



# Woollahra Local Planning Panel (Public Meeting)



## Agenda

Thursday 19 November 2020

1.00pm

Items D1 – D5

Meeting to be held using conferencing technology (refer to details over page)

#### **Compliance with social distancing requirements to limit the spread of COVID-19 virus at Woollahra Local Planning Panel Meetings (Public Meetings):**

Amendments have been made to the *Local Government Act 1993* to allow councils to meet remotely to reduce the risk of COVID-19 and ensure compliance with the Public Health Order.

Woollahra Council will be holding Woollahra Local Planning Panel (WLPP) 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 be considered at a public meeting by the Panel.

Members of the public are invited to listen to Public meetings using conferencing technology. Public participation by phone will be managed in accordance with meeting procedures.

Instructions on how to join the meeting will be forwarded to person who have pre-registered to listen or make a submission to the panel. This information will be forwarded on the day of the meeting via email.

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](mailto:records@woollahra.nsw.gov.au)

The Woollahra Local Planning Panel (Public 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](http://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 are experiencing any issues in joining the meeting please call Council's Governance department on (02) 9391 7001.

A audio recording of the meeting will be uploaded to Council's website following the meeting by 5.00pm on the next business day.

#### **Outline of Meeting Protocol & Procedure (COVID-19):**

- The Chair will call the Meeting to order and ask the Panel/Staff to present apologies and/or late correspondence.
- The Chair will commence the Order of Business as shown in the Index to the Agenda.
- To listen to the meeting, please register by sending your name, phone number, email address and item you are interested in to [records@woollahra.nsw.gov.au](mailto:records@woollahra.nsw.gov.au) by **12 noon on the day before the meeting**.
- To register to speak at the meeting, you should register using the appropriate 'Register to address the Panel Application Form' as available on Council's website at: [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) by **12 noon on the day before the meeting**.
- Members of the Public who have pre-registered to listen or speak at a meeting will be sent an email with the audio-visual link prior to the meeting. Please **do not** share the audio-visual link with any third party/ies.
- Members of the Public who have pre-registered to speak will be allowed three (3) minutes in which to address the Panel, one (1) warning bell will be rung at the conclusion of two (2) minutes and two (2) warning bells rung at the conclusion of three (3) minutes. Please direct comments to the issues at hand.
- If there are persons representing both sides of a matter (e.g. applicant/objector), the person(s) against the recommendation speak first.
- At the conclusion of the allocated three (3) minutes, the speaker takes no further part in the debate unless specifically called to do so by the Chair.
- If there is more than one (1) person wishing to address the Panel from the same side of the debate, the Chair will request that where possible a spokesperson be nominated to represent the parties.
- After considering any submissions the Panel will debate the matter (if necessary) in closed session, and arrive at a resolution.
- Minutes of the Woollahra Local Planning Panel (Public Meeting) will be posted to Council's website once finalised.

#### **Disclaimer:**

By speaking at the Woollahra Local Planning Panel (WLPP) Meeting members of the public consent to their voice and personal information (including name and address) being recorded and publicly available on Council's website. Accordingly, please ensure your address to Council is respectful and that you use appropriate language and refrain from making any defamatory statements or discriminatory comments.

Woollahra Council does not accept any liability for statements, comments or actions taken by individuals during a Council meeting.

Any part of the meeting that is held in closed session will not be recorded.

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The recording of each meeting will be retained on Council's website for a minimum period of 6 months. After that period has passed, recordings of meetings may be disposed of in accordance with the *State Records Act 1998*.

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#### **Woollahra Local Planning Panel Membership:**

1 Chair, 2 Experts and 1 Community Representative

#### **Quorum:**

3 Panel members



# Woollahra Municipal Council

## Notice of Meeting

12 November 2020

To: Woollahra Local Planning Panel Members  
*Chair*  
*Experts*  
*Community Representative*

Dear Panel Members,

### **Woollahra Local Planning Panel (Public Meeting) – 19 November 2020**

In accordance with the provisions of the Local Government Act 1993, I request your attendance at Council's **Woollahra Local Planning Panel (Public Meeting)** meeting to be held using teleconferencing technology **on Thursday 19 November 2020 at 1.00pm.**

Members of the public are advised that we will be holding Woollahra Local Planning Panel meetings remotely using conferencing technology (until further notice). Information on how to register to listen and/or register to address the meeting is available on Council's website [https://www.woollahra.nsw.gov.au/council/meetings\\_and\\_committees/planning\\_panels/woollahra\\_local\\_planning\\_panel\\_wlpp/wlpp\\_register\\_to\\_speak](https://www.woollahra.nsw.gov.au/council/meetings_and_committees/planning_panels/woollahra_local_planning_panel_wlpp/wlpp_register_to_speak).

A audio recording of the meeting will be uploaded to Council's website following the meeting by 5.00pm on the next business day.

The safety of our community, Councillors and our staff is Council's number one priority and we thank you for your patience and understanding at this time.

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

Craig Swift-McNair  
General Manager

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## Meeting Agenda

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2.	Late Correspondence	
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<b>Item No:</b>	D1
<b>Subject:</b>	<b>PLANNING PROPOSAL - INTERPRETATION OF DESIRED FUTURE CHARACTER IN WOOLLAHRA LEP 2014.</b>
<b>Author:</b>	Kelly McKellar, Acting Team Leader Strategic Planner
<b>Approvers:</b>	Anne White, Manager - Strategic Planning Nick Economou, Acting Director Planning & Development
<b>File No:</b>	20/204925
<b>Reason for Report:</b>	To seek the advice of the Woollahra Local Planning Panel in relation to a planning proposal to clarify the interpretation of desired future character as contained in various aims and objectives of the Woollahra LEP 2014.

### **Recommendation:**

THAT the Woollahra Local Planning Panel advises Council to proceed with the planning proposal (at **Annexure 1**) to amend the *Woollahra Local Environmental Plan 2014* to introduce provisions clarifying the interpretation of desired future character.

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## **1. Reason for report to the Woollahra Local Planning Panel**

This report seeks the advice of the Woollahra Local Planning Panel (Woollahra LPP) on a planning proposal to amend the *Woollahra Local Environmental Plan 2014* (Woollahra LEP 2014) to introduce provisions which will clarify the interpretation of desired future character as contained in various aims and objectives of the Woollahra LEP 2014.

On 27 September 2018, the Minister for Planning issued a Local Planning Panel Direction – Planning Proposals:

- *A Council to whom this direction applies is required to refer all planning proposals to be prepared after 1 June 2018 to the local planning panel for advice, unless the council's general manager determines that the planning proposal relates to:*
  - a) *the correction of an obvious error in a local environmental plan*
  - b) *matters that are of a consequential, transitional, machinery or other minor nature, or*
  - c) *matters that council's general manager considers will not have any significant adverse impact on the environment or adjoining land.*
- *When a planning proposal is referred to the panel, it must be accompanied by an assessment report prepared by council staff setting out recommendations, including whether or not the planning proposal should proceed.*
- *A proposal is to be referred to the local planning panel before it is forwarded to the Minister under section 3.34 of the Environmental Planning and Assessment Act 1979 (the Act).*

In this case, the planning proposal is required to be referred to the Woollahra LPP because the General Manager has not made a determination in regard to items (a), (b) or (c), above.

## **2. Background**

A recent decision in the NSW Land and Environment Court (LEC) approved a six storey mixed-use development at 28-34 Cross St, Double Bay (DA617/2017). This decision has implications for the interpretation of the term desired future character as used in the Woollahra LEP 2014 and the *Woollahra Development Control Plan 2015* (Woollahra DCP 2015).

In this case, the Applicant successfully argued that rather than the provisions in Woollahra LEP 2014 and Woollahra DCP 2015, the recent approvals for six storey development on adjoining land set the desired future character. Council unsuccessfully appealed this decision (s56A Appeal). Copies of the LEC decisions are contained in **Annexures 2 and 3** of this report.

Relevant to this planning proposal are the following findings (see **Annexure 3**):

- The term ‘desired future character’ is not defined in the Woollahra LEP 2014 [52].
- A DCP cannot be used to interpret the provisions of an LEP unless the LEP expressly refers to the provisions of the DCP for that purpose [46].
- The Woollahra LEP 2014 does not refer to Woollahra DCP 2015 to define the term desired future character [46].
- The Commissioner was not obliged to interpret the term desired future character in Woollahra LEP 2014 by reference to the Woollahra DCP 2015 [46].
- The drafter of the Woollahra LEP 2014 has not confirmed that the interpretation of desired future character is influenced by zoning, permitted and prohibited development and development standards [54].
- Where the term desired future character is not defined, the matters that may be taken into account in evaluating what is the desired future character are not defined [54].
- There is no provision which prevents approved and constructed development being considered as part of the evolving local character and accordingly the desired future character of an area [54].

On 6 October 2020, Council’s Environmental Planning Committee (EPC) considered a report on the LEC findings and its potential implications on Council’s place-based planning approach. A copy of the report is attached in **Annexure 4**. Additionally, the Double Bay Residents Association made a submission to Council in relation to this matter dated 27 August 2020 which was attached to the EPC report (see **Annexure 5**).

On 26 October 2020, Council resolved:

- A. *THAT a planning proposal be prepared to amend references to desired future character in Woollahra LEP 2014 so that the meaning and interpretation of desired future character (across all parts of the municipality) is defined and cross referenced.*
- B. *THAT the planning proposal be referred to the Woollahra Local Planning Panel for advice.*
- C. *THAT the advice of the Woollahra Local Planning Panel be reported to the Environmental Planning Committee.*

At this meeting, Council considered late correspondence from staff containing confidential legal advice about this matter (see **Annexure 6 - Confidential**).

Accordingly, staff have prepared a planning proposal which seeks to amend the Woollahra LEP 2014 to clarify the interpretation of desired future character as contained in various aims and objectives.

### **3. Planning Proposal**

Consistent with Council's resolution of 26 October 2020, a planning proposal has been prepared to amend Woollahra LEP 2014 (see **Annexure 1**). The planning proposal seeks to amend Woollahra LEP 2014 by inserting an additional local provision into *Part 6 Additional local provisions* to define desired future character.

#### **3.1. Planning Proposal structure**

The planning proposal has been prepared in accordance with section 3.33 of the *Environmental Planning and Assessment Act 1979* (the Act) and the two documents prepared by the formerly named NSW Department of Planning and Environment titled *A Guide to Preparing Planning Proposals* (December 2018) and *A Guide to Preparing Local Environmental Plans* (December 2018).

The planning proposal satisfies the requirements of section 3.33 of the Act as it includes:

- A statement of the objectives or intended outcome of the amendment to Woollahra LEP 2014.
- An explanation of the provisions that are to be included in the amendment to Woollahra LEP 2014.
- The justification for the objectives, outcomes and provisions and the process for their implementation.
- Details of the community consultation that is to be undertaken.

#### **3.2. Objective of amendment to Woollahra LEP 2014**

The term desired future character is used 18 times in Woollahra LEP 2014 across the aims of the plan, zone and clause objectives. The objective of the planning proposal is to define the term desired future character to ensure that the meaning and interpretation is defined by other provisions of both the Woollahra LEP 2014 and Woollahra DCP 2015.

Doing so will re-establish Council's place-based planning approach and the intent of the original drafting of Woollahra LEP 2014 and Woollahra DCP 2015.

Accordingly, this planning proposal seeks to amend the Woollahra LEP 2014 to create a statutory link between the provisions containing the term desired future character, the LEP development standards, and the corresponding desired future character statements in the Woollahra DCP 2015.

The proposed amendment will reduce ambiguity about the interpretation of desired future character, and encourages the consistent application and interpretation of the adopted development standards and controls. This will help to ensure that development achieves the desired future character of the area and provides consistent and transparent planning outcomes.

#### **3.3. Explanation of provisions**

The planning proposal seeks to amend Woollahra LEP 2014 by inserting an additional local provision into *Part 6 Additional local provisions* to define desired future character. While it is acknowledged that this the local provision will be subject to drafting by the Parliamentary Counsel's Office, the additional local provision may be similar to the following:



### ***6.8 Desired future character***

- (1) *In this instrument, a reference to desired future character of the area, neighbourhood, zone or attribute of same, means the character prescribed in relation to that area, neighbourhood, zone or attribute by:*
- (a) the relevant aims, objectives and other provisions of this instrument; and*
  - (b) to the extent not inconsistent, a development control in force, but whenever made, under or for the purposes of this instrument.*

### **3.4. Relationship to strategic planning framework**

The planning proposal is broadly consistent with the strategic planning framework including the *Greater Sydney Region Plan: A Metropolis of Three Cities* (2018), *Eastern City District Plan* (2018), *Woollahra Local Strategic Planning Statement 2020* (Woollahra LSPS 2020), *Woollahra 2030* and the relevant SEPPs and Section 9.1 Ministerial Directions. Consistency with the strategic planning framework is discussed in the justification section of the planning proposal (**Annexure 1**).

Notably, the planning proposal will give effect to Woollahra LSPS 2020 by strengthening the link between desired future character and the development standards of the Woollahra LEP 2014 and corresponding provisions of the Woollahra DCP 2015. This will encourage future development consistent with the desired future character of Woollahra's neighbourhoods and villages.

## **4. Conclusion**






This report seeks the advice of the Woollahra LPP on a planning proposal to introduce provisions which will clarify the interpretation of desired future character as contained in various aims and objectives of the Woollahra LEP 2014.

A recent decision of the LEC found that recently approved adjoining development set the desired future character of the area, rather than the objectives and development standards of the Woollahra LEP 2014 or provisions in the Woollahra DCP 2015. This is inconsistent with Council's place-based planning approach and the intent of the original drafting of the Woollahra LEP 2014 and Woollahra DCP 2015.

The planning proposal seeks to maintain the integrity of our planning controls as a consequence of the Court's interpretation.

We recommend that the Woollahra LPP advise Council to proceed with the planning proposal at **Annexure 1** to define desired future character to ensure that its meaning and interpretation is taken as that which is defined in other provisions of the Woollahra LEP 2014 and Woollahra DCP 2015.

## Annexures

1. Planning Proposal (annexures removed) [↓](#) 
2. SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112 [↓](#) 
3. Woollahra Municipal Council v SJD DB2 Pty Ltd [2020] NSWLEC 115 [↓](#) 
4. EPC Report 6 October 2020 (annexures removed) [↓](#) 
5. Submission from Double Bay Residents Association 27 August 2020 [↓](#) 
6. Confidential Late Correspondence to Council 26 October 2020 (*circulated under separate cover*) - **Confidential**

# Planning Proposal



## Woollahra LEP 2014 Interpretation of Desired Future Character

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Version Date:	November 2020
Division/Department:	Planning and Development/Strategic Planning
Responsible Officer:	Kelly McKellar & Emma Williamson
HPE CM Record Number:	20/161741

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## 1. Introduction

### 1.1. Summary

This planning proposal seeks to amend the *Woollahra Local Environmental Plan 2014* (Woollahra LEP 2014) to clarify the interpretation of desired future character as contained in various aims and objectives of the plan. This will strengthen the relationship between the objectives for desired future character, development standards and the *Woollahra Development Control Plan 2015* (Woollahra DCP 2015).

The intended effect is to facilitate a consistent interpretation of the adopted development standards and controls in relation to desired future character. This will ensure that future development is of a height and scale that achieves the visions for the LGA. Importantly, this will help to ensure consistent and transparent development outcomes for our community and for applicants.

This planning proposal responds to a recent decision of the Land and Environment Court (LEC). The LEC found that recently approved adjoining development set the desired future character of the area, rather than the objectives and development standards of the Woollahra LEP 2014 or provisions of the Woollahra DCP 2015.

Specifically, in *Woollahra Municipal Council v SJD DB2 Pty Ltd [2020] NSWLEC 115*, the LEC found that the drafting of the Woollahra LEP 2014 had not confirmed that the interpretation of desired future character is influenced by zoning, permitted and prohibited development, and development standards.

The LEC also found that there was no statutory obligation for the interpretation of desired future character in the Woollahra LEP 2014 to reference the corresponding provisions in the Woollahra DCP 2015. The LEC stated that for this to occur the Woollahra LEP 2014 would have to expressly refer to the provisions in the Woollahra DCP 2015.

Accordingly, this planning proposal seeks to ensure that the objectives for desired future character are applied with the intent of the original drafting of the Woollahra LEP 2014. This will be achieved by inserting an additional local provision to strengthen the relationship between the term desired future character, development standards, and the Woollahra DCP 2015.

Council is aware of the NSW Department of Planning, Industry and Environment's (DPIE) ongoing work to introduce a standard approach for local character. The amendments outlined in this planning proposal will address the immediate interpretation issue arising from the LEC decision. However, we acknowledge that the introduction of a local character model clause or map overlays, and/or a local character statement may further refine the proposed amendments.

In preparing this planning proposal, we have considered the DPIE's *Local Character and Place Guideline* (2019), *Discussion Paper – Local Character Statements* (2019) and *Planning System Circular 18-001 – Respecting and enhancing local character in the planning system* (2018).

This planning proposal has been prepared in accordance with section 3.33 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the relevant DPIE guidelines, including 'A Guide to Preparing Local Environmental Plans' and 'A Guide to Preparing Planning Proposals'.



## 1.2. Background

### Drafting of SILEP and WDCP

Council takes a place-based approach to strategic planning and preparing planning controls. This approach guided the original drafting of both the Woollahra LEP 2014 and Woollahra DCP 2015. Our place-based approach seeks to deliver superior place outcomes and public benefits for Woollahra's neighbourhoods and villages.

The Woollahra LEP 2014 contains 18 references to desired future character in its aims and in the objectives for land use zones, minimum lot size, height of buildings and floor space ratio. More detailed provisions for the desired future character of various precincts, localities and streets are contained in the Woollahra DCP 2015.

In the Woollahra DCP 2015 the unique character of each business centre, heritage conservation area and residential precinct is recognised in a desired future character statement and place-based provisions. This approach is the result of a considered strategic planning and urban design process and extensive community engagement to ensure it reflects the community's expectations for future development.

Council's commitment to place-based planning was recently reaffirmed by the *Woollahra Local Strategic Planning Statement 2020* (Woollahra LSPS 2020). Local character is a critical part of the vision set out in the LSPS.

### Development application for 28-34 Cross Street, Double Bay

In 2017, a development application (DA) for 28-34 Cross Street Double Bay (DA 617/2017) proposed a six storey mixed-use development. The applicable development standards and controls for the *B2 Local Centre* zone envisaged a four storey building on the site.

The Woollahra LEP 2014 sets out maximum Height of Buildings of 14.7m and floor space ratio (FSR) of 2.5:1 for the site. The proposal had a building height of 19.7m to the main roof and 21.2m to the plant/lift overrun and an FSR of 3.5:1. This exceeded the development standards by more than 40%.

The Applicant sought a variation under *clause 4.6 Exceptions to development standards* of the Woollahra LEP 2014. Their justification was that it was consistent with the height and built form of the approved developments to the east at 16-18 and 20-26 Cross Street.

On 4 October 2018, the DA was refused by the Sydney Eastern Planning Panel. In its reasons for refusal, the Panel noted that the only grounds on which a variation to the development to the extent proposed could be justified is if the recent approvals had resulted in the abandonment of development standards. The Panel did not accept that the development standards had been abandoned in the Double Bay Business Centre.

On 12 December 2018, the Applicant requested a review of the DA determination under section 8.2 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

On 19 March 2020, the review of the DA determination was refused by the Panel. In its reasons for refusal the Panel was not persuaded that the clause 4.6 variation demonstrated that compliance with the development standards was unreasonable or unnecessary. It was also noted that the approval of the DA would potentially constitute abandonment of Council's planning controls.

#### Section 8.15 appeal of the Panel's determination

##### ***SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112***

On 22 March 2019, the Applicant filed a Class 1 Appeal with the LEC. The appeal was upheld by Acting Commissioner Clay on 22 March 2020 and development consent was granted (see **Annexure 1**).

The appeal considered the objectives of the *B2 Local Centre* zone being:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To attract new business and commercial opportunities.
- To provide active ground floor uses to create vibrant centres.
- To provide for development of a scale and type that is compatible with the amenity of the surrounding residential area.
- To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.

The Applicant relied on two recent developments on neighbouring sites to establish desired future character, rather than the objectives and standards of the Woollahra LEP 2014 and Woollahra DCP 2015.

Acting Commissioner Clay supported the Applicant's interpretation, noting that:

*The desired future character in my opinion must take into account the form of the buildings to the east which the Council approved under effectively the same controls as present. ... [69]*

#### Section 56A appeal of the LEC decision

##### ***Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115***

Council appealed the LEC decision under section 56A of the *Land and Environment Court Act 1979* (see **Annexure 2**).

Relevant to this planning proposal, one of the grounds for appeal was the interpretation of desired future character. Council's position is that:

- The desired future character is defined and fixed by zoning and development standards in Woollahra LEP 2014. [11]
- The Woollahra DCP 2015 gives effect to the provisions of the Woollahra LEP 2014 so as to describe the desired future character of the neighbourhood or area. [12 & 14]
- Once defined by the Woollahra LEP 2014 and Woollahra DCP 2015, the desired future character cannot change until the LEP and DCP are amended. [27]

- The desired future character cannot be changed by the approved DAs that contravene the development standards in the Woollahra LEP 2014. [27]

On 18 August 2020, Chief Justice Preston dismissed the appeal. Relevant to this planning proposal are the following findings (see **Annexure 2**):

- The term 'desired future character' is not defined in the Woollahra LEP 2014 [52].
- A DCP cannot be used to interpret the provisions of an LEP unless the LEP expressly refers to the provisions of the DCP for that purpose [46].
- The Woollahra LEP 2014 does not refer to Woollahra DCP 2015 to define the term desired future character [46].
- The Commissioner was not obliged to interpret the term desired future character in Woollahra LEP 2014 by reference to the Woollahra DCP 2015 [46]. The drafter of the Woollahra LEP 2014 has not confirmed that the interpretation of desired future character is influenced by zoning, permitted and prohibited development and development standards [54].
- Where the term desired future character is not defined, the matters that may be taken into account in evaluating what is the desired future character are not defined [54].
- There is no provision which prevents approved and constructed development being considered as part of the evolving local character and accordingly the desired future character of an area [54].

#### **Council resolution to amend the Woollahra LEP 2014**

On 6 October 2020, Council's Environmental Planning Committee (EPC) considered a report on the LEC findings and its impact on Council's place-based planning approach. On 26 October 2020, Council resolved:

- THAT a planning proposal be prepared to amend references to desired future character in Woollahra LEP 2014 so that the meaning and interpretation of desired future character (across all parts of the municipality) is defined and cross referenced.*
- THAT the planning proposal be referred to the Woollahra Local Planning Panel for advice.*
- THAT the advice of the Woollahra Local Planning Panel be reported to the Environmental Planning Committee.*

### Relationship to the local character policy context

This planning proposal seeks to avoid inconsistencies with the DPIE's approach to local character and ongoing work in relation to this matter. Consideration has been given to the following:

- *Local Character and Place Guideline* (2019)
- *Discussion Paper – Local Character Statements* (2019)
- *Planning System Circular 18-001 – Respecting and enhancing local character in the planning system* (2018).

Council's place-based strategic approach is generally consistent with the DPIE's guideline with respect to the evolution of local character. It is noted that the Guideline states:

*Desired future character refers to an agreed vision of how an area will change over time, including an identification of characteristics to be retained or enhanced. Desired future character is often articulated through a character statement or integrated into development controls. (p.12)*

*The Local Environmental Plan (LEP) is the primary land use planning mechanism that influences character. The land use zones, objectives and development standards establish the context for decision making on individual developments which shape local character. Accordingly, where an area has been identified as requiring a stronger consideration of local character, the LEP should be reviewed to ensure that it delivers on the community's desired future character. (p.12)*

Council is aware of the DPIE's ongoing work to introduce a standard approach to local character may include a model clause and/or map overlays, in the *Standard Instrument (Local Environmental Plans) Order 2006*.

Relevant to the approach taken by this planning proposal, the Discussion Paper and Circular note that a local character overlay could support local character by creating a link between a LEP, a local character statement and/or the provisions of a DCP.

Local character is an important feature in the delivery of housing supply and diversity that enhances our area and reflects the community's vision for the future. In line with Council's place-based approach and the views of our community, the importance of local character was recently reaffirmed by the adoption of the Woollahra LSPS 2020. Maintaining community confidence that development will maintain and enhance local character is vital to delivering appropriate housing supply and diversity to meet the unique needs of our community.

The amendments to the Woollahra LEP 2014 outlined in this planning proposal will address the immediate interpretation issue arising from the recent LEC decision. However, we acknowledge that when a local character model clause or map overlays are introduced by a future planning proposal and/or a local character statement is prepared, these may refine the proposed amendments.

It is noted that extensive community consultation is a critical input to the creation of new local character provisions. This will require a substantial amount of time to complete.

Accordingly, once implemented, this planning proposal ensures that the Woollahra LEP 2014 continues to facilitate development that is consistent with the desired future character of Woollahra's unique neighbourhoods and villages until such time as a transition to the new model provisions is facilitated.

**Advice of the Woollahra Local Planning Panel**

In accordance with Council's resolution, staff have prepared this planning proposal. It is to be reported to the Woollahra Local Planning Panel (WLPP) meeting of 19 November 2020 for advice.



## 2. Objectives of planning proposal

The term desired future character is used 18 times in Woollahra LEP 2014 across the aims of the plan, zone and clause objectives. The objective of the planning proposal is to define the term desired future character to ensure that the meaning and interpretation is defined by other provisions of both the Woollahra LEP 2014 and Woollahra DCP 2015.

The need for this planning proposal arose from the findings of a recent LEC case of *Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115* which granted consent for a development based on recently approved adjoining development. In coming to this decision, the Commissioner found that the

*...WLEP has not defined the meaning of the term "desired future character" that is used in various provisions of WLEP. The drafter of WLEP has, therefore, not confined the meaning of the term "desired future character" by reference to the particular provisions in WLEP, including those concerning the zoning, the permitted and prohibited development, and the development standards, that shape the urban character and built form of neighbourhoods or areas in Woollahra. [54]*

*... provisions of a development control plan cannot be used to interpret [desired future character], unless the provisions of the local environmental plan expressly refer to the provisions of the development control plan for that purpose. [46]*

These findings are inconsistent with Council's place-based planning approach and the intent of the original drafting of the Woollahra LEP 2014 and Woollahra DCP 2015.

Accordingly, this planning proposal seeks to amend the Woollahra LEP 2014 to create a statutory link between the provisions containing the term desired future character, the LEP development standards, and the corresponding desired future character statements in the Woollahra DCP 2015.

The proposed amendment will reduce ambiguity about the interpretation of desired future character, and encourages the consistent application and interpretation of the adopted development standards and controls. This will help to ensure that development achieves the desired future character of the area and provides consistent and transparent planning outcomes.

### 3. Explanation of provisions

The proposed amendment seeks to make what is primarily an administrative change to Woollahra LEP 2014. The amendment will strengthen the relationship between the provisions containing the term desired future character and the relevant development standards and controls. The planning proposal will apply to all land in the Woollahra LGA.

This will be achieved by expressly stating in the Woollahra LEP 2014 that desired future character is derived from the development standards of Woollahra LEP 2014 and the desired future character provisions of Woollahra DCP 2015.

The existing and proposed provisions are discussed below.

#### 3.1. Existing provisions

The Woollahra LEP 2014 makes reference to desired future character in:

- the aims of the plan
- certain zone objectives in the Land Use Table
- the objectives of development standards for minimum lot size, height of buildings and floor space ratio.

