub: 4-6 PERTH AND TONIN

STRATA PLAN 2780 (E)

Registered: 26-6-1967
 CAL 3/1967 of 29-5-1967
 Ref Map: Ref. Plan 807
 Last Plan: D.P. 107807, P.P. 54184

Lot No.	Unit Entitlement	OFFICE USE ONLY	
		Vol	Fol.
1	G5	10583-101	
2	G5	10583-102	
3	G5	10583-103	
4	G7	10583-104	
5	G3	10583-105	
6	G4	10583-106	
7	G5	10583-107	
8	G5	10583-108	
9	G4	10583-109	
10	G4	10583-110	

AGGREGATE: 10583-110

REGISTRATION: 26-6-1967

STRATA PLAN No. 2780

237 Underwood St. PADDINGTON

Survey's Reference: G27/105

Figure 4 Registration of existing strata plan in 1967

Planning principles assessment

We have reviewed the planning principles which provide guidance on developments relying on existing use rights (see below).

Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71

The planning principles which were established in have been evaluated as per below:

- "How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?"

The existing bulk and scale of the development is inappropriate within the area. However, the proposed development is contained wholly within the existing building envelope on site. Therefore, the reliance on existing use rights will not negatively impact on existing site conditions.

- "What is the relevance of the building in which the existing takes place?"

The building is existing within the area and has been since circa 1965. There are no proposed changes to its use or building envelope. The works are contained within existing building envelope and will have minimal impacts on surrounding neighbours.

- *"What are the impacts on adjoining land?"*

The potential impacts on adjoining land will be minimal. The site already has a roof terrace which was constructed with the original building and being used as a trafficable area (see evidence above). The proposed works for a pergola will only enhance the useability of roof terrace area and will not result in any significant changes to it. The impacts of existing roof terrace will be similar to proposed roof terrace with pergola structure.

- *"What is the internal amenity?"*

There will be no changes to existing internal amenity. The usability of and external roof terrace will increase with the proposed pergola.

Lemworth Pty Limited v Liverpool City Council [2001] NSWLEC 23

As per Council's request, this Court Case was reviewed. We note that the proposed works for 237 Underwood Street relate to a new pergola structure on the rooftop of existing RFB. There will be no intensification of the existing residential use. There will be no extension of the existing building footprint. The pergola structure will merely be used to enhance the usability of the existing roof area for its residents.

Agostino v Penrith City Council [2022] NSWLEC 1258

As per Council's request, this Court Case was reviewed. We note that the existing use rights apply to the RFB on site which includes the roof terrace. As per letter dated 1975 provided as evidence, the roof terrace facing Caledonia Street has always been used as a trafficable roof terrace for its residents.

Regards,



Anja Morgan
Principal town planner
Easton Planning Consultants