Specifically, the term desired future character is found 18 times in the Woollahra LEP 2014:

1. Part 1 Section 1.2 Aims of the Plan cl2.1(2)(l)
2. Land Use Table Zone R2 Low Density Residential – 1 Objectives of Zone
3. Land Use Table Zone R3 Medium Density Residential – 1 Objectives of Zone
4. Land Use Table Zone B1 Neighbourhood Centre – 1 Objectives of Zone
5. Land Use Table Zone B2 Local Centre – 1 Objectives of Zone
6. Land Use Table Zone B4 Mixed Use – 1 Objectives of Zone
7. Land Use Table Zone SP3 Tourist – 1 Objectives of Zone
8. Part 4 Section 4.1 Minimum subdivision lot size cl4.1(1)(a)
9. Part 4 Section 4.1 Minimum subdivision lot size cl4.1(1)(e)
10. Part 4 Section 4.1AA Minimum subdivision lot size for community title schemes cl4.1AA(1)(b)
11. Part 4 Section 4.1A Minimum lot sizes for dual occupancies, manor houses, multi dwelling housing and residential flat buildings cl4.1A(1)
12. Part 4 Section 4.3 Height of buildings cl4.3(1)(a)
13. Part 4 Section 4.3A Exceptions to building heights (Areas A–H) cl4.3A(1)(a)
14. Part 4 Section 4.4 Floor space ratio cl4.4(1)(a)(i)
15. Part 4 Section 4.4 Floor space ratio cl4.4(1)(b)
16. Part 4 Section 4.4A Exceptions to floor space ratio (Areas 1 and 1A—Double Bay) Principal development standards cl4.4A(3)

17. Part 4 Section 4.4B Exceptions to floor space ratio (Areas 2 and 3—selected Zone B1 and Zone B4 centres) cl4.4B(3)(a)
18. Part 4 Section 4.4C Exceptions to height and floor space ratio (Area 4—Rose Bay) cl4.4C(3)(a)

Provisions for the desired future character of various precincts, localities and streets are then contained in Woollahra DCP 2015, in particular:

- a) Chapter B1 – Residential Precincts
- b) Chapter B2 – Neighbourhood Heritage Conservation Areas
- c) Chapter C1 – Paddington Heritage Conservation Areas
- d) Chapter C2 – Woollahra Heritage Conservation Area
- e) Chapter C3 – Watsons Bay Heritage Conservation Area
- f) Chapter D1 – Neighbourhood Centres
- g) Chapter D2 – Edgecliff Centre
- h) Chapter D5 – Double Bay Centre
- i) Chapter D6 – Rose Bay Centre

The recent LEC decision has identified that there is ambiguity in how the existing provisions relating to desired future character are interpreted.

Inserting an additional local provision in the Woollahra LEP 2014 has been identified as an effective method to reduce this ambiguity and provide an appropriate statutory relationship between the aims, objectives, development standards and corresponding provisions.

### 3.2. Proposed provisions

The proposed provisions seek to strengthen the relationship between the provisions containing the term desired future character, development standards of the Woollahra LEP 2014, and corresponding provisions in the Woollahra DCP 2015. This will help to improve consistency and transparency of development outcomes.

The preferred option is to insert an additional local provision under *Part 6 Additional local provisions* of Woollahra LEP 2014. While it is acknowledged that this will be subject to drafting by the Parliamentary Counsel's Office, the additional local provision may be similar to the following:

#### 6.8 Desired future character

- (1) *In this instrument, a reference to desired future character of the area, neighbourhood, zone or attribute of same, means the character prescribed in relation to that area, neighbourhood, zone or attribute by:*
  - (a) *the relevant aims, objectives and other provisions of this instrument; and*
  - (b) *to the extent not inconsistent, a development control plan in force, but whenever made, under or for the purposes of this instrument.*

The proposed provision provides a single definition applicable to the 18 references to desired future character in the Woollahra LEP 2014. It is the most appropriate way to achieve the intended outcomes of the planning proposal and help ensure consistent interpretation and planning outcomes.

The implementation of the planning proposal will not require any consequential changes to Woollahra DCP 2015.

Notably, the proposed amendments seek to reinforce the purpose and status of the Woollahra DCP 2015 by expressly linking it to the Woollahra LEP 2014. The reinforcement of the link between a LEP and DCP is consistent with Section 3.42 of the EP&A Act:

- (1) The principal purpose of a development control plan is to provide guidance on the following matters to the persons proposing to carry out development to which this Part applies and to the consent authority for any such development—*
  - (a) giving effect to the aims of any environmental planning instrument that applies to the development,*
  - (b) facilitating development that is permissible under any such instrument,*
  - (c) achieving the objectives of land zones under any such instrument.**The provisions of a development control plan made for that purpose are not statutory requirements.*
- (2) The other purpose of a development control plan is to make provisions of the kind referred to in section 3.43(1)(b)–(e).*
- (3) Subsection (1) does not affect any requirement under Division 4.5 in relation to complying development*

## 4. Justification

This planning proposal responds to a recent LEC decision regarding the interpretation of objectives in the Woollahra LEP 2014 relating to desired future character. This will help to improve consistency and transparency of development outcomes for our community and applicants.

The LEC found that recently approved adjoining development, rather than the objectives and development standards of the Woollahra LEP 2014, set the desired future character. This is inconsistent with the intent of the original drafting of the Woollahra LEP 2014.

The planning proposal has strategic merit and the key reasons to amend the Woollahra LEP 2014 are:

- The planning proposal is for administrative amendments to the Woollahra LEP 2014 to strengthen the relationship between the provisions containing the term desired future character and development standards. These changes also aim to establish a statutory relationship between the provisions of the Woollahra LEP 2014 and the desired future character statements set out in the Woollahra DCP 2015.
- The proposal to insert an additional local provision under Part 6 of Woollahra LEP 2014 will improve consistency in interpretation of desired future character and encourage future development in line with the community's vision for the future.
- The planning proposal is broadly consistent with the applicable section 9.1 directions.
- The planning proposal is broadly consistent with the objectives of *A Metropolis of Three Cities* and the initiatives of the *Eastern City District Plan*.
- The planning proposal is broadly consistent with the Standard Instrument and other applicable State Environmental Planning Policies.
- The planning proposal is consistent with the vision and planning priorities of the Woollahra LSPS 2020 and the community strategic plan, *Woollahra 2030 – Our community, our place, our plan* (Woollahra 2030).
- The planning proposal supports the purpose and status of the Woollahra DCP 2015 consistent with the Section 3.42 of the EP&A Act.

This section sets out the case for the proposed amendment to the Woollahra LEP 2014 and responds to the questions from the DPIE's 'A Guide to Preparing Planning Proposals'.

### 4.1. Need for planning proposal

#### 1. Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?

Maintaining and enhancing local character is a critical part of the vision and priorities of the Woollahra LSPS 2020. The following planning priorities are of particular relevance to this planning proposal:

- *Planning priority 4 – Sustaining diverse housing choices in planned locations that enhance our lifestyles and fit in with our local character and scenic landscapes.*
- *Planning priority 6 – Placemaking supports and maintains the local character of our neighbourhoods and villages whilst creating great places for people.*



- *Planning priority 12: Protecting and enhancing our scenic and cultural landscapes*

This planning proposal responds to a recent decision of the LEC that granted consent for a DA based on its interpretation that recently approved adjoining development, rather than the objectives and development standards of the Woollahra LEP 2014, set the desired future character for the area. This is inconsistent with the original drafting of the Woollahra LEP 2014 and with the vision set out in the Woollahra LSPS 2020.

Consequently, this planning proposal seeks to re-establish the intent of the original drafting that desired future character is established by the development standards in the Woollahra LEP 2014 and corresponding character statements and provisions in the Woollahra DCP 2015. This will encourage future development that is consistent with the community's vision for the LGA and particular, for local character, great places, and scenic landscapes.

**2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

Yes. This planning proposal to amend the Woollahra LEP 2014 will result in the term desired future character being interpreted as intended by the original drafting of the Woollahra LEP 2014. The proposal to insert a local provision to define local character for the purposes of the Plan is the best way to achieve the objectives and intended outcomes whilst preventing inconsistencies with the DPIE's ongoing local character program.

The proposed amendment seeks to address the interpretation issues raised by the recent LEC decisions. Key to this decision was the LEC's interpretation that desired future character can be set by the approved adjoining development, rather than the objectives and development standards of the Woollahra LEP 2014.

The proposed amendment to the Woollahra LEP 2014 seeks to re-establish that desired future character is reflected in the development standards of the Woollahra LEP 2014, such as maximum building height and FSR, and in the local character statements and corresponding provisions in the Woollahra DCP 2015.

It is noted that the term desired future character is not defined in the *Standard Instrument (Local Environmental Plans) Order 2006 (SILEP)*. The Dictionary in the Standard Instrument is a compulsory provision. It is therefore not possible to insert a definition of desired future character other than by an amendment being made to the Standard Instrument. Any such amendment would have state-wide application and is inappropriate in this instance.

Another alternative suggested was the inclusion of a note or definition in each of the 18 references to desired future character. However, this was considered overly onerous and potentially confusing.

Council is aware of the Department's ongoing work to introduce a standard approach to local character, which may include map overlays and/or a model clause in the SILEP. The local character Discussion Paper and Planning Circular identify that SILEP could support local character by creating a link between an LEP, a local character statement and a DCP.

The proposed amendment to the Woollahra LEP 2014 outlined in this planning proposal will address the immediate interpretation issue arising from the LEC decision. However, we acknowledge that when a local character model clause or map overlays are introduced by a future planning proposal and/or a local character statement is prepared it may further refine the proposed amendments.

It is noted that extensive community consultation is a critical input to the creation of new local character provisions. This will require a substantial amount of time to complete. In the interim, the proposed amendment to the Woollahra LEP 2014 provides an effective and timely method for achieving the intended outcomes of this planning proposal.

Accordingly, this planning proposal is the best way to ensure that the Woollahra LEP 2014 continues to facilitate development that is consistent with the desired future character of Woollahra's unique neighbourhoods and villages until such time as a transition to the new model provisions is appropriate.

#### 4.2. Relationship to strategic planning framework

### 3. Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including exhibited draft plans or strategies)?

Yes. The planning proposal is consistent with the *Greater Sydney Region Plan: A Metropolis of Three Cities* (2018) and the *Eastern City District Plan* (2018) and will give effect to the relevant objectives and actions the relevant actions, as discussed below.

- ***Greater Sydney Region Plan: A Metropolis of Three Cities***

The *Greater Sydney Region Plan: A Metropolis of Three Cities* is the Greater Sydney Commission's 40-year vision for Greater Sydney. It is to be implemented by District Plans.

The planning proposal is broadly consistent with the vision of the Plan, particularly in its aim to create great places that recognise local characteristics and the qualities people value. In particular the planning proposal will give effect to the following directions and objectives:

- *A city of great places*  
*Objective 12: Great places that bring people together*

Council used a place based approach to develop the Woollahra LEP 2014 and Woollahra DCP 2015 to ensure development standards respond to the characteristics of the local area. The proposed amendments to the Woollahra LEP 2014 will help to maintain and enhance Woollahra's local character and great places by building on local characteristics through place-based planning.

- *A city in its landscape*  
*Objective 28: Scenic and cultural landscapes are protected*

Located on the southern shores of Sydney harbour and the eastern coast line, Woollahra has unique scenic and cultural landscapes which are highly valued by the local community and visitors. As identified in 'A Metropolis of Three Cities', the continued protection of these landscapes is important for their aesthetic, social and economic values and for the character of the region.

The planning proposal supports the protection and enhancement of the scenic and cultural elements of the Woollahra LGA by clarifying the interpretation of desired future character articulated in the development standards of the Woollahra LEP 2014 and provisions of the Woollahra DCP 2015.

- **Eastern City District Plan**

The Eastern City District Plan sets out a vision, planning properties and actions for implementing the long term vision for Greater Sydney at a local level.

The planning proposal is broadly consistent with the planning priorities and actions of the *Eastern City District Plan*. It seeks to maintain and enhance Woollahra's local strengths and deliver quality places that represent the unique qualities of the local area.

In particular, the planning proposal will give effect to the following priorities and actions:

- *Planning Priority E6: Creating and renewing great places and local centres, and respecting the District's heritage*  
*Action 18(e): Using a place-based and collaborative approach throughout planning, design, development and management, deliver great places by:*
  - *recognising and celebrating the character of a place and its people.*

Council's place-based approach to strategic planning seeks to maintain and enhance our great places by recognising local characteristics. The planning proposal will help ensure that Council's place-based planning approach continues to be reflected in the interpretation of the Woollahra LEP 2014 and Woollahra DCP 2015.

The proposed amendment will ensure consistent interpretation of the term desired future character in relation to development standards in the Woollahra LEP 2014 and local character provisions in the Woollahra DCP 2015. Consistent interpretation of desired future character will encourage future development that aligns with the community's vision for Woollahra's unique villages, neighbourhoods and scenic landscapes.

- *Planning Priority E16: Protecting and enhancing scenic cultural landscapes*  
*Action 63: Identify and protect scenic and cultural landscapes*  
*Action 64: Enhance and protect views of scenic and cultural landscapes from the public realm*

Woollahra's unique harbour and coastal setting is a highly valued aspect of the LGA's local character. The proposed amendment will ensure consistent interpretation of the term desired future character in relation to development standards in the Woollahra LEP 2014 and local character provisions in the Woollahra DCP 2015. This will help to ensure future development adheres to development standards that aim to protect and enhance Woollahra's unique landscapes.

**4. Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?**

Yes. The planning proposal is consistent with the Woollahra LSPS 2020 and Council's community strategic plan, *Woollahra 2030 – Our community, our place, our plan (Woollahra 2030)*.

- **Woollahra LSPS 2020**

The Woollahra LSPS 2020 sets out a 20 year vision and planning priorities for managing future land use and preserving our community's values and the special characteristics of the LGA. Local character is a critical part of the vision set out in the Woollahra LSPS 2020.

The planning proposal is consistent with the vision and planning priorities of the Woollahra LSPS 2020. The following priorities are of particular relevance to this planning proposal:

- *Planning priority 4: Sustaining diverse housing choices in planned locations that enhance our lifestyles and fit in with our local character and scenic landscapes*
- *Planning priority 6: Placemaking supports and maintains the local character of our neighbourhoods and villages whilst creating great places for people*
- *Planning priority 12: Protecting and enhancing our scenic and cultural landscapes*

The planning proposal will give effect to Woollahra LSPS 2020 by strengthening the link between desired future character and the development standards of the Woollahra LEP 2014 and corresponding provisions of the Woollahra DCP 2015. The proposed amendment will encourage future development in alignment with the desired future character of Woollahra's neighbourhoods and villages.

- **Woollahra 2030**

*Woollahra 2030* sets out the long term vision for Woollahra and is structured around five themes each supported by goals and strategies to deliver a sustainable future for our community.

The planning proposal is consistent with the goals and strategies identified in *Woollahra 2030*, including:

- *Goal 4: Well planned neighbourhoods*
  - 4.1: *Encourage and ensure high quality planning and urban design outcomes*
  - 4.3: *Protect our heritage, including significant architecture and the natural environment*
  - 4.6: *Ensure that planning and building requirements are complied with*
- *Goal 5: Liveable places*
  - 5.5: *Enhance the physical environment of our local suburbs, neighbourhoods and town centres*
- *Goal 9: Community focused economic development*
  - 9.1: *Encourage vibrant and vital local suburbs, villages and neighbourhoods that support a healthy community*

The intended effect of the planning proposal supports the goals of *Woollahra 2030* by encouraging place-based development outcomes that support the desired future character vision for the area. Our local character provisions encourage the evolution of unique local suburbs, neighbourhoods and town centres, creating great places through high quality and diverse urban design.

## **5. Is the planning proposal consistent with applicable State Environmental Planning Policies?**

Yes. The planning proposal is consistent with the *Standard Instrument – Principal Local Environmental Plan* and other applicable State Environmental Planning Policies (refer to **Schedule 1**).

**6. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?**

Yes. The planning proposal is consistent with the applicable section 9.1 directions (refer to **Schedule 2**).

**4.3. Environmental, social and economic impact**

**7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

No. This planning proposal relates to the administrative function of the Woollahra LEP 2014. There will be no adverse impacts on critical habitat areas or threatened species, populations or ecological communities, or their habitats.

**8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

No. This planning proposal relates to the administrative function of the Woollahra LEP 2014 and there will be no environmental effects.

**9. Has the planning proposal adequately addressed any social and economic effects?**

Yes. The planning proposal is administrative in nature and does not propose to increase jobs, dwellings or demand for social or economic infrastructure. The planning proposal will have no social or economic effects on items of European or Aboriginal cultural heritage, social infrastructure or commercial centres.

**4.4. State and Commonwealth interests**

**10. Is there adequate public infrastructure for the planning proposal?**

Yes. The planning proposal is administrative in nature and will not generate increase jobs, dwellings, or community need for transport or other services. The planning proposal will not create any additional demand on public infrastructure.

**11. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?**

Council will consult with the DPIE's policy team to prevent inconsistencies with the DPIE's approach used in developing their local character program.

Consultation with other State and Commonwealth public authorities will be undertaken in accordance with the conditions of the Gateway Determination.

## **5. Mapping**

The planning proposal does not amend any maps.

## 6. Community consultation

The planning proposal will be publicly exhibited in accordance with the requirements of:

- the EP&A Act
- the *Environmental Planning and Assessment Regulation 2000*
- *Woollahra Community Participation Plan* (2019)
- *Local Environmental Plans – a guide to preparing local environmental plans* (2018)
- any conditions of the Gateway Determination.

We recommend that the planning proposal is exhibited for a minimum of 28 days.

Public notification of the exhibition will comprise:

- weekly notice in the local newspaper (the *Wentworth Courier*) for the duration of the exhibition period, when a hardcopy version of that newspaper is being published
- a notice on Council's website
- a notice to local community, resident and business groups including:
  - Darling Point Society
  - Double Bay Residents Association
  - HarbourView Neighbourhood Watch & Residents Group
  - Point Piper Association
  - Queen Street & West Woollahra Association
  - Rose Bay Residents Association
  - The Paddington Society
  - The Watsons Bay Association
  - Vaucluse West Residents Association.

During the public exhibition the following material will be available on Council's website and in the customer service area at Woollahra Council Chambers:

- the planning proposal, in the form approved by the gateway determination
- the gateway determination
- information relied upon by the planning proposal (such as a copy of the LEC decisions, Woollahra DCP 2015 and relevant Council reports)
- Woollahra LEP 2014
- Section 9.1 Directions.

## 7. Project timeline

Council intends to expedite this planning proposal to as the LEC decision has resulted in some ambiguity in the application of the Woollahra LEP 2014.

We are seeking to exercise the functions of the Minister for Planning under section 3.36 of the EP&A Act. Accordingly, the proposed timeline for completion is as follows:

Plan-making step	Estimated completion
Report to Environmental Planning Committee (EPC) requesting preparation of a planning proposal	6 October 2020
Staff seek confidential legal advice on options	Mid October
Council resolution to proceed	26 October 2020
Ongoing liaison with DPIE/Parliamentary Counsel	Ongoing
Woollahra Local Planning Panel (WLPP) provides advice	19 November 2020
Advice of WLPP to EPC	30 November 2020
Council resolution to proceed	14 December 2020
Gateway determination	January 2021
Completion of technical assessment	Usually none required
Government agency consultation	Feb 2021
Public exhibition period (min 28 days)	Feb 2021
Submissions assessment	March 2021
EPC considers assessment of planning proposal post exhibition	April 2021
Council decision to make the LEP amendment	May 2021
Council to liaise with Parliamentary Counsel to prepare LEP amendment	May 2021
Forwarding of LEP amendment to DPIE for notification	June 2021
Notification of the approved LEP	June 2021



## Schedules

### Schedule 1 – Consistency with State Environmental Planning Policies (SEPPs)

State environmental planning policy	Comment on consistency
SEPP No 19 – Bushland in Urban Areas	Consistent. The planning proposal will not affect the application of this SEPP.
SEPP No 21 – Caravan Parks	Consistent. The planning proposal will not affect the application of this SEPP.
SEPP No 33 – Hazardous and Offensive Development	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this SEPP.
SEPP No 36 – Manufactured Home Estates	Not applicable
SEPP No 47 – Moore Park Showground	Not applicable
SEPP No 50 – Canal Estate Development	Not applicable. The proposal does not include a canal estate.
SEPP No 55 – Remediation of Land	Consistent. The planning proposal does not seek to rezone land and will not affect the application of the SEPP for the purpose of promoting the remediation of contaminated land and reducing the risk of harm to human health or any other aspect of the environment.
SEPP No 64 – Advertising and Signage	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 65 – Design Quality of Residential Apartment Development	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 70 – Affordable Housing (Revised Schemes)	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Aboriginal Land) 2019	Not applicable. No land within the Woollahra LGA is owned by an Aboriginal Land Council or identified on the Land Application Map of the SEPP.
SEPP (Activation Precincts) 2020	Not applicable. No land within the Woollahra LGA is identified as an Activation Precinct.



State environmental planning policy	Comment on consistency
SEPP (Affordable Rental Housing) 2009	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Building Sustainability Index: BASIX) 2004	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Coastal Management) 2018	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Concurrences and Consents) 2018	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Educational Establishments and Child Care Facilities) 2017	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Exempt and Complying Development Codes) 2008	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Gosford City Centre) 2018	Not applicable.
SEPP (Housing for Seniors or People with a Disability) 2004	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Infrastructure) 2007	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Koala Habitat Protection) 2019	Not applicable. Woollahra Council is listed in Schedule 1 of the SEPP.
SEPP (Kosciuszko National Park - Alpine Resorts) 2007	Not applicable. No land within the Woollahra LGA is identified on the Land Application Map.
SEPP (Kurnell Peninsula) 1989	Not applicable. This SEPP applies to land within the Sutherland Shire.
SEPP (Major Infrastructure Corridors) 2020	Not applicable. No future corridors are identified within the Woollahra LGA.

State environmental planning policy	Comment on consistency
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Penrith Lakes Scheme) 1989	Not applicable. This SEPP applies to land in the Penrith LGA.
SEPP (Primary Production and Rural Development) 2019	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (State and Regional Development) 2011	Consistent. No development sites of State Significance are identified within the Woollahra LGA.
SEPP (State Significant Precincts) 2005	Consistent. No State Significant Precincts are identified within the Woollahra LGA.
SEPP (Sydney Drinking Water Catchment) 2011	Not applicable. No land within the Woollahra LGA is identified on the Land Application Map.
SEPP (Sydney Region Growth Centres) 2006	Not applicable. No land within the Woollahra LGA is identified on the Land Application Map.
SEPP (Three Ports) 2013	Not applicable.
SEPP (Urban Renewal) 2010	There are currently no potential urban renewal precincts in the Woollahra LGA identified in the SEPP.
SEPP (Vegetation in Non-Rural Areas) 2017	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Western Sydney Aerotropolis) 2020	Not applicable. No land within the Woollahra LGA is identified on the Land Application Map.
SEPP (Western Sydney Employment Area) 2009	Not applicable. No land within the Woollahra LGA is identified on the Land Application Map.
SEPP (Western Sydney Parklands) 2009	Not applicable.

Sydney Regional Environmental Plans – now deemed State Environmental Planning Policies	Comment on consistency
SREP No 8 (Central Coast Plateau Areas)	Not applicable.
SREP No 9 - Extractive Industry (No 2 - 1995)	Not applicable.
SREP No 16 – Walsh Bay	Not applicable.
SREP No 20 - Hawkesbury- Nepean River (No 2 - 1997)	Not applicable.
SREP No 24 - Homebush Bay Area	Not applicable.
SREP No 26 – City West	Not applicable.
SREP No 30 - St Marys	Not applicable.
SREP No 33 - Cooks Cove	Not applicable.
SREP (Sydney Harbour Catchment) 2005	<p>Applicable</p> <p>Consistent. The planning proposal applies to land within the Sydney Harbour Catchment. Planning principles under Part 2, clause 13-15 Sydney Harbour Catchment of the SREP have been considered. The planning proposal is consistent with these principles.</p> <p>The intended effect of the planning proposal will protect and enhance the scenic qualities of harbour and foreshore areas by ensuring the scale and form of future development supports the desired future character for the area.</p>

**Schedule 2 – Consistency with section 9.1 directions**

Direction		Applicable/comment
<b>1</b>	<b>Employment and resources</b>	
1.1	Business and industrial zones	Consistent. The planning proposal will not reduce total potential floor space area for employment uses and related public services in business zones. It will not change the areas and locations of existing business and industrial zones. The planning proposal is consistent with the objectives and principles of this direction.
1.2-1.5	Directions 1.2-1.5	Not applicable. These directions are not relevant to the Sydney metropolitan area.
<b>2</b>	<b>Environment and heritage</b>	
2.1	Environment protection zones	Consistent. The planning proposal will not reduce the environmental protection standards of land within an environmental protection zone or land otherwise identified for environment protection purposes.
2.2	Coastal management	Consistent. The planning proposal does not propose the rezoning of any land and will therefore not result in increased development or more intensive land-use on land within a coastal area.
2.3	Heritage conservation	Consistent. The planning proposal will not reduce provision in Woollahra LEP 2014 for heritage conservation in the Woollahra LGA or the Sydney Harbour Catchment Area.
2.4	Recreation vehicle areas	Consistent. The planning proposal does not allow land to be developed for a recreation vehicle area.
2.5	Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Not applicable. The planning proposal does not apply to land in the Far North Coast.
2.6	Remediation of contaminated land	Consistent. The planning proposal is administrative in nature and does not propose any site specific development.
<b>3</b>	<b>Housing, infrastructure and urban development</b>	
3.1	Residential zones	Consistent. The planning proposal will not reduce the choice of building types and locations available in the housing market or reduce the permissible residential density of land. The planning proposal is consistent with the principles of this direction.

Direction		Applicable/comment
3.2	Caravan parks and manufactured home estates	Not applicable. The planning proposal does not affect caravan parks and manufactured home estates.
3.3	Home occupations	Not applicable. The planning proposal does not affect home occupations in dwelling houses.
3.4	Integrating land use and transport	Consistent. The planning proposal does not contain a provision which is contrary to the aims, objectives and principles of: <ul style="list-style-type: none"> <li>• <i>Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and;</i></li> <li>• <i>The Right Place for Business and Services – Planning Policy (DUAP 2001).</i></li> </ul>
3.5	Development near regulated airports and defence airfields	Consistent. The planning proposal will not create, alter or remove a zone provision relating to land near a regulated airport which includes a defence airfield.
3.6	Shooting ranges	Not applicable. The planning proposal will not affect, create, alter or remove a zone or a provision relating to land adjacent to and/or adjoining an existing shooting range.
3.7	Reduction in non-hosted short term rental accommodation period	Not applicable. The planning proposal does not apply to land in the Byron Shire Council.
<b>4</b>	<b>Hazard and risk</b>	
4.1	Acid sulfate soils	Consistent. Existing acid sulfate soils provisions will not be altered by the planning proposal.
4.2	Mine subsidence and unstable land	Not applicable. The planning proposal does not apply to land within a proclaimed Mine Subsidence District or to land identified as unstable.
4.3	Flood prone land	Consistent. The planning proposal will not rezone flood liable land or affect the application of controls that ensure that development on flood liable land will not result in risk to life or damage to property.
4.4	Planning for bushfire protection	Not applicable. The planning proposal does not apply to land mapped as bushfire prone land.
<b>5</b>	<b>Regional planning</b>	
5.1 - 5.9	Strategies 5.1-5.9	Not applicable. These strategies do not apply to the Woollahra LGA.
5.10	Implementation of Regional Plans	Consistent. The planning proposal is broadly consistent with the <i>Greater Sydney Region Plan: A Metropolis of Three Cities</i> (2018) and the <i>Eastern City District Plan</i> (2018) as discussed in Section 4 of this report.

Direction		Applicable/comment
5.11	Development of Aboriginal Land Council land	Not applicable. The Woollahra LGA is not shown on the Land Application Map of <i>SEPP (Aboriginal Land) 2019</i> .
<b>6</b>	<b>Local plan making</b>	
6.1	Approval and referral requirements	Consistent. The planning proposal is administrative in nature. It is not expected to require any additional approval or referral requirements.
6.2	Reserving land for public purposes	Consistent. The planning proposal does not amend reservations of land for public purposes.
6.3	Site specific provisions	Consistent. The planning proposal does not apply to a specific site or a particular development.
<b>7</b>	<b>Metropolitan Planning</b>	
7.1	Implementation of <i>A Metropolis of Three Cities</i> (March 2018)	Consistent. The planning proposal is broadly consistent with the <i>Greater Sydney Regional Plan: A Metropolis of Three Cities</i> , particularly Objectives 12 and 28. This is discussed in section 4.
7.2 – 7.12	Directions 7.2 – 7.12	Not applicable. These strategies do not apply to the Woollahra LGA.



### Supplementary material

Annexure 1 – *SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112*  
**[20/191793]**

Annexure 2 - *Woollahra Municipal Council v SJD DB2 Pty Ltd [2020] NSWLEC 115*  
**[20/191796]**

Annexure 3 - Environmental Planning Committee report 6 October 2020  
(annexures removed) **[20/191753]**



Land and Environment Court

New South Wales

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Case Name:	SJD DB2 Pty Ltd v Woollahra Municipal Council
Medium Neutral Citation:	[2020] NSWLEC 1112
Hearing Date(s):	4-5 February 2020
Date of Orders:	12 March 2020
Decision Date:	12 March 2020
Jurisdiction:	Class 1
Before:	Clay AC
Decision:	<p>The Court orders that:</p> <p>(1) The appeal is upheld.</p> <p>(2) Development consent is granted for demolition of the existing buildings and construction of a six-storey shop top housing development at 28-34 Cross Street, Double Bay with ground floor retail, twenty-one (21) residential units over five (5) levels above and two (2) levels of basement parking for thirty-six (36) vehicles and four (4) motorbikes with vehicular access from 20-26 Cross Street, Double Bay upon the conditions Annexure 'A' hereto.</p> <p>(3) The exhibits are to be returned other than Exhibits A and 3.</p>
Catchwords:	DEVELOPMENT APPLICATION – residential flat building – clause 4.6 objections to height and floor space ratio controls – desired future character – economic impact – precedent
Legislation Cited:	Environmental Planning and Assessment Act 1979 Woollahra Local Environmental Plan 2014
Cases Cited:	Initial Action Pty Ltd v Woollahra Municipal Council (2008) 236 LGERA 256; [2018] NSWLEC 118 RebelMH Neutral Bay Pty Limited v North Sydney

	Council [2019] NSWCA 130 Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827
Texts Cited:	Macquarie Dictionary (online) Woollahra Development Control Plan 2015
Category:	Principal judgment
Parties:	SJD DB2 Pty Ltd (Applicant) Woollahra Municipal Council (Respondent)
Representation:	Counsel: A Galasso SC (Applicant) S Simington (Solicitor) (Respondent)  Solicitors: Mills Oakley (Applicant) Lindsay Taylor Lawyers (Respondent)
File Number(s):	2019/91041
Publication Restriction:	No

## JUDGMENT

- 1 **COMMISSIONER:** Double Bay is considered by many to be a very desirable place to live. It is the Applicant's proposal to provide residential accommodation in the heart of Double Bay which is the subject of the dispute before the Court.
- 2 This is an appeal pursuant to s 8.15 of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the refusal by the Sydney Eastern City Planning Panel (the Panel), exercising the power of the Respondent, of a development application for demolition of existing buildings and construction of a six storey shop top housing development at 28-34 Cross Street Double Bay (the Site).
- 3 The proposal exceeds the controls for height and floor space in the Woollahra Local Environmental Plan 2014 (WLEP). The Council says that the appeal should be dismissed because the objections made pursuant to cl 4.6 of WLEP do not adequately address the non-compliances, that the proposal is inconsistent with the desired future character of the area and that the loss of significant commercial floor space is unacceptable.

- 4 The Applicant relies upon two recent approvals adjacent to the Site which exceed the current controls to establish in particular the desired future character in this part of Double Bay, which means that the proposal is appropriate and that the loss of commercial space is not a determining reason for refusal.
- 5 For the reasons which follow, I accept that the clause 4.6 objections are made out and that on the merits the appeal should be allowed.

**The Site and locality**

- 6 The Site presently comprises four allotments being Lot 2 DP 512299, Lot 2 DP 510714, Lot 2 DP 509670 and Lot 2 DP 508760, together known as 28-34 Cross Street Double Bay. The Site is on the southern side of Cross Street and has rear access to Knox Lane.
- 7 With an area of 1041 square metres, the Site has a frontage to Cross Street of 35.385m, a length of boundary to Knox lane of 36.785m, an eastern boundary of 28.53m and a western boundary of 33.44m.
- 8 The Site has no vehicular access and is currently developed with a one and two storey retail/commercial building in a horseshoe shape with a central courtyard fronting Cross Street. Generally, the retail uses are at ground floor and commercial uses at the first floor. There is pedestrian access through the Site from Cross Street to Knox Lane.
- 9 Directly opposite on the northern side of Cross Street is a part 2, mostly 5 storey mixed use development with residential uses above the ground floor (45-51 Cross Street). A little to the east of 45-51 is the Intercontinental Hotel (generally 6-7 storeys) and then a Council carpark.
- 10 To the south are three to four storey buildings on the other side of Knox Lane.
- 11 Adjacent to the Site and to the east are two developments under construction - each to be ultimately of six storeys (20-26 Cross Street and 16-18 Cross Street). They are discussed in a little detail later.

**The Proposal**

- 12 The existing buildings are to be demolished and, in their stead, constructed a six storey shop top housing development. There will be retail on ground floor

and twenty one residential apartments above. There are two levels of basement parking proposed, with parking for thirty six cars and four motorbikes.

- 13 Access to the basement is from the development to the east, 20-26 Cross Street. That is, vehicles will enter 20-26 Cross Street from Knox Lane, descend to its basement before then crossing through an opening to the basement of the subject proposal. Appropriate easements are proposed.
- 14 Because the present development has commercial uses on its first floor and the proposed development does not, the Site will provide about 1000 square metres less in retail/commercial uses than the development on the site at the present time.
- 15 The height proposed is 19.71m to the main roof and 21.21m to the plant/lift overrun. The proposed floor space ratio is 3.54:1. The height and floor space proposed is equivalent to the two developments under construction to the east.
- 16 The proposed building is intended to continue the line of development commencing at 18-20 Cross Street, by adopting the heights and general form of those developments. The street wall height is four storeys and the top two storeys are recessed and less visible from the street. The proposed Cross street elevation is shown below:



### The history of the application

- 17 The application was lodged on 14 December 2017. The Council staff assessment report recommended approval, but on 4 October 2018 the Panel refused the application. The Panel did not accept that the approved developments to the east of the Site on Cross Street amounted to an

abandonment of the development standards and determined that the clause 4.6 objection was not well founded.

- 18 The Applicant sought a review pursuant to s 8.2 of the EPA Act. An assessment report was prepared by a consultant planner (the Council witness in this case Ms Frecklington) and recommended refusal. On 19 March 2019, the Panel, differently constituted, by majority (2-1) again refused the application, on essentially the same grounds as previously. The Chair of the panel, the minority, accepted the Applicant's arguments.
- 19 The original development application and the application for review were both notified in accordance with the Respondent's notification requirements. Twenty submissions opposing the application were received after the original notification and fourteen after the second notification. The issues raised by objectors included non-compliance with height and floor space ratio standards, bulk and scale, visual intrusion, loss of views and outlook, traffic and parking impacts, precedent, inconsistency with desired future character.

#### **The planning regime**

- 20 The Site is zoned B2 Local Centre under WLEP. Shop top housing is a permissible use with development consent.
- 21 The objectives of the zone, to which regard must be had in determining the development application (WLEP cl 2.3(2)) are:

#### **Zone B2 Local Centre**

##### **1 Objectives of zone**

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To attract new business and commercial opportunities.
- To provide active ground floor uses to create vibrant centres.
- To provide for development of a scale and type that is compatible with the amenity of the surrounding residential area.
- To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.



- 22 WLEP has development standards for height (cl 4.3) and floor space ratio (FSR) (cl 4.4). The height control for the Site is 14.7m and the maximum FSR is 2.5:1. The controls and heights of adjacent and nearby developments and the objectives of the controls are dealt with when dealing with the clause 4.6 objections.
- 23 The Site is located within the Double Bay Centre under Part D5 of the Woollahra Development Control Plan 2015 (WDCP). The relevant provisions of WDCP are set out in the discussion of the issues.

**The recent approvals**

- 24 It is the recent approvals of the two developments under construction to the east of the Site to which the Applicant points as demonstrating the desired future character and, although said to a lesser degree, the abandonment of the controls in this part of Double Bay.
- 25 The development immediately to the east is 20-26 Cross Street. The building presently under construction was approved by the Council (not the Panel) on 12 September 2016, notwithstanding a recommendation for refusal by Council officers. It was subject to the same controls as the present application. The proposed height was 21.21m (control 14.7m) and an FSR of 3.5:1 (control 2.5:1).
- 26 To the east and adjoining 20-26 Cross Street is 16-18 Cross Street. The building presently under construction on that site was approved on the same day as 20-26 Cross Street – 12 September 2016. The proposed height was 20.7m and the proposed FSR 4.54:1. The present controls did not apply in terms because that development application was lodged prior to their commencement by virtue of WLEP, but the controls which did apply had the same effect, albeit the FSR control was in the earlier local environmental plan and the height control in the then development control plan.
- 27 A plan showing the actual heights of 16-18 and 20-26 together with the proposal and the controls in the vicinity follows:



- 28 As is apparent, there is a clear "block" of Cross Street from its intersection with Bay Street, to the point at which Knox Lane intersects with Cross Street. The properties on Cross Street to the east of Knox Lane front New South Head Road and do not address Cross Street in any material way. Bay Street is a wide street and that part of Cross Street to the west of Bay Street is in a different physical and planning context.

**Breach of development standards**

- 29 As set out above, the proposal breaches both the height and the FSR development standards, with a FSR of 3.54:1 (control 2.5:1) and a height of 21.21m (control 14.7m).
- 30 As such, consent cannot be granted except in accordance with cl 4.6(2) of the WLEP 2014. Clause 4.6 provides, at (3) and (4):

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

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

31 In order for there to be power to grant development consent for a development that contravenes a development standard, cl 4.6(4)(a) requires that the Court, in exercising the functions of the consent authority, be satisfied that:

- The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a) and cl 4.6(4)(a)(i)),
- The written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)),
- The proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)), and
- The proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)).

(*Initial Action Pty Ltd v Woollahra Municipal Council* (2008) 236 LGERA 256; [2018] NSWLEC 118 ("*Initial Action*")

32 The Court, in exercising the functions of the consent authority, must "in fact" be satisfied of the above matters (*RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130). The state of satisfaction that compliance is "unreasonable or unnecessary" and that there are "sufficient environmental planning grounds" to justify the contravention (the first two dot points above) must be reached only by reference to the cl 4.6 request. Whilst the evidence in the proceedings can assist in understanding the request and in considering the adequacy of the request, it cannot supplement what is in the request.

33 On the other hand, the state of satisfaction that the proposed development is in the public interest (the last two dot points above) can be reached by

considering the evidence before the Court, without being limited to what is contained in the cl 4.6 request.

- 34 A further precondition in cl 4.6(4), which must be satisfied before the power can be exercised to grant development consent for development that contravenes a development standard, is that the concurrence of the Secretary has been obtained. The Secretary's concurrence can be assumed as a result of written notice dated 21 February 2018 attached to the Planning Circular PS 18-003 (*Initial Action* at [28]).
- 35 The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised by Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 at [42]-[51] ("*Wehbe*") and repeated in *Initial Action* at [17]-[21]. Although *Wehbe* concerned a SEPP 1 objection, the common ways to demonstrate that compliance with a development standard is unreasonable or unnecessary in *Wehbe* are equally applicable to cl 4.6 (*Initial Action* at [16]):
- (a) the objectives of the development standard are achieved notwithstanding non-compliance with the standard;
  - (b) the underlying objective or purpose of the development standard is not relevant to the development, so that compliance is unnecessary;
  - (c) the underlying objective or purpose would be defeated or thwarted if compliance was required, so that compliance is unreasonable;
  - (d) the development standard has been abandoned by the council;
  - (e) the zoning of the site was unreasonable or inappropriate so that the development standard was also unreasonable or unnecessary (note this is a limited way of establishing that compliance is not necessary as it is not a way to effect general planning changes as an alternative to strategic planning powers).

The five ways to demonstrate compliance is unreasonable/unnecessary are not exhaustive, and it may be sufficient to establish only one way (*Initial Action* at [22]).

- 36 In this case, the Applicant points to (a) and (d) to demonstrate compliance is unreasonable or unnecessary.
- 37 The objectives of the height development standard are (cl 4.3 of WLEP):

- (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 to ensure the height of development is appropriate to the condition of the site and its context,

38 The objective of the FSR development standard is relevantly (cl 4.4 of WLEP):

...

- (b) to ensure that buildings are compatible with the desired future character of the area in terms of bulk and scale ...

**Objector evidence**

- 39 At the outset of the hearing evidence was given by three residents of 45-51 Cross Street (directly across Cross Street from the Site), Mr Malcolm Young as Vice President of the Double Bay Residents Association, and Mr Brian O'Dowd, a former resident of Double Bay who maintains an interest in development proposed in Double Bay.
- 40 The oral evidence encapsulated the range of matters in the written submissions referred to at [19] above.
- 41 There was in addition the opportunity to observe the site and consider the proposed development from those vantage points on the fourth and fifth floor southern balconies of apartments at 45-51 Cross Street. What was apparent was that there was enjoyed an outlook south across Double Bay and the "amphitheatre" created by the hill towards Edgecliff. It is that outlook which will be interrupted by varying degrees depending upon the relative height of the apartment.
- 42 It should also be recorded that each of the apartments the Court inspected, and presumably all of the apartments, have a northern aspect in addition to the southern outlook. The northern aspect, or view, is towards, and includes, Sydney Harbour, receives the northern sun, and, subject to exception, is the focus of the principal living area of the apartments. Each apartment has a large terrace on its northern side.

- 43 The interruption of outlook to the south is relied upon by the Council as one of the reasons to refuse the appeal. That impact is said to constitute a visual intrusion as that phrase is understood in the objectives of the height standard. I have taken into account the written and oral evidence of the objectors and the site inspection in forming the opinions in this judgment.

**Expert evidence - economics**

- 44 Mr Duane was retained by the Applicant and Mr Leyshon by the Respondent to assist the Court on the issue of the loss of commercial floor space.

- 45 In their joint report they record agreement on a number of matters, the most pertinent being:

- (a) the Town Centre was impacted by the redevelopment of Westfield Bondi Junction and Sydney City about ten years ago but has undergone a renaissance in recent times as a consequence of the Kiaora Lane development (on the southern side of New South Head Road);
- (b) office space vacancy is about 6.5% or 1500 square metres, lower than typical long term averages;
- (c) post development the Site will generate something in the order of 26-33 fewer jobs, or 0.65% - 0.8% of employment within the Town Centre; 2.3% - 2.9% of office jobs within the Town Centre;
- (d) the proposed development will not materially impact upon the overall commercial viability of the Centre;
- (e) the residential market which the Centre serves is projected to continue to grow and support the viability of the Centre in retail terms in particular.

- 46 Mr Leyshon says the proposal:

- (a) is an unacceptable loss of employment opportunities;
- (b) sets a precedent which will be counterproductive to achieving continued long term viability of the Centre;
- (c) is contrary to the various provisions of WDCP;
- (d) an approval on this site could operate as a precedent ultimately putting the viability of the centre at risk.

- 47 Mr Duane takes issue and says:

- (a) the loss of commercial floor space is very minor and can be accommodated in future commercial developments as demand arises;



- (b) as redevelopment occurs each site will have a variable mix and no individual development will operate as a precedent;
- (c) there is no requirement in the DCP but rather it is an encouragement in words alone.

**Discussion**

- 48 The focal point of the analysis is the DCP, the most relevant provision of which is in section D5.6.2 - Controls (for the Double Bay Centre):

**“Objectives**

...

O4 Encourage first floor retail and commercial use.

...

**Controls**

...

C1 Design for a mix of uses within buildings

...

C3 Design for retail, commercial and community uses at ground and first floor levels. Consider design solutions that promote retail, commercial use at first floor level such as galleried arcades”

- 49 These objectives and controls are within a broader context of the objectives for development in the Double Bay Centre which includes at D5.1.3:

“O3 To encourage a diverse mix of uses in the Double Bay Centre and maintain retail uses at ground level.”

- 50 The strategies for development in the Double Bay Centre (Clause D5.3.2) include to

“Ensure that the centre maintains its commercial viability and competitive position within the Sydney retail market [by]:

(a) Foster[ing] the existing mix of uses of the centre such as hotels, retail and commercial and upper level residential.

(b) Encourage a flexible built form that can potentially support a diverse mix of uses in the centre

...”

- 51 Mr Leyshon also referred to the objectives of the chapter of the DCP dealing with Double Bay Centre (5.1.2 and 5.1.3), but I take them as statements of what the chapter of the DCP is intended to achieve rather than independent objectives which development must meet. They are broad statements and are subject to the specific objectives and controls to which I have referred above.

- 52 There is no provision within WLEP or the DCP which provides any incentive which matches the "encouragement" in the DCP. That is, there is no bonus provision which one might find to support the encouragement for first floor commercial development.
- 53 I accept the evidence of Mr Duane that the reduced commercial space is not a reason for refusal of the application.
- 54 There is no doubt that the loss of this commercial space will not affect the viability of the Double Bay Centre. Some of the businesses presently existing at the site may relocate within Double Bay and some (or potentially all) may not. Be that as it may, the potential loss of employees and office space is so small as not to have a measurable impact on the viability of the Double Bay Centre.
- 55 The retail component on the site will be enhanced by the provision of higher quality retail space with the capacity to attract a range of retail uses including food, services and boutiques. The increased residential population at the site will also add, at least in a small way, to the vitality of the Centre and the use of retail and commercial facilities.
- 56 The DCP does not command first floor commercial uses, but simply, without incentive, encourages that use as an objective to maintain the viability of the Centre and its mix of uses. It is not necessary for every development to provide the whole mix of development. The proposal provides a mix of retail and residential uses, it is a mix of uses. There will be other opportunities within the Centre to develop mixed uses, including more commercial space, particularly as suggested by Mr Duane, on or closer to New South Head Road.
- 57 Indeed, Mr Leyshon accepted in cross-examination that in future developments there will be variations in the mix of uses within buildings. That is, there is the likelihood of some developments with greater retail and commercial components than residential, or at least a greater proportion than provided here.
- 58 That quite proper concession demonstrates that the planning controls are focused on a Centre-wide outcome, rather than an absolute requirement for

each particular development within the Centre. Whilst Mr Leyshon, and the Council in submissions, relied on precedent, I do not accept that approval of this development application will operate as a precedent for future development in the Double Bay Centre. Logically, each application will be treated on its own merits having regard to the commercial viability and mix of uses within the Double Bay Centre at the time of that assessment. It is true that there may come a point of time at which the economics of the Centre are such that a development application should not be approved because of its economic impact on the Centre. This is not such a development application.

- 59 Two other observations should be made. First Control C3 of D5.6.2 says that a proponent should "design" for retail, commercial and community uses at ground and first floor levels, even if they are not actually required to be used for that purpose. Retail and commercial uses in particular require a higher floor to ceiling height than a residential use. That means that a proponent could have designed a first floor to accommodate such use which does not in fact eventuate and there will then be a residential use which occupies unnecessary height within a development. Further, in the context of this application, as otherwise evident in this judgment, the proposed building continues the "line" of each storey of the development to the east, and to design for a higher floor to ceiling height on the first floor would mean that the "lines" would not follow and there would be a discordant urban design outcome.
- 60 Second, the Applicant referred to the significantly increased commercial activity as a result of the Kiaora Lane development since the DCP was adopted. That is, the Applicant argued that the commercial objectives of the DCP have been achieved already and therefore less weight should be given to the controls encouraging the first floor commercial use. I do not accept that argument. The DCP continues to operate in its terms. If the Council considered that it was no longer necessary to have the identified objectives and controls, in whole or in part, then it could have amended the DCP. It has not done so.
- 61 The absence of commercial uses proposed at the first floor is not a reason for refusal.

**Height and Floor Space Ratio breaches**

- 62 Mr Lidis gave evidence on behalf of the Applicant. He also wrote the clause 4.6 objections. Mr Frecklington gave evidence on behalf of the Respondent.
- 63 Inevitably the height breach and the FSR breach are related. There is greater building form with the additional height and therefore there is more floor area. In addition, there is a little over 100 square metres of floor space available, which would ordinarily not be available, because there is no driveway and vehicular access on the subject site itself. Accordingly, for the most part the clause 4.6 objections can be treated together.
- 64 The elements of cl 4.6 in issue between the experts and the parties are:
- (a) whether the controls have been abandoned and therefore it is unreasonable or unnecessary to require compliance (cl 4.6(3)(a));
  - (b) whether the proposal meets the objectives of the controls and therefore it is unreasonable or unnecessary to require compliance (cl 4.6(3)(a));
  - (c) whether or not the proposal is consistent and compatible with the desired future character of the area consistently with the objective of the controls and therefore in the public interest (cl 4.6(4)(a)(ii));
  - (d) whether or not the proposal minimises its visual intrusion consistently with the objective of the controls and therefore in the public interest (cl 4.6(4)(a)(ii));
  - (e) whether the visual intrusion of the proposal is compatible with the amenity of the surrounding residential area and therefore consistent with the objective of the zone and in the public interest (cl 4.6(4)(a)(ii));
  - (f) whether the proposal is of a height and scale the achieves the desired future character of the neighbourhood and therefore consistent with the objective of the zone and in the public interest (cl 4.6(4)(a)(ii)).
- 65 These issues can be distilled as:
- (a) have the controls been abandoned?
  - (b) what is the desired future character?
  - (c) is the proposal consistent/compatible with that desired future character?
  - (d) has any visual intrusion been minimised?

I will deal with (b), (c) and (d) first, then (a).

- 66 Central to the principal issues is the weight to be given to the fact of the recently approved developments now under construction to the east of the Site. Mr Lidis, both in the clause 4.6 objections and his evidence, says that those developments set the existing character, and the desired future character, and that the approvals demonstrate the controls have been abandoned. He limits the question of character and abandonment of controls to the particular block of Cross Street from Bay Street to Knox Lane. He says that the proposal being a continuation of the form of the developments to the east is a better planning outcome than a development on the Site which complies with the controls. A complying development would be discordant in the street he says because the height of development would be reduced from the east to the subject site then increase to the Site to the west when it is redeveloped.
- 67 Mr Frecklington looks at the character and abandonment issue more broadly. She looks at the whole of Double Bay Centre and says in that context the controls have not been abandoned. She says that the approvals to the east do not reflect the existing and desired future character of this part of Cross Street when considered in the wider context and having regard to the LEP controls. She also refers to the complementary controls in the DCP.
- 68 The existing character is created by the buildings under construction to the east, the two-storey development to the west, together with, albeit to a lesser degree, the large buildings on the other side of Cross Street. The Site is perceived largely in its context on the southern side of Cross Street. I agree with Mr Lidis that the focus of the assessment of character is the more immediate context of the Site. Whilst the broader area of the Double Bay Centre can have some relevance, in the present circumstances, this portion of Cross Street is a well-defined component of the Centre, and has created its own character, a character which still forms part of the overall character of the Centre and is not an anathema to it.
- 69 The desired future character in my opinion must take into account the form of the buildings to the east which the Council approved under effectively the same controls as present. Those buildings exceed the height and floor space ratio

controls. As the Applicant pointed out in submissions, this is not a case where there is an adjacent development approved and constructed many years ago which sits as an anomaly in the street. The developments under construction represent the recently expressed attitude of the Respondent to the controls and what is desired in this part of Cross Street.

- 70 The approved developments to the east are the driving force for development on the southern side of Cross Street. They are large and occupy in the order of half the relevant block. Those developments are obviously also the most proximate to the Site and set the built form context of the Site, together with the likely development to the west of the Site, which is shown on the image above. It is the expectation of the experts that the site to the west will be redeveloped in due course, generally consistently with the controls to at least five storeys in height as distinct from its present two storeys.
- 71 For these reasons I agree with Mr Lidis, as stated in the cl 4.6 objections, that the approvals and buildings under construction to the east of the Site establish the desired future character of this part of Cross Street. Therefore, they set the desired future character for the purpose of the cl 4.6 objections. It is worthy of note that those buildings are also consistent with the broader objectives for Cross Street in the DCP. They are referred to below.
- 72 The design of the proposed development should sit comfortably with its neighbours to the east, and its neighbour to the west in order to meet the objective of the standards to be consistent with, and compatible with, the desired future character. The development on the Site is only perceived in that context. It is not readily visible from any location other than within this block of Cross Street. Although one should not exclude from consideration in a more general sense the broader locality, it is here the immediate locality of this defined block on the southern side of Cross Street which is determinative of the preferred form of development for the Site.
- 73 There was some debate about whether the building to the west, a corner site requiring emphasis, would also need to breach the controls in order to provide a proper context for the proposal. That, it was said by the Respondent, was not orderly planning. First, it should be noted cl 4.6 of WLEP is as much a part of

WLEP as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome. Second, it became clear during the evidence from Mr Frecklington that the corner building to the west can be emphasised without breaching the height control, by having a greater street wall height than the four storeys street wall height proposed for the development on the Site.

- 74 The proposed building is an excellent response to its context. It follows the "lines" of each storey of the building to the east, has the same street wall height and the same upper level setback and height. The streetscape as a consequence is coherent and consistent. Ms Frecklington, who gave her evidence very fairly and frankly, agreed that putting the controls to one side there were no issues with the design of the building.
- 75 I am therefore satisfied that the proposed building meets:
- (a) objective (a) of cl 4.3 (height standard) in that it is consistent with the desired future character of the neighborhood;
  - (b) objective (b) of cl 4.4 (FSR standard) in that it is compatible with the desired future character of the area in terms of bulk and scale;
  - (c) the seventh objective of the B2 zone in that it is of a height and scale that achieves the desired future character of the neighbourhood.
- 76 The other issue relating to the clause 4.6 objection is the question of visual intrusion, that is whether the objective of the height control to minimize visual intrusion is satisfied. The southern outlook of apartments on the northern side of Cross Street will see, to varying degrees, an apartment building including two levels of apartments above the height control, rather than the roof of the proposed building and an outlook across Double Bay Centre and to the amphitheatre of Edgecliff. The change in outlook will clearly vary depending on the level of the apartment. Some will see above the proposed building and some will not.
- 77 The objective of the height control is "to minimise the impacts of new development on adjoining or nearby properties from disruption of views...or visual intrusion".



- 78 The first question is whether the building, including that part above the height control, is a visual intrusion. A visual intrusion is not a disruption of a view, because that is a separate potential impact identified in the objective. The proposal does not disrupt "views"; it is common ground that the southern outlook is not a view.
- 79 The Macquarie Dictionary defines "intrusion" as the act of intruding and *intrude* as *to thrust or bring in without reason, permission, or welcome*. A visual intrusion must be an unwelcome form which intrudes into the available outlook. It would appear to me that a new building of itself will not necessarily be a visual intrusion. There must be something unwelcome about it. It could be the form of the building itself, or it could be its relationship to the viewer and what lies beyond.
- 80 There is no doubt that the form of the building itself does not constitute a visual intrusion. It is an attractive well-designed building with coherent form and scale.
- 81 The building does intrude into the outlook of some apartments on the northern side of Cross Street. Part of a pleasant outlook will be replaced by closer building, albeit of excellent design. That amounts to a visual intrusion. The question then is whether the development minimises the visual intrusion, because even a complying building will be a visual intrusion to some apartments in Cross Street.
- 82 Ms Frecklington says that the intrusion is moderate, and because the height in excess of the height control it is an unreasonable impact, inconsistent with the objective of the control.
- 83 Mr Lidis says that the proposed building itself, being of high architectural merit, is an improvement in the outlook.
- 84 I do not agree with Mr Frecklington. It cannot be that simply being in excess of the height control means that the objective to minimise visual intrusion is not met. If that was the case, then there would be very great difficulty in ever establishing consistency with the objective.
- 85 That said, I do not agree with Mr Lidis that the outlook is necessarily improved by the building.

- 86 In my opinion, however, the visual intrusion of the development is minor and has been minimised. The upper levels of the proposed building are set back, increasing their separation from the apartments across Cross Street. The overall height is consistent with an appropriate urban design for the site.
- 87 It is the "impact" of visual intrusion which is to be minimised, which also requires an assessment of the context of what is enjoyed by the affected viewer. The outlook to the south cannot be considered in isolation of its role in the amenity of those apartments. Each of the affected apartments has a view to the north, including Sydney Harbour, and almost all have their living areas to the north. For the most part, it is second bedrooms and studies which have the outlook to the south. The affected outlook does not add greatly to the amenity of the affected apartments.
- 88 It follows then that I am satisfied that the development meets objective (d) of cl 4.3 (height control). There is no equivalent objective in cl 4.4 (FSR control).
- 89 There is also the related question as to whether the proposal is consistent with the zone objective to provide for "development of a scale and type that is compatible with the amenity of the surrounding area". Having regard to the above reasons, and in particular the amenity of the affected apartments to the north, the proposal is compatible with the amenity of the surrounding area. The Respondent did not identify any other uses in the surrounding area where the amenity will be affected.
- 90 The environmental planning grounds relied upon to justify contravening the standards are the improved urban design outcome of consistency and coherent streetscape as a consequence of the additional height and consequential floor space. For the same reasons the objectives of the height control and floor space ratio control are satisfied, I agree there are sufficient environmental planning grounds to justify the contraventions.
- 91 Having concluded that the development meets the objectives of the standards notwithstanding the breach of the controls, one way to demonstrate the application of the standards is unreasonable or unnecessary, it is not strictly necessary to decide whether or not the controls have been abandoned. For completeness, I will do so.

- 92 In essence, the difference between the experts and the parties was whether to look at the recent approvals only in the immediate context or in the broader context of the Double Bay Centre. That is, the Respondent says that the Council has not abandoned the controls because only the two developments on Cross Street have been approved outside the controls, and so the controls which apply to the Double Bay Centre, including the Site have not been abandoned. The Applicant says that the controls have been abandoned in this part of Cross Street and that satisfies the concept of abandoning the controls.
- 93 I agree with the Applicant. The concept of abandoning a control can apply to a part of an area the subject of the control, subject to the circumstances of the case. For example, approving two developments on New South Head Road which exceed the controls does not mean the controls are abandoned for development on New South Head Road.
- 94 Here there is a discrete section of Cross Street the subject of the approvals. The Site falls within that section. The approvals were not for the purpose of meeting an urban design imperative in existence at that time, but rather were deliberate decisions to allow buildings of a significantly greater height and floor space in this locality than the controls envisaged. The abandonment is confined to this block of Cross Street on the southern side. That much is plain from the approvals and the configuration and uses in Cross Street between Bay Street and Knox Lane.
- 95 The Council deliberately and knowingly decided that larger buildings were appropriate in the block of which the Site forms part. That, in my view, amounts to an abandonment of the controls for this part of Double Bay.
- 96 In summary therefore, having regard to the matters in issue between the parties I am satisfied that the clause 4.6 objection adequately address the matters in cl 4.6(3) by demonstrating to my satisfaction that:
- (a) the controls have been abandoned and therefore it is unreasonable or unnecessary to require compliance (cl 4.6(3)(a));
  - (b) the proposal meets the objectives of the controls and therefore it is unreasonable or unnecessary to require compliance (cl 4.6(3)(a));

- (c) there are sufficient environmental planning grounds to justify contravening the standards.

97 Further, I am satisfied that:

- (a) the proposal is consistent and compatible with the desired future character of the area consistently with the objective of the controls and therefore in the public interest (cl 4.6(4)(a)(ii));
- (b) the proposal minimises its visual intrusion consistently with the objective of the controls and therefore in the public interest (cl 4.6(4)(a)(ii));
- (c) the visual intrusion of the proposal is compatible with the amenity of the surrounding residential area and therefore consistent with the objective of the zone and in the public interest (cl 4.6(4)(a)(ii));
- (d) the proposal is of a height and scale the achieves the desired future character of the neighbourhood and therefore consistent with the objective of the zone and in the public interest (cl 4.6(4)(a)(ii)).

98 The Applicant has therefore satisfied the jurisdictional requirement and any remaining merit issues remain to be determined.

99 The Respondent says (Contention 4) that the development should be refused because it is inconsistent with the built form envelope controls for the Double Bay Centre under the DCP. Of course, as Ms Frecklington says in the joint report at par 23.2 these issues overlap with those raised in relation to desired future character. The DCP identifies building envelopes which reflect the height and FSR controls in WLEP. Having determined that the clause 4.6 objections are well founded, the provisions of the DCP have a lesser role to play.

100 Section D5.3.2 sets out the Key Strategies for the Double Bay Centre which includes:

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

- a) Provide direction and certainty of outcome in relation to built form to ensure:
  - a coherent street scale;
  - compatibility with existing urban fabric;
  - a variety of building types;
  - a high level of environmental amenity.
- b) Promote high quality architectural design throughout the centre that positively contributes to the streetscape.

**c) Ensure that new development is compatible with the existing built, streetscape and village character**

**d) Establish building envelopes that define building height and building lines (at lower and upper levels) to provide coherent street definition.**

**e) Reinforce continuous active retail frontages along street boundaries.**

f) Reinforce the presence of corner buildings addressing the public domain, recognising their importance in the centre in terms of street vistas, urban scale and identity.

g) Encourage view sharing and privacy.

h) Encourage discrete vehicle access from rear lanes, while retaining some active use and address to those lanes.

i) Preserve the 'small shop' urban character of the centre by limiting the width of retail frontages."

(Emphasis added)

101 There are strategies which are common for all streets set out in D5.4.2:

"Strengthen the spatial definition of streets by encouraging building to the street boundary.

Provide continuous active retail frontage at ground floor level.

Increase street surveillance and promote a safe environment.

Strengthen all built form on corner sites."

102 The provisions for Cross Street are D5.4.7:

**"Desired future character**

a) Unify the street on the north side by building to the street boundary.

b) Retain street level connections to Knox Lane.

c) Allow 4 storeys on 50% of each site frontage to Knox Lane. See Control Drawings for more information.

d) Encourage arcades and courtyards on the south side that cater for outdoor eating and informal gathering.

e) Strengthen built form on corner sites."

103 The provisions include a sketch which shows three levels with no setback to Cross Street; that is a three-storey street wall height with the fourth level set back.

104 There are also general provisions for lanes in the Double Bay Centre in D5.4.8:

**"Desired future character**

a) Facilitate the service role of lanes, while encouraging increased active retail frontage.

b) Improve pedestrian amenity by providing adequate footpaths, limiting the width and numbers of vehicle crossovers, setting buildings back on one side and preserving natural daylight to the lanes.

c) Enhance the spatial definition of lanes with ground and first floor building lines and buildings up to two storeys in height."

105 The provisions for Knox Lane are at D5.4.9:

**"Desired future character**

a) Retain and enhance the varied spatial definition of Knox Lane.

b) Retain and enhance the honeycomb of arcades and courtyards which connect Knox Street to Cross Street.

c) Encourage visual and physical connections between Knox and Cross Streets using:

- arcaded and/or outdoor connections;
- north oriented courtyards; and
- arcade and courtyard creating buildings, which may vary from the control drawings in Section 5.5.8."

106 The strategies are achieved with the proposed building notwithstanding it exceeding four storeys. Without repeating the detail of the reasons above, there will be a coherent street scale, compatible with existing urban fabric. It is a high quality architectural design that positively contributes to the streetscape. A coherent street definition is provided. Aside from the sketch of Cross Street, the text provides little guidance for the desired future character. The sketch does provide for a three storey street wall however.

107 Mr Frecklington, again very fairly, accepted that as a matter of urban design she was not concerned whether the street wall height was three storeys as required by the DCP or four storeys as proposed here. In my view, the proposed street wall height of four storeys is preferable because it matches the wall height to the east and thereby creates a more coherent streetscape.

108 The provisions in the DCP about that part of the development facing Knox Lane was said by Mr Lidis, Ms Frecklington and the Applicant in submissions, to be ambiguous. The Respondent said in submissions that its meaning was clear. The provisions are not brimming with clarity, but probably intended to generally create four storeys to Knox Lane for no more than 50% of the frontage to the Lane and two storeys for the remainder.

- 109 It is not necessary however to determine precisely what is the proper construction of the provisions, because the principal goal of the provision is clear - to retain and enhance the varied spatial definition of Knox Lane. It was with that in mind that Mr Frecklington said in cross-examination that what is proposed is a creative response to the control and consistent with the intent of the control. I agree. The Knox Lane frontage is varied and articulated, defines the Lane and provides spatial variation. An image of what is proposed follows:



- 110 The built form achieves the objectives of the controls in the DCP for the reasons I have set out in relation to the DCP above and the preceding paragraphs dealing with the clause 4.6 objections.
- 111 The Council also argues (Contention 5) that as a matter of merit, the "visual intrusion" of the building to the apartments at the upper levels of 45-51 Cross Street, opposite the Site is unreasonable. For the reasons I have set out above, I do not regard that impact as an unacceptable one.
- 112 I do note that Mr Frecklington does not suggest there is any amenity impact upon an apartment on Knox Street to the south of the Site and says at [26.5] of the joint report that the "proposal is not considered to give rise to any unacceptable amenity impacts on any adjoining land in terms of views, privacy and solar access". I concur.



- 113 The final merit contention is "Public Interest" but appropriately limited to the public submissions which are consistent with the contentions of the Respondent. I have dealt with those contentions and therefore there is nothing related to the Public Interest contention which requires further comment or warrants refusal of the application.

**Conclusion**

- 114 I am satisfied that the provisions of cl 4.6 have been satisfied in relation to the breaches of height and FSR. There are no other merit reasons why consent should not be granted.

- 115 For the preceding reasons, I make the following orders:

- (1) The appeal is upheld.
- (2) Development consent is granted for demolition of the existing buildings and construction of a six-storey shop top housing development at 28-34 Cross Street, Double Bay with ground floor retail, twenty-one (21) residential units over five (5) levels above and two (2) levels of basement parking for thirty-six (36) vehicles and four (4) motorbikes with vehicular access from 20-26 Cross Street, Double Bay upon the conditions Annexure 'A' hereto.
- (3) The exhibits are to be returned other than Exhibits A and 3.

.....

**P Clay**

**Acting Commissioner of the Court**

Annexure A (798 KB, pdf)

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Land and Environment Court  
New South Wales

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Case Name:	Woollahra Municipal Council v SJD DB2 Pty Limited
Medium Neutral Citation:	[2020] NSWLEC 115
Hearing Date(s):	14 July 2020
Date of Orders:	18 August 2020
Decision Date:	18 August 2020
Jurisdiction:	Class 1
Before:	Preston CJ
Decision:	The Court orders: (1) The appeal is dismissed. (2) The appellant is to pay the respondent's costs of the appeal.
Catchwords:	APPEAL – appeal against a Commissioner's decision on questions of law – shoptop housing development contravened height and FSR development standards – decision to grant development consent – objectives of height and FSR development standards – consistency with desired future character of neighbourhood or area – whether misconstruction of “desired future character” – whether to be construed by reference to Woollahra Development Control Plan 2015 (WDCP) – whether approved adjoining development that contravened development standards an irrelevant consideration – whether misconstruction of desired future character provisions in WDCP – whether misdirection in assessing consistency with objective (d) of height development standard to minimise visual intrusion – whether failure to give adequate reasons for satisfaction required by cl 4.6(3) of Woollahra Local Environmental Plan (WLEP) – whether misconstruction of control C3 in s D5.6.2 of WDCP to design for first

	floor commercial use – no errors of law established
Legislation Cited:	Environment and Planning Assessment Act 1979 ss 3.42, 3.43, 4.15 Land and Environment Court Act 1979 ss 38, 56A Woollahra Development Control Plan 2015 Woollahra Local Environmental Plan 2014
Cases Cited:	Alexandria Landfill Pty Ltd v Transport for NSW [2020] NSWCA 165 Botany Bay City Council v Premier Customs Services (2009) 172 LGERA 338; [2009] NSWCA 226 Commissioner of Taxation v Macoun (2014) 227 FCR 265; [2015] FCAFC 162 Mine Subsidence Board v Wambo Coal Pty Ltd (2007) 154 LGERA 60; [2007] NSWCA 137 Minister for Aboriginal Affairs v Peko Wallsend Ltd (1986) 162 CLR 124 NSW Land and Housing Corporation v Orr (2019) 100 NSWLR 578; [2019] NSWCA 231 Plaintiff M47-2012 v Director-General of Security (2012) 251 CLR 1; [2012] HCA 46 Randall v Willoughby City Council (2005) 144 LGERA 119; [2015] NSWCA 205 Resource Pacific Pty Ltd v Wilkinson [2013] NSWCA 33 Segal v Waverley Council (2005) 64 NSWLR 177; [2005] NSWCA 310 SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSW12 Soulemezis v Dudley (Holdings) Pty Ltd (1987) 10 NSWLR 247
Category:	Principal judgment
Parties:	Woollahra Municipal Council (Appellant) SJD DB2 Pty Limited (Respondent)
Representation:	Counsel: Mr J Lazarus SC (Appellant) Mr A Galasso SC (Respondent)  Solicitors: Lindsay Taylor Lawyers (Appellant) Mills Oakley (Respondent)

File Number(s): 2020/108197  
Publication Restriction: Nil  
Decision under appeal:  
Court or Tribunal: Land and Environment Court of NSW  
Jurisdiction: Class 1  
Citation: [2020] NSWLEC 1112  
Date of Decision: 12 March 2020  
Before: Clay AC  
File Number(s): 2019/91041

## JUDGMENT

### **A council appeals a Commissioner's decision to grant development consent**

- 1 SJD DB2 Pty Limited (SJD) applied for development consent for demolition of existing buildings and construction of a six storey shoptop housing development at 28-34 Cross Street, Double Bay (the site). The proposed development involved retail on the ground floor and 21 residential apartments above, together with two levels of basement parking. The proposed development will provide less space for retail/commercial uses than the existing buildings provide. Although the development will be six storeys, the street wall height is four storeys and the top two storeys are recessed and will be less visible from the street. The proposed development breaches both the height and floor space ratio (FSR) development standards in Woollahra Local Environmental Plan 2014 (WLEP).
- 2 SJD appealed to the Court against the refusal of Sydney Eastern City Planning Panel of the development application. The appeal was heard by Acting Commissioner Clay. He determined to uphold the appeal and grant development consent to the proposed development: *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112.

- 3 Woollahra Municipal Council (the Council) appealed against the Commissioner's decision and orders on questions of law under s 56A(1) of the *Land and Environment Court Act 1979* (the Court Act).

**The grounds of appeal**

- 4 In the amended summons, the Council raised 7 grounds of appeal, many of which contained subgrounds. The grounds and subgrounds may be grouped as follows:
- (a) *The desired future character grounds*: The Commissioner erred in his construction of the "desired future character" in the objectives of the height and FSR development standards and the objective of the B2 Local Centre zone by:
    - (i) failing to have regard to the relevant provisions of Woollahra Development Control Plan 2015 (WDCP) dealing with the desired future character of the neighbourhood or area (Grounds 1(a), 3(a) and 4(a));
    - (ii) taking into account the legally irrelevant consideration of developments that had been approved or constructed to the east of the site, which exceeded those development standards (Grounds 1(b), 3(b) and 4(b)); and
    - (iii) misconstruing the desired future character provisions for Cross Street in section D5.4.7 of WDCP and for Knox Lane in section D5.4.9 of WDCP (ground 5).
  - (b) *The visual intrusion ground*: The Commissioner misdirected himself and asked the wrong question in assessing whether the proposed development was consistent with objective (d) of the height development standard to minimise the impacts of new development on adjoining or nearby properties from "visual intrusion" (ground 2).
  - (c) *The inadequate reasons ground*: The Commissioner failed to give adequate reasons for being satisfied that the applicant's written request had adequately addressed the matters required to be demonstrated by cl 4.6(3) of WLEP (ground 6).
  - (d) *The commercial viability ground*: The Commissioner misconstrued control C3 in section D5.6.2 of WDCP (ground 7).

**The desired future character grounds**

- 5 The proposed development contravened both the height and FSR development standards in WLEP. Clause 4.3(2) and the Height of Buildings Map establish a maximum height for the site of 14.7 metres. The height of the proposed development is 19.71 metres to the main roof and 21.21 metres to the plant/lift

overrun. Clause 4.4(2) and the Floor Space Ratio Map establish a maximum FSR for the site of 2.5:1. The FSR of the proposed development is 3.54:1.

- 6 Clause 4.6 of WLEP nevertheless enabled development consent to be granted for the proposed development, notwithstanding these contraventions of the height and FSR development standards, provided the preconditions in cl 4.6(4) were satisfied.
- 7 Clause 4.6(4) provides:

“Development consent must not be granted for development that contravenes a development standard unless—

  - (a) the consent authority is satisfied that—
    - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
  - (b) the concurrence of the Planning Secretary has been obtained.”
- 8 In the desired future character grounds of appeal, the Council first focused on the requirement in cl 4.6(4)(a)(ii) that the Commissioner be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the height and FSR development standards and the objectives for development within the zone within which the development is proposed to be carried out.
- 9 One of the objectives of the height development standard in cl 4.3(1)(a) is “to establish building heights that are consistent with the desired future character of the neighbourhood”. One of the objectives of the FSR development standard in cl 4.4(1)(b) is “to ensure that buildings are compatible with the desired future character of the area in terms of bulk and scale”. One of the objectives of the zone in which development is proposed to be carried out, the B2 Local Centre Zone, is the seventh objective “to ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.”
- 10 The term “desired future character” is not defined in WLEP. The Council submitted, however, that the desired future character is defined and fixed in two ways.

- 11 First, the zoning and the height, FSR and other development standards for development of the site and its surrounds define and fix the desired future character. The site and its surrounds are zoned B2 Local Centre. The Land Use Table for the B2 zone specifies the development that is permitted with consent and the development that is prohibited. This fixes the type of development that can be carried out in the zone. One of the objectives of the zone is to ensure development is of a height and scale that achieves the desired future character. This focuses on the height and scale of development that is permissible in the zone. The height of development is fixed by the height development standard in cl 4.3. The scale of development is fixed by the FSR development standard in cl 4.4. Development that is of a permissible type and is of a height and scale that complies with the height and FSR development standards will achieve the desired future character.
- 12 Secondly, WDCP gives effect to these provisions of WLEP so as to describe the desired future character of the neighbourhood or area. The Council noted that the purpose of a development control plan under s 3.42(1) of *Environmental Planning and Assessment Act 1979* (EPA Act) is as follows:

“The principal purpose of a development control plan is to provide guidance on the following matters to the persons proposing to carry out development to which this Part applies and to the consent authority for any such development—

  - (a) giving effect to the aims of any environmental planning instrument that applies to the development,
  - (b) facilitating development that is permissible under any such instrument,
  - (c) achieving the objectives of land zones under any such instrument.

The provisions of a development control plan made for that purpose are not statutory requirements.”
- 13 The Council noted that one of the aims of WLEP in cl 2(2)(l) is “to ensure development achieves the desired future character of the area” and one of the objectives of the B2 zone is the earlier quoted one, “to ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.”
- 14 Accordingly, the principal purpose of WDCP is to give effect to this aim of WLEP and this objective of the B2 zone. This is recorded in section A1.1.5 of



WDCP, where one of the overarching objectives of WDCP in O3 is “to achieve the objectives contained in Woollahra LEP 2014.”

- 15 Chapter D5 of WDCP relates to the Double Bay Centre. Section 5.4 describes the desired future character for each street in the Double Bay Centre (D5.4.1). The desired future character for each street is described in terms of “the urban design criteria for each street” (D5.4.1). An annotated street section is provided to illustrate the desired future built form.
- 16 The two relevant streets for the development are Cross Street and Knox Lane. Section D5.4.7 describes the desired future character of Cross Street as:
  - “a) Unify the street on the north side by building to the street boundary.
  - b) Retain street level connections to Knox Lane.
  - c) Allow 4 storeys on 50% of each site frontage to Knox Lane. See Control Drawings for more information.
  - d) Encourage arcades and courtyards on the south side that cater for outdoor eating and informal gathering.
  - e) Strengthen built form on corner site.”
- 17 Figure 17 is a pictorial view of the potential street character on Cross Street based on the controls in WLEP and WDCP.
- 18 An annotated section is provided through Cross Street. Amongst the annotations is one requiring “set back level 4 development from the street boundary.”
- 19 Section D5.4.9 describes the desired future character of Knox Lane as:
  - “a) Retain and enhance the varied spatial definition of Knox Lane.
  - b) Retain and enhance the honeycomb of arcades and courtyards that connect Knox Street to Cross Street.
  - c) Encourage visual and physical connections between Knox and Cross Streets using:
    - arcaded and/or outdoor connections;
    - north orientated courtyards; and
    - arcade and courtyard creating buildings, which may vary from the control drawings in Section 5.5.8.”
- 20 An annotated section of Knox Lane is provided. Amongst the annotations is one stating “each development site may be permitted to build to 4 storeys on 50% of the Knox Lane frontage if it is interspersed with 2 storey development.”

- 21 Section D5.5 of WDCP contains control drawings which show building envelopes for every site in the Double Bay Centre (D5.5.1). The envelopes are said to generally establish, amongst other things, “four storey heights along streets”. The built form framework is claimed to have been tailored to each site, taking into consideration its particular characteristics. One of the characteristics considered is “the desired future character of the street in which the site is situated” (D5.5.1).
- 22 The relevant control drawing is Control Drawing 4 in section D5.5.8. This drawing shows the site was intended to be developed to a maximum of 4 storeys (14.7m) in the area fronting Cross Street, of which “100% of this area per floor may be built on”, stepping down to an area of 2 storeys (8m) fronting Knox Lane, with an intermediate area of a maximum of four storeys of which “50% of this area per floor may be built on”.
- 23 Section D5.5.12 provides a 3D view of the building envelope. View 1 is a view east along Cross Street. The 3D view shows 4 storeys fronting Cross Street stepping down to 2 storeys fronting Knox Lane. The marginal note to view 1 states that:

“The building envelopes illustrate the permitted distribution of floor space in the centre. The FSR controls in Woollahra LEP 2014 limit the amount of floor space in the centre.”
- 24 The Council contended that these provisions of WDCP describe in words and pictorially the desired future character of the neighbourhood or area. The desired future character so described is fixed by and is consistent with the provisions of WLEP, including the development standards fixing the maximum height and FSR for the site and its surrounds.
- 25 The Council submitted that the Commissioner’s consideration of cl4.6(4)(a)(ii) of WLEP miscarried because he misconstrued the term “desired future character” in the objectives of the height and FSR development standards in cl 4.3(1)(a) and cl 4.4(1)(b) and in the objective of the B2 zone. The Council submitted the Commissioner’s misconception was threefold.
- 26 First, the Council submitted that the Commissioner did not take into account the “desired future character” provisions in section D5.4.7 for Cross Street and section D5.4.9 for Knox Lane or Control Drawing 4 showing the building

envelope for the site in WDCP for the purpose of his assessment under cl 4.6(4)(a)(ii) of WLEP of whether the proposed development is consistent with the objectives of the height and FSR development standards and the objectives for development within the B2 Zone. The Commissioner's only consideration of these desired future character provisions of WDCP was in the context of dealing with the Council's contention 4 concerning inconsistency with the built form envelope controls in WDCP for the Double Bay Centre. The Commissioner thereby separated his consideration of the desired future character provisions in WDCP from his earlier consideration of the desired future character of the neighbourhood or area for the purposes of determining the proposed development's consistency with the objectives of the height and FSR development standards and of the B2 zone.

- 27 Secondly, the Council submitted that the Commissioner took into account an irrelevant consideration in determining the desired future character of the neighbourhood or area. The Commissioner had regard to the developments that had been approved or constructed on adjoining sites to the east (16-18 Cross Street and 20-26 Cross Street), both of which developments contravened the height and FSR development standards, in determining the desired future character of the neighbourhood or area (see at [69]-[71]). The Council submitted that the approved or constructed adjoining developments were a legally irrelevant consideration. The desired future character is defined and fixed by the zoning and the development standards, including the height and FSR development standards, in WLEP, and the provisions of WDCP which provide guidance for giving effect to the provisions of WLEP. Once defined and fixed by WLEP and WDCP, the desired future character cannot change, unless and until WLEP and WDCP are amended. The desired future character cannot be changed by decisions to grant consent to development that contravenes the height and FSR development standards in WLEP.
- 28 The Council submitted that the Commissioner therefore erred in finding that the desired future character could be, and had been, changed by the approved developments to the east, which contravened the height and FSR development standards.

- 29 Thirdly, the Council submitted that the Commissioner misconstrued the desired future character provisions in section D5.4.7 and section 5.4.9 of WDCP. The Commissioner, when he did later consider the desired future character provisions of WDCP, found the “principal goal” of the provisions was to “retain and enhance the various spatial definition of Knox Lane”. The Council submitted that, although one of the criteria specified for the desired future character of Knox Lane is to “retain and enhance the varied spatial definition of Knox Lane”, that criterion needs to be read with the other criteria of desired future character for Knox Lane, the control drawing showing the built form envelope for the area, and the height and FSR development standards in WLEP. Together, these controls describe a desired future character for the area as having no more than four stories fronting Cross Street, stepping down to two stories fronting Knox Lane, with an intermediate area of four stories of which only 50% could be developed.
- 30 SJD contested that the Commissioner misconstrued the term “desired future character” in any of the three ways asserted by the Council.
- 31 First, the Commissioner did not err by not construing the term “desired future character” in various provisions of WLEP by reference to provisions of WDCP. SJD noted that the term “desired future character” is not defined in WLEP. In that circumstance, it was open to the Commissioner to determine for himself what that desired future character might be, having regard to all of the circumstances of the case.
- 32 SJD submitted that, as a matter of law, WDCP cannot operate in a definitional way so as to define the meaning of the term “desired future character” used in WLEP, in the absence of a prescriptive provision in WLEP requiring the term to be construed by reference to WDCP. There is no such legislative cross-reference in WLEP to WDCP.
- 33 That a local environmental plan is not to be construed by reference to a development control plan is a particular application of the general principle of statutory interpretation that delegated legislation made under an Act should not be taken into account for the purposes of interpretation of the Act itself: *Mine Subsidence Board v Wambo Coal Pty Ltd* (2007) 154 LGERA 60; [2007]

NSWCA 137 at [41]; *Plaintiff M47-2012 v Director-General of Security* (2012) 251 CLR 1; [2012] HCA 46 at [56]. The tail cannot wag the dog. To act otherwise is to engage in bottom up interpretation rather than top down interpretation: *Commissioner of Taxation v Macoun* (2014) 227 FCR 265; [2015] FCAFC 162 at [40].

- 34 Under Part 3 of the EPA Act, the two plans, WLEP and WDCP, are of a fundamentally different nature and provenance. Both the process for making and the maker of WLEP is different to the process for making and the maker of WDCP.
- 35 The principal purpose of WDCP is to provide guidance on the three matters referred to in s 3.42(1) of the EPA Act to persons proposing to carry out development, in this case in the Double Bay Centre, and to the Council for such development. These matters are to give effect to the aims of WLEP that applies to such development; to facilitate development that is permissible under WLEP; and to achieve the objectives of land zones under WLEP. Whilst these matters do include the objectives of the zone in which the development is proposed to be carried out, in this case the B2 zone, they do not include the objectives of development standards in WLEP, including in this case the height and FSR development standards. SJD submitted, therefore, that the principal purpose of WDCP does not extend to defining the meaning of the term “desired future character” used in provisions of WLEP, including in the objectives of the height and FSR development standards. Moreover, any provisions of WDCP made for the purpose for which a development control plan can be made are not statutory requirements (s 3.42(1) of the EPA Act).
- 36 WDCP is subordinate to WLEP (s 3.43(5) of the EPA Act). In relation to the provisions of WLEP dealing with “desired future character”, the provisions of WDCP dealing with desired future character have no effect to the extent they are the same or substantially the same as the provisions of WLEP applying to the same land or are inconsistent or incompatible with the provisions of WLEP (s 3.43(5)(a) and (b) of the EPA Act).
- 37 Furthermore, insofar as the desired future character provisions of WDCP set standards with respect to an aspect of development that can be carried out on

the site and its surrounds, the consent authority, in determining a development application for such development, “is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development” (s 4.15(3A)(b) of the EPA Act).

- 38 SJD submitted that these statutory requirements of s 3.43(5) and s 4.15(3A) of the EPA Act make the provisions of WDCP fundamentally unlike the provisions of WLEP.
- 39 In these circumstances, SJD submitted that the provisions of WDCP cannot define the meaning of the term “desired future character” used in the provisions of WLEP. The Commissioner did not err in law, therefore, in not having regard to the provisions of WDCP in determining what was the desired future character of the neighbourhood or area for the purpose of assessing whether the proposed development was consistent with the objectives of the height and FSR development standards and the objectives of the B2 zone under cl 4.6(4)(a)(ii) of WLEP.
- 40 Secondly, SJD submitted that it was not legally irrelevant for the Commissioner to consider the approved and constructed developments to the east of the site in determining the desired future character of the neighbourhood or area.
- 41 The approved and constructed developments to the east of the site could only be an irrelevant consideration if the EPA Act and WLEP expressly or by necessary implication required the consent authority not to consider such a matter: *Minister for Aboriginal Affairs v Peko Wallsend Ltd* (1986) 162 CLR 124 at 39-40. Neither the EPA Act nor WLEP do so. The term “desired future character” is not defined in WLEP. There is no prescription of matters to be considered or process to be followed to determine what is the desired future character of a neighbourhood or area. In these circumstances, it is a question of fact as to what is the desired future character having regard to all of the circumstances of the case. These circumstances include how the Council has implemented its controls and determined development applications for development that contravenes the controls.

- 42 As a matter of fact, the Council had granted consent to developments to the east of the site that exceeded the maximum height and FSR prescribed by the height and FSR development standards in WLEP. The approval and construction of these developments change the desired future character. SJD submitted that the Commissioner was correct in finding that the desired future character must take into account the form of the developments to which the Council had approved (at [69]-[71]).
- 43 Thirdly, SJD disputed the Council's contention in ground 5 that the Commissioner misconstrued the desired future character provisions of section D5.4.7 and section D5.4.9 by saying that "the principal goal" of section D5.4.7 and section D5.4.9 was "to retain and enhance the varied spatial definition of Knox Lane". First, the Commissioner's statement in [109] was made in the context of his discussion of the desired future character criteria for Knox Lane in section D5.4.9. The Commissioner was not there discussing the desired future character criteria for Cross Street in section D5.4.7. That is clear from the preceding paragraph, [108], the particular reference to Knox Lane in [109] and the words used which repeat the words of criterion (a) of the desired future character for Knox Lane in section D5.4.9. The Commissioner did not do, therefore, what the Council alleged that he did; the Commissioner never said that the principal goal of both sections D5.4.7 and D5.4.9 was to retain and enhance the varied spatial definition of Knox Lane.
- 44 Second, the Commissioner's statement in [109] was only one part of a much larger consideration of the desired future character provisions of WDCP. The Commissioner expressly referred to the site being located within the Double Bay Centre under Part D5 of WDCP (at [23]) and set out the relevant desired future character provisions of WDCP (at [99]-[105]). The Commissioner set out in full the strategies for the built form of the Double Bay Centre in section D5.3.2 (at [100]), the strategies for all streets in section D5.4.2 (at [101]), the desired future character provisions for Cross Street in section D5.4.7 (at [102]) and the desired future character provisions for Knox Lane in section D5.4.9 (at [105]). The Commissioner referred expressly to the sketch in section D5.4.7 showing three levels with no setback to Cross Street and a fourth level setback (at [103]). The Commissioner applied these built form strategies and desired



future character criteria to the proposed development of the site (at [106]-[110]). The Commissioner's consideration in [109] was, therefore, focused only on criterion (a) in section D5.4.9 for Knox Lane and was part of the Commissioner's larger consideration of the desired future character provisions.

- 45 I find that the Commissioner did not err in his construction of the term "desired future character" used in the provisions of WLEP in the three ways claimed by the Council.
- 46 First, the Commissioner was not legally obliged to construe the term "desired future character" in WLEP by reference to the desired future character provisions of WDCP. As SJD submitted, the provisions of a development control plan cannot be used to interpret the provisions of a local environmental plan, unless the provisions of the local environmental plan expressly refer to the provisions of the development control plan for that purpose. WLEP does not refer to WDCP as explicating the meaning of the term "desired future character" used in provisions of WLEP.
- 47 The fact that the principal purpose of a development control plan is to provide guidance on certain matters referred to in s 3.42(1) of the EPA Act does not make it permissible to construe the provisions of a local environmental plan by reference to a development control plan.
- 48 Of course, the maker of a development control plan will need to construe the provisions of a local environmental plan in order to provide guidance on the matters referred to in s 3.42(1)(a), (b) and (c). These matters include the aims of the local environmental plan and the objectives of land zones under the local environmental plan. As in WLEP, these aims and objectives may use terms, such as "desired future character", that are not defined in the local environmental plan. In order to provide guidance in the provisions of the development control plan so as to give effect to these aims or to achieve these objectives that use such undefined terms, the maker of the development control plan will need to construe the meaning of the various terms and apply that construction in the drafting of the provisions of the development control plan. But this process of providing guidance in this way does not define the meaning of the undefined terms in the local environmental plan; it merely

implements an interpretation of the meaning of the terms in the local environmental plan.

- 49 So understood, the Commissioner did not err on a question of law by not construing the “desired future character” in the objectives of the height and development standards in cl 4.3 and cl 4.4 and the objective of the B2 zone of WLEP by reference to the desired future character provisions of WDCP.
- 50 This is not to say that it was not permissible for the Commissioner to have had regard to the desired future character provisions in WDCP, only that he was not bound to do so. There can only be an error on a question of law by failing to address a matter that the Commissioner was bound to address. Failure to address a matter that was permissible to consider, but not mandatory to consider, is not an error in deciding a question of law: *Minister for Aboriginal Affairs v Peko Wallsend Ltd* at 39-40; *Randall v Willoughby City Council* (2005) 144 LGERA 119; [2015] NSWCA 205 at [15].
- 51 For these reasons, I reject grounds 1(a), 3(a), and 4(a).
- 52 Secondly, the Commissioner did not take into account an irrelevant consideration in construing and applying the term “desired future character” in WLEP. As has been noted, the term “desired future character” is not defined in WLEP. Its meaning is to be derived from the text and context of the provisions of WLEP in which it is used and the other provisions of WLEP that frame the urban character and built form of the neighbourhood or area. These provisions include the zoning of land (cl 2.2 and the Land Zoning Map), the zone objectives (cl 2.3), the Land Use Table (at the end of Pt 2) and the development standards in Pt 4, including height of buildings (cl 4.3 and the Height of Buildings Map) and FSR (cl 4.4 and the Floor Space Ratio Map). Together, these provisions of WLEP shape the desired future character of neighbourhoods and areas in Woollahra.
- 53 The issue separating the parties is whether these provisions of WLEP exhaustively define and fix the desired future character of these neighbourhoods and areas of Woollahra. The Council’s originalist construction gives the term “desired future character” the meaning that it was understood to have at the time WLEP was made. That meaning is derived from the provisions

of WLEP as made that define and fix the desired future character. Once so defined and fixed by WLEP, the desired future character does not change. The only means of changing the desired future character is to amend the provisions of WLEP that define and fix the desired future character. SJD accepted that the provisions of WLEP can shape the desired future character but so too can external factors such as the developments that are approved and constructed in the neighbourhood or area. These developments change the built form and urban character that exist at any particular time. The desired future character for a neighbourhood or area can evolve over time, responding not only to the provisions of WLEP but also to developments carried out in accordance with development consents granted under WLEP and the EPA Act.

- 54 I consider SJD's construction is correct. The first reason flows from the fact that WLEP has not defined the meaning of the term "desired future character" that is used in various provisions of WLEP. The drafter of WLEP has, therefore, not confined the meaning of the term "desired future character" by reference to the particular provisions in WLEP, including those concerning the zoning, the permitted and prohibited development, and the development standards, that shape the urban character and built form of neighbourhoods or areas in Woollahra. In circumstances where the term "desired future character" is undefined and unconfined in WLEP, the matters that may be taken into account in evaluating what is the desired future character of a particular neighbourhood or area at any point in time will similarly be unconfined, except insofar as there may be found in the subject matter, scope and purpose of WLEP some implied limitation on the matters that may legitimately be considered. There is no limitation found in the subject matter, scope and purpose of WLEP which would preclude consideration of developments that have been approved and constructed in the neighbourhood or area.
- 55 The second reason flows from the text and context of the provisions in which the term "desired future character" is used. The term is used in the objectives of the height and FSR development standards, and in the objective of the B2 zone, as a referent for an assessment of consistency or compatibility.

- 56 In the objective of the height development standard in cl 4.3(1)(a), the referent of “desired future character of the neighbourhood” is used to establish building heights. The building heights that the clause establishes and that are shown on the height of buildings map are consistent with the desired future character of the neighbourhoods in Woollahra. This means that the desired future character of the neighbourhood establishes the building heights for buildings on land in the neighbourhood and not the other way around, that the building heights establish the desired future character.
- 57 In the objective of the FSR development standard in cl 4.4(1)(b), the referent of “desired future character of the area” is used in order to ensure that buildings in particular zones, including the B2 zone, are compatible in terms of bulk and scale. The FSR for land in those zones that the clause establishes and that is shown on the Floor Space Ratio Map is compatible with the desired future character in terms of bulk and scale. This means that the desired future character establishes the FSR of buildings in these zones and not the other way around, that the FSR of the buildings in those zones establishes the desired future character.
- 58 In the seventh objective of the B2 zone, the referent of “desired future character of the neighbourhood” is used in order to ensure that development is of a height and scale that achieves the desired future character. This means that the desired future character of the neighbourhood establishes the height and scale of development in the neighbourhood and not the other way around, that the height and scale of development in the neighbourhood establishes the desired future character.
- 59 In each of these three objectives, therefore, the desired future character of the neighbourhood or area exists before and informs the establishment of the maximum height and FSR for buildings, and the height and scale of developments, in the neighbourhood or area. This necessarily means that the desired future character of the neighbourhood or area can be evaluated by reference to matters other than only the provisions of WLEP establishing the zoning, the permitted and prohibited development, and the development standards for permitted development in the zone. In this case, this means that

the desired future character of the neighbourhood or area can be evaluated by reference to matters other than the building height and FSR established by the height and FSR development standards in cl 4.3 and cl 4.4 and the zoning and Land Use Table for the B2 zone.

- 60 Thirdly, the application of cl 4.6 of WLEP to the height and FSR development standards supports a broader not narrower construction of the term “desired future character” used in those development standards. Clause 4.6 provides an appropriate degree of flexibility in applying certain development standards to particular development (cl 4.6(1)(a)). However, cl 4.6 does not apply to a development standard that is expressly excluded from the operation of the clause (cl 4.6(2)). Neither the height of buildings development standard in cl 4.3 nor the FSR development standard in cl 4.4 is expressly excluded from the operation of cl 4.6. This contemplates that development that contravenes the height and FSR development standards may be approved under cl 4.6.
- 61 One of the matters in respect of which the consent authority is required to be satisfied under cl 4.6(4)(a)(ii) in order to be able to grant development consent for development that contravenes a development standard is that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard. In this case, the consent authority needed to be satisfied that the proposed development is consistent with the objective in cl 4.3(1)(a) “to establish building heights that are consistent with the desired future character of the neighbourhood” and the objective in cl 4.4(1)(b) “to ensure that buildings are compatible with the desired future character of the area in terms of bulk and scale”.
- 62 Construction of the term “desired future character” that would confine its meaning to being defined and fixed by the development standards only would make forming the opinion of satisfaction under cl 4.4(4)(a)(ii) that the proposed development is consistent with these objectives difficult, if not impossible. On this construction, the height and FSR development standards define and fixed the desired future character. A development that contravenes the height and FSR development standards needs to demonstrate that it will be consistent with the desired future character. It cannot do this because, contravening the

development standards, it is inconsistent with the desired future character that is defined and fixed by those development standards.

63 This circularity is avoided if the term “desired future character” is construed as permitting regard to be had to matters other than only the development standard. On this construction, the desired future character of the neighbourhood or area can be shaped not only by the provisions of WLEP, including the development standards themselves, but also other factors, including approved development that contravenes the development standard.

64 For these reasons, I reject ground 1(b), 3(b) and 4(b).

65 I reject the third way the Council contended the Commissioner erred in ground 5. The Commissioner did not misconstrue section D5.4.7 or section D5.4.9. I agree with and adopt SJD’s submissions on this ground. The Council’s contention is based on a misreading of the Commissioner’s reasons. The Commissioner did not state that the principal goal of both sections D5.4.7 and D5.4.9 was “to retain and enhance the varied spatial definition of Knox Lane”. The Commissioner’s statement to that effect at [109] was only focusing on criterion (a) for the desired future character of Knox Lane, nothing more. The Commissioner considered elsewhere all of the desired future character provisions of WDCP, as SJD has identified. He well understood, and recorded his understanding in the judgment, that the controls described a desired future character for the site as involving four storeys fronting Cross Street, two storeys fronting Knox Lane, and four storeys in between of which only 50% could be developed.

66 I reject ground 5.

**The visual intrusion ground**

67 One of the objectives of the height development standard in cl 4.3(1)(d) is “to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion.” Under cl 4.6(4)(a)(ii), the Commissioner was required to evaluate whether the proposed development will be in the public interest because it is consistent with this and the other objectives of the height standard. The Commissioner identified this need to evaluate whether the proposed development is

consistent with this objective of minimising the proposed development's impact on adjoining or nearby properties from visual intrusion (see at [64(e)], [65(d)] and [76]-[88]). There was no issue between the parties about the proposed development's impact on adjoining or nearby properties from disruption of views, loss of privacy or overshadowing. The only issue was visual intrusion.

- 68 The Commissioner addressed this question of whether the objective of the height development standard to minimise visual intrusion was satisfied (at [76]). The only visual intrusion alleged was the intrusion of the proposed development into the southern outlook of the existing apartments of the northern side of Cross Street. The Commissioner described this visual intrusion as follows:

"The southern outlook of apartments on the northern side of Cross Street will see, to varying degrees, an apartment building including two levels of apartments above the height control, rather than the roof of the proposed building and an outlook across Double Bay Centre and to the amphitheatre of Edgecliff. The change in outlook will clearly vary depending on the level of the apartment. Some will see above the proposed building and some will not." (at [76]).

- 69 The Commissioner considered that this amounted to "visual intrusion" for the purposes of the objective in cl 4.3(1)(d). The Commissioner found at [81]:

"The building does intrude into the outlook of some apartments on the northern side of Cross Street. Part of a pleasant outlook will be replaced by closer building, albeit of excellent design. That amounts to a visual intrusion. The question then is whether the development minimises the visual intrusion, because even a complying building will be a visual intrusion to some apartments in Cross Street."

- 70 The Commissioner assessed the degree of visual intrusion, however, to be minor and to have been minimised. The Commissioner found at [86] and [87]:

"In my opinion, however, the visual intrusion of the development is minor and has been minimised. The upper levels of the proposed building are set back, increasing their separation from the apartments across Cross Street. The overall height is consistent with an appropriate urban design for the site.

It is the 'impact' of visual intrusion, which is to be minimised, which also requires an assessment of the context of what is enjoyed by the affected viewer. The outlook to the south cannot be considered in isolation of its role in the amenity of those apartments. Each of the affected apartments has a view to the north, including Sydney Harbour, and almost all have their living areas to the north. For the most part, it is second bedrooms and studies which have the outlook to the south. The affected outlook does not add greatly to the amenity of the affected apartments."

- 71 The Commissioner concluded that he was satisfied that the proposed development was consistent with the objectives in cl 4.3(1)(d) (at [88]).
- 72 The Council submitted that the Commissioner misdirected himself, and asked the wrong question, by assessing whether the impact of the visual intrusion was minimised by reference to the primacy of the views to the north enjoyed by the affected apartments. Whether the impact of the visual intrusion created by the proposed development has been minimised cannot be assessed by reference to views and outlook enjoyed by the affected apartments in a completely different direction.
- 73 The Council submitted that this was an irrelevant consideration. Alternatively, the Council submitted that the Commissioner's finding that the visual intrusion was minimised by reason of the affected apartments still having views and outlook in the different direction was manifestly unreasonable.
- 74 SJD submitted that the Commissioner's finding that the proposed development minimised the visual intrusion was a factual one, involving no error on any question of law. It was reasonably open to the Commissioner to have regard to "the context of what is enjoyed by the affected viewer" (at [87]), being all of the views and outlook enjoyed by the affected apartments, in order to assess the degree of visual intrusion of the proposed development and whether any visual intrusion had been minimised.
- 75 The Commissioner found that because the proposed development would only intrude on one outlook of the apartment, the outlook to the south across Double Bay south to the amphitheatre of Edgecliff (at [76]), which intrusion would be minor (at [86]), and the apartments' views and outlook to the north, including Sydney Harbour, would be unaffected (at [87]), the visual intrusion would be minimised (at [86], [87]). That was a factual finding open to the Commissioner.
- 76 SJD submitted that, in these circumstances, the Commissioner did not have regard to an irrelevant consideration or make a manifestly unreasonable decision in finding that the visual intrusion of the proposed development on the affected apartments has been minimised because the apartments will still enjoy views and outlook to the north.



- 77 I find the Council has not established that the Commissioner took into account an irrelevant consideration or made a manifestly unreasonable decision in finding that the proposed development is consistent with the objective in cl 4.3(1)(d) because the impacts of the proposed development on adjoining or nearby properties from visual intrusion will be minimised. I agree with SJD's submission that it was factually open to the Commissioner to assess the impact of the proposed development on the affected apartments from visual intrusion in the context of all of the views and outlook enjoyed by the affected apartments.
- 78 In terms, what is to be minimised under the objective in cl 4.3(1)(d) are "the impacts of new development on adjoining or nearby apartments", not the disruption of views, loss of privacy, overshadowing or visual intrusion. True, the impacts of the new development on the adjoining or nearby apartments are to be from the disruption of views, loss of privacy, overshadowing or visual intrusion, but it is the collective impacts of the new development on adjoining or nearby properties from these various sources of impact that is to be minimised.
- 79 This focus of the objective frames the evaluative task required by cl 4.6(4)(a)(ii). Is this development consistent with this objective of minimising the impacts of new development on adjoining or nearby properties from these sources of impact?
- 80 As the Commissioner recognised, any assessment of the impacts of new development on adjoining or nearby properties requires identification of a baseline of the amenity currently enjoyed by the properties, which level of amenity would be impacted on by the new development. In terms of views and outlook, this requires identification of the views and outlook currently enjoyed by the properties.
- 81 The next step in the assessment is to identify the nature and extent of disruption of views and visual intrusion that the new development will cause on the current level of amenity, including existing views and outlook, of the properties. If a new development does not disrupt any views and only visually intrudes in one outlook in a minor way, as the Commissioner found was the nature and extent of impact in this case, it is reasonably open to find that the

impacts of the new development on adjoining or nearby properties have been minimised. Such assessment does not involve taking into account an irrelevant consideration or making a manifestly unreasonable decision.

82 I reject ground 2.

**The inadequate reasons ground**

83 Under cl 4.6(4)(a)(i), the Commissioner was required to determine whether he was satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3). One of the matters in cl 4.6(3)(a) is "that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case."

84 The Commissioner expressed his conclusion in [96] that he was satisfied that the applicant's written request had adequately addressed the matters in cl 4.6(3):

"In summary therefore, having regard to the matters in issue between the parties I am satisfied that the clause 4.6 objection adequately address the matters in cl 4.6(3) by demonstrating to my satisfaction that:

(a) the controls have been abandoned and therefore it is unreasonable or unnecessary to require compliance (cl 4.6(3)(a));

(b) the proposal meets the objectives of the controls and therefore it is unreasonable or unnecessary to require compliance (cl 4.6(3)(a));

(c) there are sufficient environmental planning grounds to justify contravening the standards."

85 The Council contended in ground 6 that the Commissioner failed to give reasons for this conclusion. The Council noted that the Commissioner had earlier found at [32] that the states of satisfaction that compliance is "unreasonable or unnecessary" and that there are "sufficient environmental planning grounds" to justify the contravention must be reached only by reference to the cl 4.6 request. The Council submitted, however, that the Commissioner did not explain how he had reached the requisite states of satisfaction only by reference to the cl 4.6 requests.

86 The Council accepted that the Commissioner may have referred in his reasons to evidence relevant to aspects of the matters in cl 4.6(3), but the Council submitted that nowhere does the Commissioner explain how he formed the requisite states of satisfaction about the matters in cl 4.6(3) by reference only

to the cl 4.6 requests. That omission founds the contention of failure to give reasons.

- 87 SJD contested that the Commissioner failed to give reasons. First, SJD submitted that the adequacy of the reasons given on a particular point needs to be viewed in the context of the issue being decided. In this case, one of the principal issues was whether the applicant's cl 4.6 request should be upheld. This involved the Commissioner determining whether he was satisfied of the matters in cl 4.6(4)(a). The Commissioner devoted much of his judgment to explaining why he was satisfied of the matters in cl 4.6(4)(a). The Commissioner's conclusion in [96] was the end of a process of reasoning, and not his only reason, for explaining why the Commissioner was satisfied of the matters in cl 4.6(4)(a).
- 88 Secondly, SJD submitted that the Commissioner did refer in his reasons to the cl 4.6 request. SJD noted that the Commissioner had observed at [32] that the question of whether he was satisfied that the applicant's written request had adequately addressed the matters required to be demonstrated by cl 4.6(3) was to be answered by reference to the cl 4.6 request. The Commissioner referred in [66] to what had been said by Mr Lidis in the cl 4.6 objections, as well as in his evidence, that the approval of developments to the east of the site that contravened the height and FSR development standards demonstrated that the development standards had been abandoned. As the Commissioner noted in [96(a)], if development standards have been abandoned, it is unreasonable or unnecessary to require compliance with the development standard. The Commissioner addressed this method of demonstrating that compliance with the development standards is unreasonable or unnecessary in [91]-[95]. This provides the reasoning for the Commissioner's conclusion in [96(a)].
- 89 SJD submitted that the Commissioner's conclusion in [96(b)], that the proposed development meets the objectives of the development standards, notwithstanding contravention of the development standards, was supported by the Commissioner's analysis of the proposed development's consistency with the objectives of the development standards, particularly that the proposed

development will be consistent or compatible with the desired future character of the neighbourhood or area. This analysis included reference to the cl 4.6 request. In [71], the Commissioner stated that he agreed with Mr Lidis, “as stated in the cl 4.6 objections”, that the approved developments to the east of the site established the desired future character of this part of Cross Street.

90 Thirdly, SJD submitted that consideration of the cl 4.6 request does not require reproducing “slabs” of the request or summarising the contents of the request. The requirement in cl 4.6(3) is that the consent authority “has considered a written request from the applicant that seeks to justify the contravention of the development standard”. The reasons given by the Commissioner needed only to show that such consideration had occurred and to explain why the Commissioner was satisfied that the written request has adequately addressed the matters required to be demonstrated by cl 4.6(3). This is a requirement as to substance not form. There is no requirement for the reasons to refer expressly to the form of the written request provided the reasons address the substance of the written request and explain why that substance adequately addresses the matters required to be demonstrated by cl 4.6(3). The Commissioner’s reasons were sufficient to do this.

91 I find the Council has not established that the Commissioner failed to give reasons for his conclusion that he was satisfied that the applicant’s written request had adequately addressed the matters required to be demonstrated by cl 4.6(3).

92 First, it is not sufficient for the Council to show that the Commissioner’s reasons could beneficially have been more detailed in explaining the Commissioner’s findings of fact and reasons for making those findings of fact. The inadequacy of reasons has to be sufficient to constitute an error of law: see *Soulemezis v Dudley (Holdings) Pty Ltd* (1987) 10 NSWLR 247 at 282, 274. As Basten J observed in *Resource Pacific Pty Ltd v Wilkinson* [2013] NSWCA 33 at [48]:

“When an appellate court is invited to find that a trial judge provided inadequate reasons, it is important to understand the nature of the function being invoked. It is not the function of an appellate court to set standards as to the optimal, or even desirable, level of detail required to be revealed in reasons for judgment. Rather it is to determine whether the reasons provided

have reached a *minimum* acceptable level to constitute a proper exercise of judicial power.”

- 93 Similarly, Bell P in *NSW Land and Housing Corporation v Orr* (2019) 100 NSWLR 578; [2019] NSWCA 231 at [66] held that the function of an appellate court in reviewing the adequacy of reasons given by the primary judge “is to determine not the optimal level of detail required in reasons for a decision but rather the minimum acceptable standard” and “the standard is not one of perfection”.
- 94 Secondly, the content of the obligation to give adequate reasons in part turns on “the function performed by the tribunal and the nature of any appeal which is created in respect of its decisions”: *Alexandria Landfill Pty Ltd v Transport for NSW* [2020] NSWCA 165 at [404].
- 95 The function being performed by the Commissioner involved merits review of the Council’s decision to refuse consent to the proposed development. The Commissioner on the appeal was re-exercising the function to determine the development application for the proposed development. The exercise of this function involved deciding the issue of whether the matters in cl 4.6(4) were satisfied so as to be able to grant development consent. In discharging this function the Commissioner was required to conduct the proceedings with as “little formality and technicality” as possible (s 38(1) of the Court Act) and was not bound by the rules of evidence but could inform himself on any matter and in such manner as he thought fit (s 38(2) of the Court Act). The merits review function typically involves a choice between factors involving evaluative judgments. In these circumstances, it may not be necessary or possible to give expansive reasons, if the various competing factors have been identified and addressed: *Alexandria Landfill Pty Ltd v Transport for NSW* at [49].
- 96 Where the right of appeal is limited to questions of law, as is the case with an appeal under s 56A of the Court Act, findings of fact can be treated less elaborately than an issue involving a question of law or mixed fact and law: *Soulemezis v Dudley (Holdings) Pty Ltd* at 281. It ordinarily will be sufficient if the reasons apprise the parties of the broad outline and constituent facts of the reasoning on which the decision-maker has acted: *Soulemezis v Dudley (Holdings) Pty Ltd* at 273. It may be sufficient if the judgment reveals the

ground for, although not the detailed reasoning in support of the findings of fact: *Soulemezis v Dudley (Holdings) Pty Ltd* at 282 and see *Alexandria Landfill Pty Ltd v Transport for NSW* at [320].

- 97 Where an appeal is limited to questions of law, a complaint that a judgment fails to engage with the evidence and submissions will lie outside the scope of an appeal confined to questions of law: *Alexandria Landfill Pty Ltd v Transport for NSW* at [404], [411].
- 98 Thirdly, attention needs to be given to the level of generality at which issues need to be addressed. The primary obligation to give reasons is to address the principal contested issues: *Segal v Waverley Council* (2005) 64 NSWLR 177; [2005] NSWCA 310 at [99(a) and (b)]. It is unnecessary to address in the reasons the arguments in favour of or against the resolution of a principal contested issue: at [99(b)]. The principal contested issues may be expressed at a higher level of generality or broken down into sub-issues or sub-sub-issues. A pragmatic and functional approach needs to be adopted in determining the level to which reasons need to be addressed. As Basten JA observed in *Resource Pacific Pty Ltd v Wilkinson* at [46], “commonsense says that at some point the exercise of division must cease...because the administration of justice requires a pragmatic and functional approach to the obligations imposed on trial judges.” Similarly in *Alexandria Landfill Pty Ltd v Transport for NSW*, Macfarlan JA noted at [322] that the principal issues in that case were “expressed at a high level of generality but below them rested issues and sub-issues and even sub-sub-issues, not all of which the LEC could reasonably be expected to address expressly.”
- 99 Fourthly, the failure expressly to refer to a particular matter in a judgment is not decisive that the matter was not considered: *Whisprun Pty Ltd v Dickson* (2003) 77 ALJR 1598; [2003] HCA 48 at [62]. In this case, for example, a failure expressly to refer to the cl 4.6 written request in the reasons, other than in a few paragraphs of the reasons, does not establish that the Commissioner did not consider and base his finding of satisfaction under cl 4.6(4)(a)(i) on the written request. It is also sufficient in certain circumstances for reasons to be implicit in the judgment rather than be explicit: *Alexandria Landfill Pty Ltd v*

*Transport for NSW* at [323]. In *Soulemezis v Dudley (Holdings) Pty Ltd*, McHugh JA found that it was sufficient that the judge's judgment "reveals the ground for, although not the detailed reasoning in support of, his finding of fact" (at [282]).

- 100 Fifthly, the reason given on a particular point in a particular passage of the judgment needs to be read in context. As Bell P observed in *NSW Land and Housing Corporation v Orr* at [77]:

"These principles include the following:

- (i) Decision-makers commonly express their reasons sequentially; but that does not mean that they decide each factual issue in isolation from the others. Ordinarily they review the whole of the evidence, and consider all issues of fact, before they write anything. Expression of conclusions in a certain sequence does not indicate a failure to consider the evidence as a whole": *Re Minister for Immigration and Multicultural Affairs, Re; Ex parte Applicant S20/2002; Appellant S106/2002 v Minister for Immigration and Multicultural Affairs* [2003] HCA 30; 77 ALJR 1165 per Gleeson CJ at [14] (Ex parte Applicant);
- (ii) the court should not read passages from the reasons for decision in isolation from others to which they may be related: *Re Maria Politis v Commissioner of Taxation* [1988] FCA 739 at [14]; 20 ATR 108 at 111;
- (iii) the reasons must be read fairly and as a whole: *Ex parte Applicant* at [147] per Kirby J; *Wu Shan Liang* at 291; *Bisley* at 251;
- (iv) the reasons recorded ought not to be inspected with a fine tooth-comb attuned to identifying error: *Collector of Customs v Pozzolanic Enterprises Pty Ltd* (1993) 43 FCR 280 at 287; [1993] FCA 456 (Pozzolanic) at 287; *Wu Shan Liang* at 272, 291;
- (v) there should be a degree of tolerance for looseness in the language of the tribunal, unhappy phrasing of the tribunal's thoughts or verbal slips: *Pozzolanic* at 287, *Wu Shu Liang* at 272 and 291."

- 101 Judged by these standards, the Commissioner's judgment reached the minimum acceptable standard required in the present context.
- 102 At the outset, it is important to identify the principal contested issues that the Commissioner was obliged to address. The Council's statement of facts and contentions identified, as contentions that the development application be refused, the proposed development's contravention of the height development standard (contention 1) and the FSR development standard (contention 2). The particulars to those contentions included that the applicant's written request had not adequately addressed the matters required to be demonstrated by cl 4.6(3) of WLEP.

- 103 The Commissioner upfront in the judgment identified in [3] the contentions, including that “The Council says that the appeal should be dismissed because the objections made pursuant to cl 4.6 of WLEP do not adequately address the non-compliances...”. The Commissioner addressed these contentions from [29] onwards. He quoted cl 4.6(3) and (4) in full (at [30]). He identified the need, in order for there to be power to grant consent to a development that contravenes a development standard, for the Court to be satisfied that the written request has adequately addressed the matters required to be demonstrated by cl 4.6(3) (see at [31]). He noted that this state of satisfaction “must be reached only by reference to the cl 4.6 request” (at [32]).
- 104 The first matter in cl 4.6(3)(a) that the written request must adequately address is that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. The Commissioner identified the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary (at [35]). The Commissioner noted that the applicant relied on two of these ways: first, that the objectives of the development standard are achieved notwithstanding noncompliance with the standard and, secondly, that the development standard has been abandoned by the Council (at [36]).
- 105 The Commissioner identified the objectives of each of the development standards that the proposed development contravened (at [37], [38]). These objectives involved assessing the consistency or compatibility of the proposed development with the desired future character of the neighbourhood or area. The Commissioner later identified (in [64]):

“The elements of cl 4.6 in issue between the experts and the parties” as including:

- (a) whether the controls have been abandoned and therefore it is unreasonable or unnecessary to require compliance (cl 4.6(3)(a));
  - (b) whether the proposal meets the objectives of the controls and therefore it is unreasonable or unnecessary to require compliance (cl 4.6(3)(a));
  - (c) whether or not the proposal is consistent and compatible with the desired future character of the area consistently with the objective of the controls and therefore in the public interest (cl 4.6(4)(a)(ii));
- ...



- 106 The elements of cl 4.6 in issue in (a) and (b) clearly relate to the question under cl 4.6(4)(a)(i) of whether the applicant's written request has adequately addressed the matter in cl 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Element (c) clearly relates to the question under cl 4.6(4)(a)(ii) of whether the proposed development will be in the public interest because it is consistent with the objectives of the height and FSR development standards that the proposed development be consistent or compatible with the desired future character of the neighbourhood or area. However, as one of the ways in which the applicant contended that compliance with the height and FSR development standards would be unreasonable or unnecessary was that the proposed development achieved these objectives notwithstanding noncompliance with the development standards, the question of whether the proposed development was consistent or compatible with the desired future character of the neighbourhood or area was also relevant to addressing the question under cl 4.6(4)(a)(i) of whether the applicant's written request has adequately addressed the matter in cl 4.6(3)(a).
- 107 Perhaps recognising this overlap between the matters about which the Commissioner was required to be satisfied in cl 4.6(4)(a)(i) and (ii), the Commissioner distilled the issues he needed to determine to be fourfold:
- "These issues can be distilled as:
- (a) have the controls been abandoned?
- (b) what is the desired future character?
- (c) is the proposal consistent/compatible with that desired future character?
- (d) has any visual intrusion been minimised?" (at [65]).
- 108 The Commissioner stated he would deal with (b), (c) and (d) first, then (a) (at [65]).
- 109 The consequence was that the Commissioner's consideration of distilled issues (b) and (c) served not only to address and give reasons for his addressing the matter in cl 4.6(4)(a)(ii) but also the matter in cl 4.6(4)(a)(i) of whether the applicant's written request has adequately addressed the matter required to be demonstrated in cl 4.6(3)(a) of whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

- 110 That this was the approach adopted by the Commissioner is illustrated by particular references in his discussion of desired future character to the cl 4.6 request (eg [66] and [71]) and to the applicant's argument in the cl 4.6 request that the development standards have been abandoned, so that compliance with the development standards would be unreasonable or unnecessary (eg at [66], [67]).
- 111 The Commissioner next addressed distilled issue (d) of whether any visual intrusion had been minimised. One of the objectives of the height development standard in cl 4.3(1)(d) was to minimise the impacts of new development on adjoining or nearby properties from, amongst other impacts, visual intrusion. Again, whilst this issue related to the question in cl 4.6(4)(a)(ii) on whether the proposed development will be in the public interest because it is consistent with the objectives of the height development standard, it was also relevant to the matter in cl 4.6(4)(a)(i) of whether the applicant's written request has adequately addressed the matter required to be demonstrated by cl 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. The applicant in its cl 4.6 request had argued that compliance with the height development standard was unreasonable or unnecessary because the proposed development achieved the objectives of the height development standard, including objective (d), notwithstanding that it contravened the development standard.
- 112 The Commissioner's consideration of the issue of whether the objective of the height control to minimise visual intrusion was satisfied, therefore, served both of these purposes (in [76]-[88]).
- 113 This dual consideration of the matters in cl 4.6(4)(a)(i) and (ii) led the Commissioner to conclude at [91] that "the development meets the objectives of the standards notwithstanding the breach of the controls". This was the first way that the applicant's cl 4.6 request had sought to justify that compliance with the development standards was unreasonable or unnecessary in the circumstances of the case (see at [35(a)] and [36]). As this was sufficient to demonstrate that compliance with the development standard was unreasonable or unnecessary, the Commissioner noted that "it is not strictly

necessary to decide whether or not the controls have been abandoned” (at [91]). This was the second way that the applicant’s cl 4.6 request had sought to justify that compliance with the development standards was unreasonable or unnecessary (see [35(d)] and [36]). Nevertheless, for completeness, the Commissioner went on to determine that way (at [92]-[95]).

- 114 The Commissioner’s analysis of the issue of whether the applicant’s written request had adequately addressed the matters required to be demonstrated by cl 4.6(3) was summarised in [96]. The Commissioner expressly stated that he was:

“satisfied that the clause 4.6 objection adequately address[ed] the matters in cl 4.6(3) by demonstrating to my satisfaction that:

(a) the controls have been abandoned and therefore it is unreasonable or unnecessary to require compliance (cl 4.6(3)(a));

(b) the proposal meets the objectives of the controls and therefore it is unreasonable or unnecessary to require compliance (cl 4.6(3)(a));

(c) there are sufficient environmental planning grounds to justify contravening the standards.”

- 115 A careful analysis of the Commissioner’s judgment, therefore, reveals, first, that the Commissioner correctly identified the task he was required to undertake, that is, he asked himself the right question, of deciding whether he was satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by cl 4.6(3); secondly, particularly addressed the matter in cl 4.6(3)(a) of whether compliance with the development standards is unreasonable or unnecessary in the circumstances of the case; thirdly, referred to the applicant’s written request in his addressing of the matters in cl 4.6(3), both expressly by referring to the request on a number of occasions and impliedly by referring to the content of the request that sought to justify the contravention of the development standards; and fourthly, stated his conclusion that he was satisfied that the cl 4.6 request adequately addressed the matters in cl 4.6(3).

- 116 In these circumstances, the Commissioner’s judgment, read fairly and as a whole, is adequate to reveal the grounds for, and provide sufficient reasoning in support of, his factual finding that the applicant’s written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

The reasons have reached a minimum acceptable level to constitute a proper exercise of the function being exercised by the Commissioner of determining the applicant's development application for the proposed development. Having regard to the function being exercised by the Commissioner, and the nature of the appeal available from the Commissioner's decision being limited to questions of law, the Commissioner was not required to be more detailed in explaining his reasons for this finding of fact. The Commissioner did address the issue at the appropriate level of generality. He did not need to descend to the sub-issues or the sub-sub-issues in his reasons. The fact that he did not recite the content of the cl 4.6 request and address every argument in it in his reasons does not establish that the Commissioner did not consider all of the content and arguments in the cl 4.6 request. The Commissioner also was not obliged to record in his reasons his detailed consideration of that content and arguments in the cl 4.6 request. It was sufficient for the Commissioner to consider the cl 4.6 request as a whole and explain in substance why he was satisfied that the request adequately addressed the matters required to be demonstrated by cl 4.6(3).

117 I reject ground 6.

**The commercial viability ground**

118 The Council had raised as a reason for refusal of the proposed development that it involves the removal of existing commercial/office uses from the site (approximately 1100m<sup>2</sup>) and provides inadequate replacement of commercial/office space (572m<sup>2</sup>) (contention 6 in the statement of facts and contentions). The Council contended that this loss of commercial space of approximately 500m<sup>2</sup> was inconsistent with controls C1 and C3 in section D5.6.2 of WDCP, which provide:

"C1 Design for a mix of uses within buildings

C3 Design for retail, commercial and community uses at ground and first floor levels. Consider design solutions that promote retail, commercial use at first floor level such as galleried arcades."

119 The Council contended that control C3 relates to objectives O3 and O4 which provide:

“O3 Encourage the continuation of retail and commercial uses at street level in the Centre.

O4 Encourage first floor retail and commercial use.”

120 The Commissioner found that “the reduced commercial space on the site is not a reason for refusal” (at [53]) and that “the absence of commercial uses proposed at the first floor is not a reason for refusal” (at [61]). The Commissioner found that the loss of commercial space on the site would not affect the viability of the Double Bay Centre. The potential loss of employees and office space is so small as not to have a measurable impact on the viability of the Double Bay Centre (at [54]). As far as retail uses are concerned, the Commissioner found that the retail components on the site will be enhanced by the provision of higher quality retail space with the capacity to attract a range of retail uses, including food, services and boutiques (at [55]).

121 In ground 7 of the appeal, the Council contended that these factual findings of the Commissioner miscarried by reason of the Commissioner misconstruing control C3. The Council contended that the Commissioner misconstrued the control in three ways.

122 First, the Council submitted that the Commissioner construed the control as having the objective to “encourage” first floor retail and commercial uses, when the control required “design for” first floor retail and commercial uses. The Commissioner said in [56]:

“The DCP does not command first floor commercial uses, but simply, without incentive, encourages that use as an objective to maintain the viability of the Centre and its mix of uses. It is not necessary for every development to provide the whole mix of development. The proposal provides a mix of retail and residential uses, it is a mix of uses. There will be other opportunities within the Centre to develop mixed uses, including more commercial space, particularly as suggested by Mr Duane, on or closer to New South Head Road.”

123 The Council noted that the Commissioner’s statement that the WDCP encourages first floor retail and commercial uses without incentive referred to his earlier statement in [52] that:

“There is no provision within WLEP or the DCP which provides any incentive which matches the ‘encouragement’ in the DCP. That is, there is no bonus provision which one might find to support the encouragement for first floor commercial development.”

- 124 The Commissioner later observed that designing for retail and commercial uses on the first floor level does not necessarily require that they be used for that purpose. The Commissioner stated in [59]:

“Two other observations should be made. First Control C3 of D5.6.2 says that a proponent should ‘design’ for retail, commercial and community uses at ground and first floor levels, even if they are not actually required to be used for that purpose. Retail and commercial uses in particular require a higher floor to ceiling height than a residential use. That means that a proponent could have designed a first floor to accommodate such use which does not in fact eventuate and there will then be a residential use which occupies unnecessary height within a development. Further, in the context of this application, as otherwise evident in this judgment, the proposed building continues the ‘line’ of each storey of the development to the east, and to design for a higher floor to ceiling height on the first floor would mean that the ‘lines’ would not follow and there would be a discordant urban design outcome.”

- 125 The Council submitted that the Commissioner’s focus on the controls as merely encouraging first floor retail and commercial uses misconstrued control C3, which requires the proposed development to design for first floor retail and commercial uses. The requirement to “design for” first floor retail and commercial uses is a requirement to use those areas for those purposes. The Commissioner erred in finding otherwise.
- 126 Secondly, the Council submitted that the Commissioner misconstrued objectives O3 and O4. The encouragement in those objectives had nothing to do with any incentive or bonus provision which might support the encouragement of first floor retail and commercial uses. The Council submitted that section D5.6.2 “encourages” first floor retail and commercial uses by providing that such uses are to be incorporated into the design of any proposed development in the Double Bay Centre.
- 127 Read in this way, the Council submitted that the Commissioner misconstrued control C3 by finding that it did not prescribe the use of the ground and first floor levels for retail and commercial uses.
- 128 Thirdly, the Council contended that the Commissioner had put aside the standards set by control C3 and applied his own standard as to what was reasonable in terms of the design of the first floor of the proposed development: *Botany Bay City Council v Premier Customs Services* (2009) 172 LGERA 338; [2009] NSWCA 226 at [26].

- 129 SJD contested that the Commissioner misconstrued control C3. First, control C3 is a manifestation of objectives O3 and O4. If those objectives are to encourage (a non-prescriptive concept) retail and commercial uses at ground and first floor levels, control C3, which gives effect to those objectives, should be read as also encouraging those uses on those levels. Hence, the requirement to “design for” those uses on those levels should be read as an encouragement, not a prescription or command, to achieve those uses at those levels. The Commissioner therefore did not err in so reading control C3.
- 130 Secondly, SJD submitted that the notion of “design for” first floor retail and commercial uses does not itself require the result of such uses of the first floor level. The Commissioner was correct in finding that the notion of “design for” does not “command” first floor retail and commercial uses (at [56]).
- 131 Thirdly, SJD submitted that this construction is supported by reading control C3 and objectives O3 and O4 in context. One of the other controls is C1, requiring “design for a mix of uses within buildings”. As the Commissioner correctly observed, controls C1 and C3 and objectives O3 and O4 “are within a broader context of the objectives for development in the Double Bay Centre which includes at D5.1.3: ‘O3 To encourage a diverse mix of uses in the Double Bay Centre and maintain retail uses at ground level.’” (at [49]). SJD noted that this objective supported the notion of encouragement cited by the Commissioner.
- 132 Fourthly, SJD noted that the Commissioner’s statements in his reasons about control C3 need to be read in the context of the principal issue that the Commissioner was addressing. The Commissioner’s contention 6, labelled “use”, particularised that “the loss of approximately 500m2 of commercial space would have a detrimental impact on the commercial viability of the Centre...”. The Commissioner was addressing this issue when he made his observations about control C3. The Commissioner had first made a finding of fact that the loss of the commercial space would not impact on the commercial viability of the Double Bay Centre (at [54]). The Commissioner’s subsequent observations that WDCP does not command, but only encourages, first floor commercial uses (at [56] and [59]) need to be read in this context.

- 133 In any event, SJD submitted that even if the Commissioner misconstrued control C3, he nevertheless addressed it as a focal point of his consideration and he was permitted to make a finding that departed from the control: *Botany Bay City Council v Premier Customs Services* at [4].
- 134 I find that the Council has not established that the Commissioner misconstrued control C3. I agree with the four reasons given by SJD. I add two further reasons.
- 135 First, the control's requirement is to "design for" retail and commercial uses at ground and first floor levels. A requirement to "design for" is distinct from a requirement to "construct" or a requirement to "ensure use" of ground and first floor levels for retail and commercial uses. That "design" is distinct from "construct" is shown by objective O9, which is to "ensure that buildings are designed and constructed to minimise noise and other impacts on building occupants in adjoining properties". Control C3 does not have this dual requirement of ensuring both design and construct, but only the sole requirement of design.
- 136 "Design" is also distinct from actual use. Designing spaces on the ground and first floor levels that can be used for retail and commercial uses does not ensure that such spaces will actually be used for those uses. The market may have other ideas. The spaces may remain vacant. Hence, a requirement to design for retail and commercial uses on those levels falls short of requiring the carrying out of retail and commercial uses on those levels.
- 137 Secondly, control C3 has two sentences. The first is to "design for" retail and commercial uses at ground and first floor levels. The second is to "consider design solutions" that promote retail and commercial uses at first floor level and gives an example of the design solution of galleried arcades. Both sentences need to be read in order to understand what is required by control C3. The second sentence's requirement to "consider design solutions that promote" is non-prescriptive as to result. The notions of "consider" and "promote" are distinct from "ensure"; neither notions of "consider" or "promote" require the result of retail or commercial uses at first floor levels. The requirement in the first sentence to "design for" needs to be read in this context. So read, it too



requires consideration of, but not ensuring the result of, retail and commercial uses at first floor level.

138 For the reasons given by SJD and these two further reasons, the Commissioner did not misconstrue control C5.

139 I reject ground 7.

#### **Conclusion and orders**

140 The Council has not established any of the grounds of appeal against the Commissioner's decision and orders. The appeal should be dismissed. Costs should follow the event.

141 The Court orders:

- (1) The appeal is dismissed.
- (2) The appellant is to pay the respondent's costs of the appeal.

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#### **Amendments**

10 September 2020 - Correction to typographical error at [99]

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Woollahra Municipal Council  
Environmental Planning Committee Agenda

6 October 2020

**Item No:** R3 Recommendation to Council  
**Subject:** **PROPOSED AMENDMENTS TO WOOLLAHRA LEP 2014 TO ADDRESS THE LAND AND ENVIRONMENT COURT'S INTERPRETATION OF DESIRED FUTURE CHARACTER**  
**Author:** Jacquelyne Della Bosca, Executive Planner  
**Approvers:** Anne White, Manager - Strategic Planning  
Nick Economou, Acting Director Planning & Development  
**File No:** 20/168814  
**Reason for Report:** To obtain Council's approval to prepare a planning proposal to amend Woollahra Local Environmental Plan 2014 to define and clarify references to desired future character.  
To obtain Council's approval for the planning proposal to be referred to the Woollahra Local Planning Panel for advice.

**Recommendation:**

- A. THAT a planning proposal be prepared to amend references to desired future character in Woollahra LEP 2014 so that the meaning and interpretation of desired future character is defined and cross referenced.
- B. THAT the planning proposal be referred to the Woollahra Local Planning Panel for advice.
- C. THAT the advice of the Woollahra Local Planning Panel be reported to the Environmental Planning Committee.

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**1. Summary**

A recent decision in the NSW Land and Environment Court approved a six storey mixed-use development at 28-34 Cross St, Double Bay. This decision has potential implications for the interpretation of the term desired future character as used in Woollahra Local Environmental Plan 2014 (Woollahra LEP 2014) and Woollahra Development Control Plan 2015 (Woollahra DCP 2015).

In this case, the Applicant successfully argued that rather than the provisions in Woollahra LEP 2014 and Woollahra DCP 2015, the recent approvals for six storey development on adjoining land set the desired future character. In agreeing with the Applicant, Acting Commissioner Clay stated:

*".....that the approvals and buildings under construction to the east of the Site establish the desired future character of this part of Cross Street."*

(see **Annexure 1:** SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112 – para 71).

Council unsuccessfully appealed this decision (s56A Appeal). In considering this appeal, Chief Justice Preston found that the Commissioner did not err in his interpretation of desired future character as the term is not defined in Woollahra LEP 2014:

*".....it was open to the Commissioner to determine for himself what that desired future character might be, having regard to all of the circumstances of the case".*

Woollahra Municipal Council  
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6 October 2020

(see **Annexure 2**: Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115 – para 92).

This report:

- explains Council’s place based planning controls and the importance of desired future character provisions in achieving appropriate development outcomes,
- summarises key arguments and findings in the Court decisions, and
- suggests that Council staff prepare a planning proposal to amend Woollahra LEP 2014 to address and clarify references to desired future character.

## **2. Council’s place based planning controls**

The NSW Government’s *Local Character and Place Guideline* 2019, states that:

*Desired future character refers to an agreed vision of how an area will change over time, including an identification of characteristics to be retained or enhanced. Desired future character is often articulated through a character statement or integrated into development controls. (page 12)*

Woollahra Council takes a place based approach to its planning controls. The unique character of each business centre, heritage conservation area and residential precinct is recognised through a series of place based provisions, and a clearly articulated desired future character statement. This suite of controls identifies the outcomes to be achieved through development.

This approach is the result of a thoughtful and considered planning, urban design and community engagement process, and reflects the community’s expectations about future development. This place based approach is central to Council’s suite of planning controls, and the Court’s interpretation of desired future character has the effect of potentially weakening this approach.

## **3. Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115 and ‘desired future character’**

### **3.1. The development proposal**

On 14 December 2017, a development application (DA) for 28-34 Cross Street, Double Bay, was lodged with Council (DA 617/2017). The DA was to demolish the existing development and construct a six storey mixed-use development comprising ground floor retail, 21 residential units over five levels and two levels of basement parking.

Planning controls in the Woollahra LEP 2014 and Woollahra DCP 2015 envisaged a four storey building on the site. The proposal therefore exceeded the relevant height and floor space ratio (FSR) development standards by more than 40%. The applicant justified the variation under *clause 4.6 Exceptions to development standards* (clause 4.6 objection) of Woollahra LEP 2014 based on the approvals for the adjoining two sites to the east, being Nos 16-18 and 20-26 Cross Street. Both of these sites have approvals for six storey developments. The applicant argued that the proposed development continued the built envelope from the adjoining sites to the east, adopting the same height and general form.

On 4 October 2018 the DA was refused by the Sydney Eastern City Planning Panel (Planning Panel). The Planning Panel did not accept that the approved development on adjoining land amounted to an abandonment of the development standards. The Planning Panel determined that the clause 4.6 objection was not well founded.

On 12 December 2018 the applicant lodged a section 8.2<sup>3</sup> review with Council. On 19 March 2019 the DA was refused by the Planning Panel, for reasons generally consistent with the original decision of the Planning Panel.

On 22 March 2019 the Applicant filed a Class 1 Appeal with the *Land and Environment Court* (LEC), and on 12 March 2020 Acting Commissioner Clay upheld the appeal and granted development consent (see **Annexure 1**).

Council appealed the decision on questions of law under section 56A of the *Land and Environment Court Act 1979*. One of the grounds for appeal was the interpretation of desired future character.

### **3.2. Council's grounds of appeal (s56A) regarding 'desired future character'**

In appealing the decision, Council contended that the Commissioner erred in his interpretation of desired future character by:

- failing to have regard to the relevant provisions of Woollahra DCP 2015, and
- taking into account the irrelevant consideration of approved adjoining developments, which exceeded relevant provisions. (see **Annexure 2** para [20] and [21])

In particular, Council argued that:

- The Woollahra DCP 2015 gives effect to the provisions of Woollahra LEP 2015 so as to describe the desired future character of the neighbourhood or area.
- The desired future character is defined and fixed by zoning and development standards in Woollahra LEP 2014, and the provisions of Woollahra DCP 2015.
- Once defined by Woollahra LEP 2014 and Woollahra DCP 2015, the desired future character cannot change until the LEP and DCP are amended.
- The desired future character cannot be changed by approved DAs that contravene the development standards in Woollahra LEP 2014. (see **Annexure 2** para [85] and [88])

### **3.3. Court's findings regarding "desired future character"**

On 18 August 2020, Preston CJ dismissed the appeal and made the following findings in relation to desired future character and its use in Woollahra LEP 2014:

- Woollahra LEP 2014 has not defined the meaning of desired future character that is used in various provisions.
- The Commissioner was not obliged to interpret the term desired future character in Woollahra LEP 2014 by reference to the desired future character provisions in Woollahra DCP 2015.
- The provisions of a DCP cannot be used to interpret the provisions of an LEP, unless the provisions of the LEP expressly refer to the provisions of the DCP for that purpose.
- Woollahra LEP 2014 does not refer to Woollahra DCP 2015 to define the term desired future character.

<sup>3</sup> A section 8.2 review under the *Environmental Planning and Assessment Act 1979* requests the reconsideration of a DA determination. The membership of the assessing Planning Panel must have a different composition.

Woollahra Municipal Council  
Environmental Planning Committee Agenda

6 October 2020

- The drafter of Woollahra LEP 2014 has not confirmed that the interpretation of desired future character is influenced by zoning, permitted and prohibited development and development standards.
- Where the term desired future character is not defined, the matters that may be taken into account in evaluating what is the desired future character are not defined.
- There is no limit in the subject matter, scope and purpose of Woollahra LEP 2014 which would preclude the consideration of developments that have been approved and constructed in the neighbourhood or area.  
(see **Annexure 2** para [107] - [115])

In response to the Court's decision the Double Bay Residents' Association has written to Council (see **Annexure 3**).

*".....urging Council to promptly take the necessary steps to amend its LEP ... so that the LEP may be interpreted in the way that all of us have always intended."*

#### 4. Next Steps

The term desired future character is used 18 times in Woollahra LEP 2014 across the aims of the plan, zone objectives and clause objectives. In response to the Court's decision, amendments should be made to Woollahra LEP 2014. These amendments would ensure that the term desired future character is defined and cross referenced to other provisions of Woollahra LEP 2014 and provisions in Woollahra DCP 2015.

If Council supports the recommendation of this report, the next steps in the process are:




- Prepare a planning proposal under section 3.33 of the Act to define desired future character.
- Report a draft planning proposal to the Woollahra Local Planning Panel for advice.
- Report the advice from the Woollahra Local Planning Panel to the Environmental Planning Committee.
- Further steps will depend on advice from the Woollahra Local Planning Panel and the decision of the Council following the Environmental Planning Committee meeting.

#### 5. Conclusion

Council takes a place based approach to its planning controls in Woollahra LEP 2014 and Woollahra DCP 2015. These suite of provisions collectively direct and guide how development should occur to ensure that it is compatible with, and contributes to achieving the desired future character of each neighbourhood or area.

To maintain the integrity of our planning controls, and as a consequence of the Court's interpretation, we recommend that Council resolves to prepare a planning proposal. The objective of the planning proposal would be to amend Woollahra LEP 2014 to ensure that the meaning and interpretation of desired future character is taken as that which is defined in other provisions of the Woollahra LEP 2014 and the provisions of Woollahra DCP 2015.

#### Annexures

1. SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112 [↓](#) 
2. Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115 [↓](#) 
3. Submission from the Double Bay Residents Association 27 August 2020 [↓](#) 

## Double Bay Residents' Association Inc

P.O. Box 1684, Double Bay NSW 1360

Tel: 0414 932 818 Email: dbrassoc@gmail.com

Mr Allan Coker,  
Woollahra Municipal Council,  
PO Box 61,  
Double Bay NSW 1360  
27<sup>th</sup> August 2020

Dear Allan,

### **Woollahra Municipal Council v SJD DB2 Pty Ltd (28-34 Cross Street, Double Bay)**

#### **The Judgment of Preston CJ and its consequences**

Our Association and its members view with concern the recent judgment delivered on Council's Notice of Motion under s 56A of the Land & Environment Court Act in the above matter.

A particular matter of concern is that concerning the Acting Commissioner's findings on the objectives of the Height (cl 4.3) and FSR (cl 4.4) in the Woollahra LEP which refer to "the desired future character" of the neighbourhood or area.

In our experience Council staff and our Association have alike always construed this desired future character objective of these development standards as being defined by the very detailed description of that desired future character, street by street and in some cases even parts of street, contained in the Woollahra DCP. Now all the hard work that you and your staff put in to the drafting of all those written and drawing descriptions of that character in the DCP are largely set at naught by the following findings of His Honour:

- That there is no definition of the words "desired future character" in the Woollahra LEP 2014 (paragraphs 8 and 48 of the judgment);
- That there was no obligation on the Acting Commissioner to construe the desired future character of the neighbourhood/area by reference to the desired future character provisions of the DCP (paragraphs 46 and 49).

We believe that the matter can be cured by amending the LEP so as to define "the desired future character" by reference to the description of that future character as set out in the Woollahra DCP.

Indeed, the following sentence from paragraph 46 gives the guide to this (see our italics):

“As SJD submitted, the provisions of a development control plan cannot be used to interpret the provisions of a local environmental plan, *unless the provisions of the local environmental plan expressly refer to the provisions of the development control plan for that purpose.*”

We would urge Council promptly to take the necessary steps to amend its LEP in this way so that the LEP may be interpreted in the way that all of us have always intended.

Kind regards,

Malcolm Young

President (tel 0406953130)

Cc Mr Nick Economou.

**Item No:** D2  
**Subject:** **PLANNING PROPOSAL - DOUBLE BAY BOWLING CLUB AT 18 KIAORA ROAD, DOUBLE BAY**  
**Author:** Jacquelyne Della Bosca, Executive Planner  
**Approvers:** Anne White, Manager - Strategic Planning  
Nick Economou, Acting Director Planning & Development  
**File No:** 20/207594  
**Reason for Report:** To seek the advice of the Woollahra Local Planning Panel in relation to a planning proposal for land known as the Double Bay Bowling Club at 18 Kiaora Road, Double Bay.

**Recommendation:**

THAT the Woollahra Local Planning Panel advises Council to proceed with the planning proposal (at Annexure 1) for the Double Bay Bowling Club at 18 Kiaora Road, Double Bay (Lot 101 DP 614016) which seeks the following amendments to Woollahra Local Environmental Plan 2014:

- i. Rezone the site from Zone R3 Medium Density Residential to Zone RE2 Private Recreation, and
- ii. Increase the minimum lot size from 700m<sup>2</sup> to 8,800m<sup>2</sup>.

---

**1. Reason for report to the Woollahra Local Planning Panel:**

This report seeks the advice of the Woollahra Local Planning Panel (Woollahra LPP) on a planning proposal to amend *Woollahra Local Environmental Plan 2014* (Woollahra LEP 2014) for land known as the Double Bay Bowling Club, at 18 Kiaora Road, Double Bay (Lot 101 DP 614016).

On 27 September 2018, the Minister for Planning issued a Local Planning Panel Direction – Planning Proposals:

- *A Council to whom this direction applies is required to refer all planning proposals to be prepared after 1 June 2018 to the local planning panel for advice, unless the council's general manager determines that the planning proposal relates to:*
  - a) the correction of an obvious error in a local environmental plan*
  - b) matters that are of a consequential, transitional, machinery or other minor nature, or*
  - c) matters that council's general manager considers will not have any significant adverse impact on the environment or adjoining land.*
- *When a planning proposal is referred to the panel, it must be accompanied by an assessment report prepared by council staff setting out recommendations, including whether or not the planning proposal should proceed.*
- *A proposal is to be referred to the local planning panel before it is forwarded to the Minister under section 3.34 of the Environmental Planning and Assessment Act 1979 (the Act).*

In this case, the planning proposal is required to be referred to the Woollahra LPP because the General Manager has not made a determination in regard to items (a), (b) or (c), above.



## 2. Background:

On 24 August 2020 Council resolved:

*THAT:*

- A. *Council prepare a planning proposal which sets out amendments to the Woollahra Local Environmental Plan 2014 in respect of the land described as Lot 101 in DP 614016, being the land including the bowling greens and clubhouse known as the Double Bay Bowling Club, 18 Kiaora Rd Double Bay to enable this land to be rezoned from R3 Medium Density Residential to RE2 Private Recreation in order to preserve this land for private recreational use.*
- B. *The planning proposal be forwarded to the Woollahra Local Planning Panel for advice.*
- C. *The advice of the Woollahra Local Planning Panel be reported to the Environmental Planning Committee.*
- D. *Council expedites the planning proposal for rezoning.*

The following information accompanied the notice of motion on the agenda for that meeting:

### *Background*

*In 1940, Council purchased a parcel of land (which later became Lots 100 and 101 in DP 614016) from the Metropolitan Water, Sewerage and Drainage Board (Sydney Water). This purchase was based on Council's understanding that the land would be used only for recreational purposes.*

*In 1942, Council leased this land (together with a proximate parcel of land comprising Lot 9 in DP 32788, which it had also purchased from a private individual) to the Double Bay Bowling Club Limited.*

*In 1948 Council sold the whole of the lands to the Club, subject to the understanding that the grounds be used for recreational purposes.*

*In 1975 the whole of the lands comprising the Club site were rezoned by Interim Development Order No.15 to Open Space Recreation (Private) 6(b).*

*In 1980 Interim Development Order No.15 was altered to allow part of the Club site (being Lot 100 in DP 614016) to be developed by the Club into a residential flat building to raise funds for the Club. The zoning of the remaining Club site was unchanged.*

*In 1988 the remaining club site including Lot 101 in DP 614016 was rezoned to Residential 2(b) under Local Environmental Plan No.27. It is now zoned Residential R3 Medium Density Residential.*

*This Notice of Motion seeks to preserve this land for private recreational use. The rezoning of Lot 101 in DP 614016 to RE2 Private Recreation has significant strategic merit, given the community's desire for open recreational space in an increasingly densified area of the municipality and to preserve that land for recreational use.*

*The land in question has been in active use as a bowling green and clubhouse since the 1940s.*

### 3. The site:

The site, known as the Double Bay Bowling Club, is located at 18 Kiaora Road, Double Bay, and is identified as Lot 101 in DP 614016 (see Figure 1). The site is flat and generally rectangular in shape with a site area of approximately 8860m<sup>2</sup> (see Figure 2).

The site is used as a lawn bowling club and includes 3 lawn bowling greens and a single storey clubhouse (see Figure 3). Although the site has been used as a bowling club for over 75 years the site is zoned R3 Medium Density Residential under Woollahra LEP 2014 (see Figure 4).

The site is owned by the Double Bay Bowling Club (Club) which has been operating on the site since 1942. The Club holds regular in-house bowling competitions. The greens can also be hired out for corporate barefoot bowls and the clubhouse, which is a licensed premises, can be hired out for functions.



**Figure 2: Cadastre map identifying the site (in red) (Source: Woollahra Council GIS Maps)**



**Figure 2: 2018 aerial photograph indicating the site (in red) in its immediate context. (Source: Woollahra Council GIS Maps)**



*Figure 3: Double Bay Bowling Club including clubhouse and greens, looking south-east across the site*



*Figure 3: Extract of Woollahra LEP zoning map showing the site zoned as R3 Medium Density Residential*

#### **4. Consultation with the land owner:**

The Double Bay Bowling Club was notified of this meeting of the Woollahra LPP and that a planning proposal has been prepared. Notification took place on 12 November 2020, which is the date that this report to the Woollahra LPP was published and made publicly available on Council's website.

The Double Bay Bowling Club will be notified when the advice of the Woollahra LPP is provided to Council.

## **5. Planning proposal:**

Consistent with Council's resolution of 24 August 2020, a planning proposal has been prepared to amend Woollahra LEP 2014 (see **Annexure 1**). The planning proposal seeks to amend Woollahra LEP 2014 by:

- rezoning the site from Zone R3 Medium Density Residential to Zone RE2 Private Recreation, and
- increasing the minimum lot size for subdivision from 700m<sup>2</sup> to 8,800m<sup>2</sup>.

### **5.1. Planning proposal structure**

The planning proposal has been prepared in accordance with section 3.33 of the Act and the two documents prepared by the formerly named NSW Department of Planning and Environment titled *A Guide to Preparing Planning Proposals* (December 2018) and *A Guide to Preparing Local Environmental Plans* (December 2018).

The planning proposal satisfies the requirements of section 3.33 of the Act as it includes:

- A statement of the objectives or intended outcome of the amendment to Woollahra LEP 2014.
- An explanation of the provisions that are to be included in the amendment to Woollahra LEP 2014.
- The justification for the objectives, outcomes and provisions and the process for their implementation.
- Details of the community consultation that is to be undertaken.

### **5.2. Objective of amendment to Woollahra LEP 2014**

The objective of the amendment to Woollahra LEP 2014 is to ensure that the site is retained for private recreational uses.

Rezoning the site to Zone RE2 Private Recreation will apply a zone that is consistent with the current use and the future intended use of the site.

Increasing the minimum lot size to 8,800m<sup>2</sup> will ensure that the site is retained as a single consolidated lot and not subdivided into smaller lots which would compromise the ongoing and future use of the site for private recreation and open space purposes.

### **5.3. Explanation of provisions**

The planning proposal seeks the following amendments to Woollahra LEP 2014 in relation to the site (Lot 101 DP 614016):

- Amend the Land Zoning Map (Sheet LZN\_003) to apply Zone RE2 Private Recreation
- Amend the Lot Size Map (Sheet LSZ\_003) to apply a minimum lot size of 8,800m<sup>2</sup>.

### **5.4. Relationship to strategic planning framework**

The planning proposal is consistent with the relevant objectives of the *Greater Sydney Region Plan: A Metropolis of Three Cities* (2018) and the actions of the *Eastern City District Plan* (2018), (refer to Section 6.2 of the planning proposal).

The planning proposal is consistent with Council's Community Strategic Plan titled *Our Woollahra 2030: Our community, our place, our plan*. Notably, the planning proposal meets the following:

- “Community wellbeing”, Goal 1 (A connected, harmonious and engaged community for all ages and abilities):
  - Strategy 1.3 Provide places and spaces for people to connect and interact.

The planning proposal is also consistent with the *Woollahra Local Strategic Planning Statement* (February 2020). In particular, the planning proposal is consistent with Planning Priority 2 under the theme of Infrastructure and collaboration:

- Planning Priority 2: Planning for a community supported by infrastructure that fosters health, creativity, cultural activities and social connections.

The planning proposal is consistent with the *Standard Instrument – Principal Local Environmental Plan* and all other applicable *State environmental planning policies* (refer to Schedule 1 of the planning proposal).

The planning proposal is consistent with applicable section 9.1 directions, except for direction 3.1 Residential Zones. According to part (6)(d) of this direction, this inconsistency is acceptable as it is of minor significance (refer to Schedule 2 of the planning proposal).

### 5.5. Strategic merit

The planning proposal has strategic and site specific merit. The key reasons to amend the Woollahra LEP 2014 are:

- **To ensure that the zoning of the site accurately reflects the current and future recreational use of the site.**

The site has been used as a lawn bowling club for over 75 years and it is Council’s intention that the site continues to be used for recreational purposes.

A restrictive covenant applies to the site which requires the use of the site to be for recreational purposes in connection with a bowling club, except with the written consent of Council. Council has resolved that the site is to be preserved for recreational purposes, therefore residential uses will not occur on the site regardless of the R3 Medium Density Residential Zone.

The existing R3 Medium Density Residential Zone does not represent the recreational use of land. Rezoning the site to RE2 Private Recreation is appropriate as it reflects the current use and future intended use of the land.

- **To facilitate ongoing opportunities for sport and recreation.**

Council is committed to conserving and enhancing open space in the Municipality, and there are limited opportunities for Council or private recreation providers to acquire additional land that is suitable for sport and recreational uses. The recent coronavirus restrictions have further highlighted the value of open space and recreation areas for the community, particularly in densely populated areas such as the Woollahra Municipality.

It is important that existing recreational land is protected. Increasing the minimum lot size to 8,800m<sup>2</sup> seeks to ensure that the site is retained as a single consolidated lot and not subdivided into smaller lots which would compromise the ongoing and future use of the site for private recreation and open space purposes.

- **To recognise the importance of private recreation clubs in providing social opportunities for the community and promoting healthy lifestyles.**

Recreation clubs are an important part of the social fabric and Council needs to ensure there are opportunities for recreation facilities in the Municipality.

## **6. Conclusion:**

This report seeks the advice of the Woollahra LPP on a planning proposal to:

- Rezone land known as Double Bay Bowling Club, at 18 Kiaora Road, Double Bay, from R3 Medium Density Residential to RE2 Private Recreation, and
- Increase the minimum lot size that applies to the site from 700m<sup>2</sup> to 8,800m<sup>2</sup>.

The planning proposal has strategic and site specific merit, in particular:

- Rezoning the land to the RE2 Private Recreation Zone is appropriate as it reflects the current use and future intended use of the land. The site has been operating as a lawn bowling club for over 75 years. Development on the site is limited by the restrictive covenant that requires use of the site for recreational purposes in connection with a bowling club, except with the written consent of Council. Council has resolved that the site is to be preserved for recreational purposes. The current R3 Medium Density Residential Zone does not reflect the current and future intended use of the land.
- Council is committed to conserving and enhancing open space in the Municipality and it is important that existing suitable land is protected. The planning proposal will facilitate ongoing opportunities for sport and recreation, and recognises the importance of private recreation clubs in providing social opportunities for the community and promoting healthy lifestyles.

We recommend that the Woollahra LPP advise Council to proceed with the planning proposal at **Annexure 1** for the Double Bay Bowling Club, at 18 Kiaora Road, Double Bay.

## **Annexures**

1. Planning Proposal - Double Bay Bowling Club, 18 Kiaora Rd, Double Bay - November 2020 [!\[\]\(c580b67c7cd5c9e9e19f04ff6d5093e0\_img.jpg\)](#) 



# Planning Proposal



## Double Bay Bowling Club 18 Kiaora Road, Double Bay



Version Date:	November 2020
Division/Department:	Planning and Development/Strategic Planning
Responsible Officer:	Jacquelyne Della Bosca
HPE CM Record Number:	20/160216

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## 1. Introduction

### 1.1. Background

On 24 August 2020, Woollahra Council resolved:

THAT:

- A. Council prepare a planning proposal which sets out amendments to the Woollahra Local Environmental Plan 2014 in respect of the land described as Lot 101 in DP 614016, being the land including the bowling greens and clubhouse known as the Double Bay Bowling Club, 18 Kiaora Rd Double Bay to enable this land to be rezoned from R3 Medium Density Residential to RE2 Private Recreation in order to preserve this land for private recreational use.
- B. The planning proposal be forwarded to the Woollahra Local Planning Panel for advice.
- C. The advice of the Woollahra Local Planning Panel be reported to the Environmental Planning Committee.
- D. Council expedites the planning proposal for rezoning.

The following information accompanied the notice of motion on the agenda for that meeting:

#### Background

In 1940, Council purchased a parcel of land (which later became Lots 100 and 101 in DP 614016) from the Metropolitan Water, Sewerage and Drainage Board (Sydney Water). This purchase was based on Council's understanding that the land would be used only for recreational purposes.

In 1942, Council leased this land (together with a proximate parcel of land comprising Lot 9 in DP 32788, which it had also purchased from a private individual) to the Double Bay Bowling Club Limited.

In 1948 Council sold the whole of the lands to the Club, subject to the understanding that the grounds be used for recreational purposes.

In 1975 the whole of the lands comprising the Club site were rezoned by Interim Development Order No.15 to Open Space Recreation (Private) 6(b).

In 1980 Interim Development Order No.15 was altered to allow part of the Club site (being Lot 100 in DP 614016) to be developed by the Club into a residential flat building to raise funds for the Club. The zoning of the remaining Club site was unchanged.

In 1988 the remaining club site including Lot 101 in DP 614016 was rezoned to Residential 2(b) under Local Environmental Plan No.27. It is now zoned Residential R3 Medium Density Residential.

This Notice of Motion seeks to preserve this land for private recreational use. The rezoning of Lot 101 in DP 614016 to RE2 Private Recreation has significant strategic merit, given the community's desire for open recreational space in an increasingly densified area of the municipality and to preserve that land for recreational use.

The land in question has been in active use as a bowling green and clubhouse since the 1940s.

## 1.2. Description of this planning proposal

This planning proposal relates to land known as the Double Bay Bowling Club, including the bowling greens and clubhouse, located at 18 Kiaora Road, Double Bay, and described as Lot 101 in DP 614016 (the site). (Figure 1)

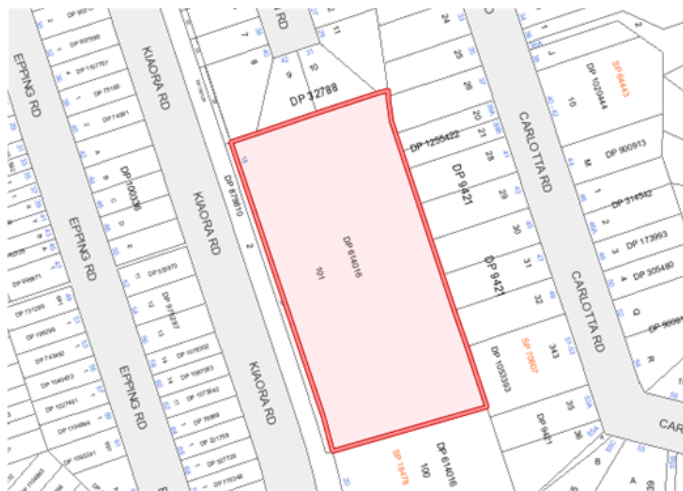


Figure 1: Cadastre map identifying the site (in red) (Source: Woollahra Council GIS Maps)

The objective of the planning proposal is to ensure that the site is retained for private recreational uses consistent with Council's resolution. The planning proposal seeks to achieve this by amending *Woollahra Local Environmental Plan 2014* (Woollahra LEP 2014) to:

- rezone the site from Zone R3 Medium Density Residential to Zone RE2 Private Recreation so that the zone is consistent with the current use and the future intended use of the site, and
- increase the minimum lot size from 700m<sup>2</sup> to 8800m<sup>2</sup> to ensure that the site is retained as a single consolidated lot and not subdivided into smaller lots which would compromise the ongoing and future use of the site for private recreation and open space purposes.

This planning proposal has been prepared in accordance with section 3.33 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the two documents prepared by the formerly named NSW Department of Planning and Environment (now known as the NSW Department of Planning, Industry and Environment) titled *A Guide to Preparing Planning Proposals* (December 2018) and *A Guide to Preparing Local Environmental Plans* (December 2018).

This planning proposal includes:

1. Existing site and surrounding context
2. Existing planning controls
3. Objective of the planning proposal
4. Explanation of provisions
5. Justification
6. Mapping
7. Community consultation
8. Project timeline

## 2. Existing site and surrounding context

### 2.1. The site

The site, known as the Double Bay Bowling Club, is located at 18 Kiaora Road, Double Bay, and is identified as Lot 101 in DP 614016 (Figure 2).

The site is used as a lawn bowling club and includes 3 lawn bowling greens and a single storey clubhouse (Figure 3). Although the site has been used as a bowling club for over 75 years the site is zoned R3 Medium Density Residential under Woollahra LEP 2014 (Figure 4).

The site is flat and generally rectangular in shape. The site area is approximately 8,860m<sup>2</sup>. The westward boundary is parallel to Kiaora Road and is approximately 120m. The northward boundary is approximately 68m, the easterly boundary is approximately 136m and the southern-most boundary is approximately 66m.

Immediately adjacent to the site is an open storm water channel (approximately 7m wide) that runs between the boundary of the site and Kiaora Road. The site is accessed by a single lane bridge over the channel (Figures 5 - 7).

The site is owned by the Double Bay Bowling Club (Club). The Club holds regular in-house bowling competitions. The greens and the clubhouse, which is a licensed premises, are also available for private functions.



Figure 2: 2018 aerial photograph indicating the site (in red) within its immediate context.  
(Source: Woollahra Council GIS Maps)





Figure 3: Double Bay Bowling Club, taken from the north-west corner looking south-east across the site

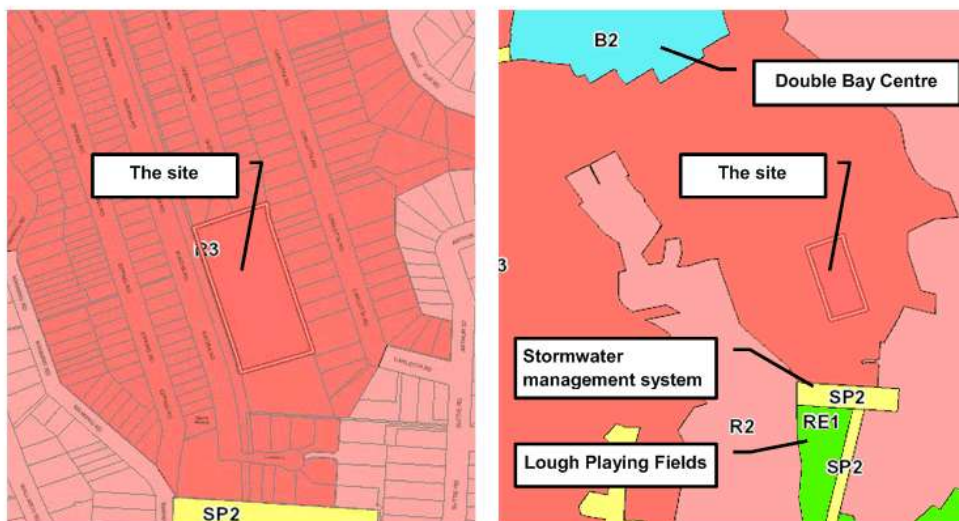


Figure 4: Extract of Woollahra LEP zoning map showing site zoned as R3 Medium Density Residential within the immediate context (map on left) and wider context to the Double Bay Centre (map on right)



*Figure 5: Single lane bridge provides access from Kiaora Road to the site across the open storm water channel*



*Figure 6: View from access bridge to the open storm water channel.  
The channel is located between the western boundary of the site and Kiaora Road  
(Source: Google Street View, Oct 2019)*





Figure 7: View from Kiaora Road looking east. The access bridge and wall of the storm water channel are in the foreground, with the site in the background (Source: Google Street View, Oct 2019)

## 2.2. Restrictive covenant over the site

The site was previously owned by Woollahra Council and was sold to the Club in 1948, along with adjoining land at 20 Kiaora Road (formerly Lot 100 DP 614016) and 42 Glendon Road (Lot 9 DP 32788) (Figure 8). The sale included a restrictive covenant whereby the land could only be used for recreational purposes in connection with a bowling club, except with the written consent of Council.

Land at 20 Kiaora Road (now SP 18478) was redeveloped for 12 townhouses in the 1980s. Council released the restrictive covenant for this lot in 1981 subject to the Club making a monetary contribution to Council for open space. Land at 42 Glendon Road (Lot 9 DP 32788) has recently been redeveloped for a dual occupancy.



Figure 8: Cadastral map of the site at 18 Kiaora Road and adjoining land at 20 Kiaora Road and 42 Glendon Road shown (Source: Council GIS Maps)

### 2.3. Existing context

The site is set within an established residential area located at the base of the Double Bay valley. The area contains a mix of older and contemporary housing. Although the immediate surrounding area is zoned R3 Medium Density Residential, the building stock is predominantly dwelling houses.

To the west and north of the site around Epping Road, Forest Road and Glendon Road, the historic subdivision pattern is small single lots (generally ranging from 180m<sup>2</sup> to 420m<sup>2</sup>) and the dominant building form is one to two storey dwelling houses and semi-detached dwellings. (Figures 9 – 12)

There are some residential flat buildings (RFBs) up to three storeys on larger lots closer to the Double Bay Centre, particularly along Court Road. (Figure 13)

Immediately east of the site, the topography rises significantly to Carlotta Road. The residential development on these elevated sites predominately comprise larger dwelling houses and some RFBs on lots generally over 600m<sup>2</sup>. These have district views over the site to the west and north-west. (Figure 14)



*Figure 9: Dwelling houses at 18-22 Epping Road, with rear lane to Kiaora Road  
(Source: Google Street View, Oct 2019)*





Figure 10: Dwelling houses at 66 - 70 Epping Road  
(Source: Google Street View, Oct 2019)



Figure 11: Dwelling houses at 53- 55 Epping Road (Source: Google Street View, Oct 2019)



Figure 12: Dwelling houses at 9 - 13 Glendon Road (Source: Google Street View, Oct 2019)





*Figure 13: Residential flat buildings cnr Kiaora Road and Court Road  
(Source: Google Street View, Oct 2019)*



*Figure 14: Looking east above the site, is the residential development on Carlotta Road*

#### **2.4. Proximity to services, transport and recreation facilities**

The site is located within 500m of the Double Bay Centre, and is accessible to buses, retail, commercial and community facilities located in the centre.

The site is also within 300m of the Lough Playing Fields (zoned RE1 Public Recreation) located on Manning Road.

### 3. Existing planning controls

The site is subject to planning controls within the Woollahra LEP 2014 relating to land zoning, building height, lot size, floor space ratio, and local provisions. These are as follows:

Double Bay Bowling Club (Lot 101 DP 614016)					
Land Use Zone	Maximum building height	Minimum lot size	Maximum Floor space ratio	Acid sulfate soils	Flood Planning Area
R3 Medium Density Residential	9.5m	700m <sup>2</sup>	0.65:1	Class 3 and Class 5	Located within a Flood Planning Area

Table 1: Double Bay Bowling Club existing planning controls in Woollahra LEP 2014

The site is zoned R3 Medium Density Residential in the Woollahra LEP 2014, the zone objectives and permitted uses are:

#### Zone R3 Medium Density Residential

##### 1 Objectives of zone

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

##### 2 Permitted without consent

Roads

##### 3 Permitted without consent

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Business premises; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Environmental protection works; Group homes; Home occupations (sex services); Hostels; Information and education facilities; Multi dwelling housing; Neighbourhood shops; Office premises; Oyster aquaculture; Places of public worship; Public administration buildings; Recreation areas; Residential flat buildings; Respite day care centres; Secondary dwellings; Semi-detached dwellings; Seniors housing; Shops; Tank-based aquaculture

##### 4 Prohibited

Pond-based aquaculture; Any other development not specified in item 2 or 3

#### 4. Objectives of planning proposal

The objective of the planning proposal is to ensure that land at 18 Kiaora Road, Double Bay, (Lot 101 DP 614016) is retained for private recreational uses. The planning proposal seeks to achieve this by amending Woollahra LEP 2014 to:

- rezone the site from Zone R3 Medium Density Residential to Zone RE2 Private Recreation. The RE2 Zone objectives and permitted uses are consistent with the current use and the future intended use of the site (see extract of the land use table below)
- increase the minimum lot size from 700m<sup>2</sup> to 8800m<sup>2</sup>. The total area of the site is approximately 8860m<sup>2</sup>, increasing the minimum lot size to 8800m<sup>2</sup> will ensure that the site is retained as a single consolidated lot and not subdivided into smaller lots which would compromise the ongoing and future use of the site for private recreation and open space purposes.

Woollahra LEP 2014 land use table for the RE2 Private Recreation Zone:

##### Zone RE2 Private Recreation

##### 1 Objectives of zone

- To enable land to be used for private open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.

##### 2 Permitted without consent

Nil

##### 3 Permitted without consent

Aquaculture; Centre-based child care facilities; Community facilities; Environmental facilities; Environmental protection works; Information and education facilities; Kiosks; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Roads

##### 4 Prohibited

Any development not specified in item 2 or 3

The Department of Planning Practice Note PN 11-002 *Preparing LEPs using the Standard Instrument: standard zones* also provides the following advice about the RE2 Private Recreation:

*This zone is generally intended to cover a wide range of recreation areas and facilities on land that is privately owned or managed. The use of facilities developed on this land may be open to the general public or restricted e.g. to registered members only. Private recreation may include racecourses, golf clubs, bowling clubs, rifle ranges, speedways, tennis complexes and other sporting or recreational facilities which may be on significant parcels of privately owned land, or on land leased from councils or State authorities.*

Rezoning land at 18 Kiaora Road, Double Bay, is consistent with the intended application of the RE2 Private Recreation Zone for uses such as "bowling clubs", and the proposed increase in the minimum lot size is consistent with the intention of retaining "significant parcels" of privately owned land for private recreation and open space purposes.

Double Bay Bowling Club Rezoning of Land to RE2 Private Recreation

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## 5. Explanation of provisions

The planning proposal seeks the following amendments to Woollahra LEP 2014 in relation to the site (Lot 101 DP 614016):

- Amend the Land Zoning Map (Sheet LZN\_003) to apply *Zone RE2 Private Recreation*
- Amend the Lot Size Map (Sheet LSZ\_003) to apply a minimum lot size of 8800m<sup>2</sup>.

(Also refer to Section 7 Mapping)

	18 Kiaora Road, Double Bay (Lot 101 DP 614016)	
Woollahra LEP 2014 control/clause	Current	Proposed
<b>Zoning</b>	R3 Medium Density Residential	RE2 Private Recreation
<b>Minimum Lot Size (m<sup>2</sup>)</b>	700m <sup>2</sup>	8800m <sup>2</sup>

Table 2: Summary of proposed changes to Woollahra LEP 2014



## 6. Justification

The planning proposal has strategic and site specific merit and the key reasons to amend the Woollahra LEP 2014 are:

- **To ensure that the zoning of the site accurately reflects the current and future recreational use of the site.**

The site has been used as a lawn bowling club for over 75 years and it is Council's intention that the site continues to be used for recreational purposes.

A restrictive covenant applies to the site which requires use of the site for recreational purposes in connection with a bowling club, except with the written consent of Council. Council has resolved that the site is to be preserved for recreational purposes, therefore residential uses will not occur on the site regardless of the R3 Medium Density Residential Zone.

The existing R3 Medium Density Residential Zone does not represent the recreational use of land. Rezoning the site to RE2 Private Recreation is appropriate as it reflects the current use and future intended use of the land.

- **To facilitate ongoing opportunities for sport and recreation.**

Council is committed to conserving and enhancing open space in the Municipality, and there are limited opportunities for Council or private recreation providers to acquire additional land that is suitable for sport and recreational uses. The recent coronavirus restrictions have further highlighted the value of open space and recreation areas for the community, particularly in densely populated areas such as the Woollahra Municipality.

It is important that existing suitable land is protected.

Increasing the minimum lot size to 8800m<sup>2</sup> seeks to ensure that the site is retained as a single consolidated lot and not subdivided into smaller lots which would compromise the ongoing and future use of the site for private recreation and open space purposes.

- **To recognise the importance of private recreation clubs in providing social opportunities for the community and promoting healthy lifestyles.**

Recreation clubs are part of the social fabric and Council needs to ensure there are opportunities for recreation facilities within the Municipality.

- The planning proposal is consistent with applicable section 9.1 directions, except for direction 3.1 Residential Zones. According to part (6)(d) of this direction, this inconsistency is acceptable as it is of minor significance (refer to Schedule 2).
- The planning proposal is consistent with the objectives of *A Metropolis of Three Cities* and the initiatives of the *Eastern City District Plan*.
- The planning proposal is consistent with the Standard Instrument and all other applicable *State Environmental Planning Policies*.
- The planning proposal is consistent with the vision and planning priorities of the *Woollahra Local Strategic Planning Statement* and is consistent with Council's community strategic plan titled *Woollahra 2030 – Our community, our place, our plan* (Woollahra 2030).

## 6.1. Need for planning proposal

### 1. Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?

No. The planning proposal is the result of a Council resolution to rezone the site in order to preserve the land for private recreational use (see Section 1 of this report).

However, the planning proposal is consistent with Council's vision as expressed in the *Woollahra Local Strategic Planning Statement*:

- We have safe and convenient access to a range of active transport choices, **recreation and sport facilities**, arts, social and cultural activities, deliveries, connectivity, health services and education. (page 18)
- Factors that contribute to the amenity of a neighbourhood include access to green open space, water and air quality, safety, accessibility, pleasant streetscapes, local villages and **opportunities for recreation and social interaction**. (page 34)
- We support a balanced economy including boutique retail, visitation, well-regulated night-time entertainment, dining and other **recreational opportunities**. (page 50)
- The public and **private land** available for national parks, open space, water and foreshore access and **recreational purposes** is limited. Council is committed to maintaining this land, which is highly valued and well-used by our community. (page 58)

The planning proposal is consistent with Planning Priority 2:

*Planning for a community supported by infrastructure that fosters health, creativity, cultural activities and social connections.*

In particular Action 16:

*Work with our community, neighbouring councils and government agencies to deliver community spaces and services, arts and cultural spaces and experiences, high quality public places and recreational facilities through infrastructure strategies and related plans.*

(Also see Section 6.2.4 below)

### 2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. The planning proposal is the best means of achieving the intended outcome for the site - which is to retain the land for recreational purposes. The key reasons are:

- The site is used for the purpose of a lawn bowling club. This use is not a permitted use in the R3 Medium Density Residential zone. Under the Woollahra LEP 2014 a lawn bowling facility falls under the land use term "recreation facility (outdoor)", which is defined in the LEP Dictionary as:

**recreation facility (outdoor) means** a building or place (other than a recreation area) used predominantly for outdoor recreation, whether or not operated for the purposes of gain, including a golf course, golf driving range, mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart track, rifle range, water-ski centre or any other building or place of a like

*character used for outdoor recreation (including any ancillary buildings), but does not include an entertainment facility or a recreation facility (major).*

In Woollahra LEP "recreation facilities (outdoor)" are permitted with consent in Zone RE1 Public Recreation and Zone RE2 Private Recreation only.

- The site is subject to a restrictive covenant requiring use of the land for recreational purposes in connection with a bowling club, except with the written consent of Council. Council has resolved that the site is to be preserved for recreational purposes.
- The existing R3 Medium Density Residential zone does not represent the recreational use of land. Applying the RE2 Private Recreation zone to the site is the most effective way to reflect the current and future intended use of the site for recreational purposes. Increasing the minimum lot to size to 8800m<sup>2</sup> prevents subdivision of the site into smaller lots which would compromise use of the site for private recreation and open space purposes consistent with the RE2 Zone.

Other options for achieving the objective and outcomes are limited and do not effectively meet the objective of the planning proposal, these are:

- **Option 1:** To list the site in Woollahra LEP 2014 Schedule 1 Additional permitted uses, and identify "development for recreation facility (outdoor)" as an additional use permitted with development consent. This option retains a residential zoning on the site, which is not reflective of the current and intended future use of the site. This option also establishes a site specific provision which is not consistent with section 9.1 local planning directions, 6.3 Site specific provisions.
- **Option 2:** Do nothing i.e. retain the current R3 Medium Density Residential Zone and use the restrictive covenant as the main instrument to require recreational uses on the site. Retaining the R3 zone for the site creates a false expectation about the nature of development that can occur given the restrictive covenant and Council's resolution to preserve the site for recreational purposes. Applying the RE2 Private Recreation zone most suitably reflects the current and intended future use of the site.

## 6.2. Relationship to strategic planning framework

### 3. Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including exhibited draft plans or strategies)?

Yes. The planning proposal is consistent with the relevant objectives of the *Greater Sydney Region Plan: A Metropolis of Three Cities* (2018) and the relevant actions of the *Eastern City District Plan* (2018), as discussed below.

#### **Greater Sydney Region Plan: A Metropolis of Three Cities**

The planning proposal is consistent with the directions and objectives of *Greater Sydney Region Plan: A Metropolis of Three Cities*, particularly Objective 7:

*Objective 7 Communities are healthy, resilient and socially connected*

"Active and socially connected people are healthier and better able to adapt to change. Strong social networks help communities respond to the challenges of urban life, such as housing affordability and access to work and education. They give people access to knowledge, resources and opportunities. Great places are shaped by healthy and connected communities that share values and trust, and can develop resilience"

By providing for the ongoing use of the site for recreation purposes, the planning proposal will facilitate opportunities that support “active and socially connected people” consistent with Objective 7.

#### **Eastern City District Plan**

The planning proposal is generally consistent with the actions of the *Eastern City District Plan*, particularly actions 8, 15 and 67:

#### ***Direction: A city for people***

Objective 5: Benefits of growth realised by collaboration of governments, community and business.

- Planning Priority E3 - Providing services and social infrastructure to meet people's changing needs
  - Action 8 Deliver social infrastructure that reflects the needs of the community now and in the future.
- Planning Priority E4 - Fostering healthy, creative, culturally rich and socially connected communities
  - Action 15 Strengthen social connections within and between communities through better understanding of the nature of social networks and supporting infrastructure in local places.

#### ***Direction: A city in its landscape***

Objective 31: Public open space is accessible, protected and enhanced

- Planning Priority E18 - Delivering high quality open space
  - Action 67 Maximise the use of existing open space and protect, enhance and expand public open space by:
    - a. providing opportunities to expand a network of diverse, accessible, high quality open spaces that respond to the needs and values of communities as populations grow.

By providing for the ongoing use of the site for recreation purposes, the planning proposal will facilitate opportunities that:

- provide for “social infrastructure that reflects the needs of the community now and in the future” consistent with Action 8
- support “fostering healthy..... and socially connected communities” consistent with Action 15
- “maximise the use of existing open space” consistent with Action 67.

#### **4. Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?**

Yes. The planning proposal is consistent with the *Woollahra Local Strategic Planning Statement* and Council's Community Strategic Plan, *Woollahra 2030*.

#### **Woollahra Local Strategic Planning Statement:**

The planning proposal is consistent with Planning Priority 2:

*Planning for a community supported by infrastructure that fosters health, creativity, cultural activities and social connections.*



In particular Action 16:

*Work with our community, neighbouring councils and government agencies to deliver community spaces and services, arts and cultural spaces and experiences, high quality public places and recreational facilities through infrastructure strategies and related plans.*

**Woollahra 2030 –our community, our place, our plan**

The planning proposal is also consistent with the following themes and goals.

*Theme: Community wellbeing*

Goal 1: A connected, harmonious and engaged community for all ages and abilities - Woollahra will be a community where people care for each other, have a sense of belonging and can contribute meaningfully to their local community and neighbourhood through participation in community life:

- Strategy 1.3 Provide places and spaces for people to connect and interact

*Theme: Quality places and spaces*

Goal 5: Liveable places -

Woollahra will be a community with accessible, integrated and well maintained public places and open spaces. We will have clean and well maintained infrastructure and community facilities. It will be a safe and attractive place with high quality public and private facilities and amenities.

- Strategy 5.1 Enhance local community, cultural and recreation facilities to become more attractive, integrated, and accessible

By providing for the ongoing use of the site for recreation purposes, the planning proposal will facilitate opportunities to “provide places and spaces for people to connect and interact” and “enhance local community, cultural and recreation facilities to become more attractive, integrated, and accessible” consistent with Woollahra 2030.

**5. Is the planning proposal consistent with applicable State Environmental Planning Policies?**

Yes. The planning proposal is consistent with the *Standard Instrument – Principal Local Environmental Plan* and all other applicable State Environmental Planning Policies (refer to **Schedule 1**).

**6. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?**

No. The planning proposal is consistent with all applicable section 9.1 directions, except for direction 3.1 Residential Zones. According to part (6)(d) of this direction, this inconsistency is acceptable as it is of minor significance (refer to **Schedule 2**).

**6.3. Environmental, social and economic impact**

**7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

No. There are no critical habitat areas, threatened species, populations or ecological communities or their habitats present on the subject land. Accordingly, the proposal will not have any impact in this regard.

**8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

No. There are no likely environmental effects that would arise as a result of the planning proposal.

The site is located within a flood planning area, and is identified as containing Class 3 and 5 acid sulfate soils. It is currently used as a lawn bowling club. Rezoning the site to RE2 Private Recreation is not likely to result in environmental harm. Any future development on the site consistent with the RE2 Private Recreation Zone will require a DA, and any potential environmental impacts will be suitably assessed and managed through the DA process and conditions of consent.

**9. Has the planning proposal adequately addressed any social and economic effects?**

For the reasons identified in the justification (Section 6 of this report), the planning proposal will have positive social and economic effects. In particular:

- The planning proposal will have positive social impacts for the community by providing opportunities for recreation facilities within the Municipality. Recreation clubs provide social opportunities for the community and promote healthy lifestyles.
- The planning proposal will have positive economic effects for the community by ensuring that land suitable for recreational uses is identified and retained. This is important as there are limited opportunities for Council or private recreation providers to acquire land within the Municipality that is suitable for sport and recreational uses because of the cost of land and supply of suitably sized lots.
- The current land owner, the Double Bay Bowling Club, may form the opinion that the planning proposal will have a negative economic impact on the Club because the rezoning will mean that the land cannot be redeveloped for housing under Zone R3 Medium Density Residential, and the change to the minimum lot size will mean that the site cannot be subdivided. However, development on the land is limited by the restrictive covenant that applies to the site. The covenant requires use of the site for recreational purposes in connection with a bowling club, except with the written consent of Council, and Council has resolved that the site is to be preserved for recreational purposes.

**6.4. State and Commonwealth interests**

**10. Is there adequate public infrastructure for the planning proposal?**

Yes. The site is connected to water, sewer, electricity and telephone services, and the site is in proximity to regular and frequent public transport services.

Immediately adjacent to the site is an open storm water channel and the site is accessed from Kiaora Road by a single lane bridge over the channel.

There is no significant infrastructure demand that will result from the planning proposal as the rezoning seeks to apply a zone that is consistent with the current use of the site as a bowling club.

Notwithstanding, we will consult with public utility and service providers during the public exhibition, including Sydney Water regarding the site access.

**11. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?**

This section will be completed following consultation with public authorities identified in the gateway determination. Public authorities, including but not limited to, will be notified:

- Sydney Water
- Office of Sport
- Transport for NSW, Roads and Maritime Services

Any other authorities identified by the Greater Sydney Commission and Department of Planning, Industry and the Environment will be consulted during the public exhibition of the planning proposal.

## 7. Mapping

The planning proposal seeks to amend the following Woollahra LEP 2014 maps:

- Land Zoning Map (Sheet LZN\_003)
- Lot Size Map (Sheet LSZ\_003)

An extract of the existing and proposed maps are shown in Figures 16 – 19.

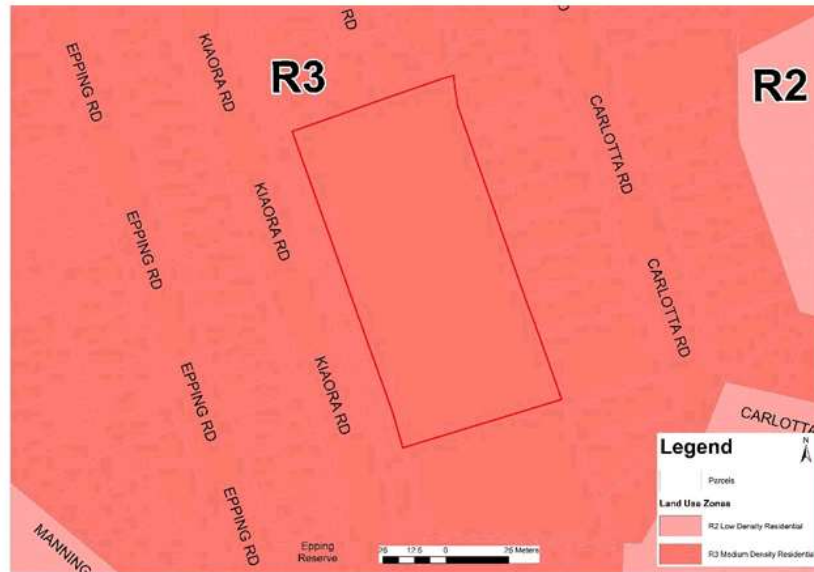


Figure 16: Extract from existing Woollahra LEP 2014 Land Zoning Map (Sheet LZN\_003)



Figure 17: Extract from proposed Woollahra LEP 2014 Land Zoning Map (Sheet LZN\_003)



Figure 18: Extract from existing Woollahra LEP 2014 Lot Size Map (Sheet LSZ\_003)



Figure 19: Extract from proposed Woollahra LEP 2014 Lot Size Map (Sheet LSZ\_003)



## 8. Community consultation

The public exhibition will be undertaken in accordance with the requirements of the Act and the *Environmental Planning and Assessment Regulation 2000* and the *Woollahra Community Participation Plan*.

We recommend that the planning proposal is exhibited for a minimum of 28 days.

Public notification of the exhibition will comprise:

- Weekly notice in the local newspaper (the *Wentworth Courier*) for the duration of the exhibition period (when available)
- Notice on Council's website
- Letter to the land owner and land owners in the vicinity of the site
- Letter to local community groups such as the Double Bay Residents Association and the Vaucluse Residents' Association.

During the exhibition period the following material will be available on Council's website and in the customer service area at Woollahra Council offices:

- Planning proposal, in the form approved by the gateway determination
- Gateway determination
- Information relied upon by the planning proposal (such as relevant Council reports).

## 9. Project timeline

If Council is authorised to exercise the functions of the Minister for Planning under section 3.36 of the *Environmental Planning and Assessment Act 1979*, the proposed timeline for completion is as follows:

Plan-making step	Estimated completion
Council Notice of Motion and resolution to prepare planning proposal	24 August 2020
Woollahra Local Planning Panel (WLPP) provides advice	19 November 2020
Advice of WLPP to Environmental Planning Committee (EPC). EPC recommends proceeding	30 November 2020
Council resolution to proceed	14 December 2020
Gateway determination	February 2021
Completion of technical assessment	None anticipated
Government agency consultation	March 2021
Public exhibition period (min 28 days)	March 2021
Submissions assessment	April 2021
EPC consider assessment of planning proposal post exhibition	May 2021
Council decision to make the LEP amendment	June 2021
Council to liaise with Parliamentary Counsel to prepare LEP amendment	July 2021
Forwarding of LEP amendment to Department of Planning, Industry and Environment for notification	July 2021
Notification of the approved LEP	August 2021

## Schedules

### Schedule 1 – Consistency with State Environmental Planning Policies

State environmental planning policy	Comment on consistency
SEPP No 19 – Bushland in Urban Areas	Applicable  Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 21 – Caravan Parks	Applicable  Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 33 – Hazardous and Offensive Development	Applicable  Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 36 – Manufactured Home Estates	Not applicable
SEPP No 47 – Moore Park Showground	Not applicable
SEPP No 50 – Canal Estate Development	Applicable  Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 55 – Remediation of Land	Applicable  Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.  <ul style="list-style-type: none"> <li>The planning proposal applies to land that was originally a Metropolitan Water Sewerage and Drainage Board holding. Lawn bowling greens were built on the land and in 1948 and the site has been used as a lawn bowling club for over 75 years.</li> <li>The land is suitable in its current state for the existing use on the land (a lawn bowling club).</li> <li>The land is suitable (or can made suitable after remediation) for the other</li> </ul>

State environmental planning policy	Comment on consistency
	<p>uses permitted in the RE2 Private Recreation zone.</p> <ul style="list-style-type: none"> <li>A change of use will require a DA and contamination risks will be considered at that stage consistent with <i>State Environmental Planning Policy No. 55—Remediation of Land</i> and the <i>Managing Land Contamination: Planning Guidelines</i>.</li> </ul>
SEPP No 64 – Advertising and Signage	<p>Applicable</p> <p>Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.</p>
SEPP No 65 – Design Quality of Residential Apartment Development	<p>Applicable</p> <p>Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.</p>
SEPP No 70 – Affordable Housing (Revised Schemes)	<p>Applicable</p> <p>Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.</p>
SEPP (Aboriginal Land) 2019	Not applicable.
SEPP (Activation Precincts) 2020	Not applicable.
SEPP (Affordable Rental Housing) 2009	<p>Applicable</p> <p>Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.</p>



State environmental planning policy	Comment on consistency
SEPP (Building Sustainability Index: BASIX) 2004	Applicable  Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Coastal Management) 2018	Applicable  Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Concurrences and Consents) 2018	Applicable  Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Educational Establishments and Child Care Facilities) 2017	Applicable  Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Exempt and Complying Development Codes) 2008	Applicable  Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Gosford City Centre) 2018	Not applicable.
SEPP (Housing for Seniors or People with a Disability) 2004	Applicable  Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Infrastructure) 2007	Applicable  Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Koala Habitat Protection) 2019	Not applicable
SEPP (Kosciuszko National Park - Alpine Resorts) 2007	Not applicable
SEPP (Kurnell Peninsula) 1989	Not applicable
SEPP (Major Infrastructure Corridors) 2020	Not applicable

State environmental planning policy	Comment on consistency
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	Applicable  Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Penrith Lakes Scheme) 1989	Not applicable
SEPP (Primary Production and Rural Development) 2019	Applicable  Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (State and Regional Development) 2011	Applicable  Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (State Significant Precincts) 2005	Applicable  There are currently no identified state significant sites located in the Woollahra Municipality.
SEPP (Sydney Drinking Water Catchment) 2011	Not applicable
SEPP (Sydney Region Growth Centres) 2006	Not applicable
SEPP (Three Ports) 2013	Not applicable
SEPP (Urban Renewal) 2010	There are currently no potential urban renewal precincts in the Woollahra Municipality which are identified in the SEPP.
SEPP (Vegetation in Non-Rural Areas) 2017	Applicable  Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Western Sydney Aerotropolis) 2020	Not Applicable
SEPP (Western Sydney Employment Area) 2009	Not applicable
SEPP (Western Sydney Parklands) 2009	Not applicable

Sydney Regional Environmental Plans – now deemed State Environmental Planning Policies	Comment on consistency
SREP No 8 (Central Coast Plateau Areas)	Not applicable
SREP No 9 - Extractive Industry (No 2 - 1995)	Not applicable
SREP No 16 – Walsh Bay	Not applicable
SREP No 20 - Hawkesbury- Nepean River (No 2 - 1997)	Not applicable
SREP No 24 - Homebush Bay Area	Not applicable
SREP No 26 – City West	Not applicable
SREP No 30 - St Marys	Not applicable
SREP No 33 - Cooks Cove	Not applicable
SREP (Sydney Harbour Catchment) 2005	<p>Applicable Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.</p> <ul style="list-style-type: none"> <li>The planning proposal applies to land within the Sydney Harbour Catchment. Therefore the planning principles under Part 2, clause 13 Sydney Harbour Catchment of the SREP have been considered during its preparation. The planning proposal is consistent with the principles.</li> <li>The site is not in the Foreshores and Waterways Area, therefore the principles of clause 13 Foreshores and Waterways Area are not applicable to this planning proposal.</li> </ul>

## Schedule 2 – Compliance with section 9.1 directions

The planning proposal is consistent with all applicable directions except for direction 3.1 Residential Zones. According to part (6)(d) of this direction, this inconsistency is acceptable as it is of minor significance for the reasons set out in the table below.

Planning proposal – Compliance with section 9.1 directions		
Direction		Applicable/comment
<b>1</b>	<b>Employment and resources</b>	
1.1	Business and industrial zones	Not applicable. The planning proposal does not apply to land within an existing or proposed business or industrial zone.
1.2-1.5	Directions 1.2-1.5	Not applicable. These directions are not relevant to the Sydney metropolitan area.
<b>2</b>	<b>Environment and heritage</b>	
2.1	Environment protection zones	Not applicable. The planning proposal does not apply to land within an environmental protection zone or land identified for environmental protection.
2.2	Coastal management	Not applicable. The planning proposal does not apply to land within the coastal zone.
2.3	Heritage conservation	Not applicable. The planning proposal does not apply to land items, areas, objects and places of environmental heritage significance and indigenous heritage significance.
2.4	Recreation vehicle areas	Not applicable. The planning proposal does not apply to sensitive land or land with significant conservation values. It will not allow land to be developed for a recreation vehicle area.
2.5	Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Not applicable. The planning proposal does not apply to land in the Far North Coast.

Planning proposal – Compliance with section 9.1 directions		
Direction		Applicable/comment
2.6	Remediation of contaminated land	<p>Applicable and consistent.</p> <ul style="list-style-type: none"> <li>The planning proposal applies to land that was originally a Metropolitan Water Sewerage and Drainage Board holding. Lawn bowling greens were built on the land and in 1948 and the site has been used as a lawn bowling club for over 75 years.</li> <li>The land is suitable in its current state for the existing use on the land (a lawn bowling club).</li> <li>The land is suitable (or can be made suitable after remediation) for the other uses permitted in the RE2 zone. A change of use will require a DA and contamination risks will be considered at that stage consistent with <i>State Environmental Planning Policy No. 55—Remediation of Land</i> and the <i>Managing Land Contamination: Planning Guidelines</i>.</li> </ul>
<b>3</b>	<b>Housing, infrastructure and urban development</b>	
3.1	Residential zones	<p>Applicable.</p> <p>The planning proposal affects land with an existing residential zone. It seeks to rezone the land from R3 Medium Density Residential to RE2 Private Recreation and increase the minimum lot size from 700m<sup>2</sup> to 8800m<sup>2</sup>. The planning proposal is inconsistent with this direction but according to part (6)(d) of this direction, this inconsistency is acceptable as it is of minor significance because:</p> <ul style="list-style-type: none"> <li>The proposal relates to one site only.</li> <li>The site is currently operating as a lawn bowling club, and has been for over 75 years.</li> <li>Development on the site is limited by the restrictive covenant that requires use of the site for recreational purposes in connection with a bowling club, except with the written consent of Council.</li> <li>Council has resolved that the site is to be preserved for recreational purposes. Therefore residential uses on the site will not occur regardless of the R3 Medium Density Residential zone.</li> <li>The current R3 Zone does not represent the nature of development that can occur on the land.</li> <li>The R3 zoning on this site is an anomaly.</li> <li>Rezoning the site to RE2 Private Recreation zone is appropriate as it reflects the current use and future intended use of the land.</li> </ul>

Planning proposal – Compliance with section 9.1 directions		
Direction		Applicable/comment
3.2	Caravan parks and manufactured home estates	Not applicable. The planning proposal does not affect caravan parks and manufactured home estates.
3.3	Home occupations	Not applicable. The planning proposal does not affect home occupations in dwelling houses.
3.4	Integrating land use and transport	Applicable. The planning proposal is consistent with the aims, objectives and principles of <i>Improving Transport Choice – Guidelines for planning and development</i> (DUAP 2001), and <i>The Right Place for Business and Services – Planning Policy</i> (DUAP 2001) as: <ul style="list-style-type: none"> <li>• The site is located near the Double Bay Centre which is accessible by public transport and walking.</li> <li>• The site is located in proximity to bus routes offering frequent public transport connections within the Woollahra LGA and beyond.</li> </ul>
3.5	Development near regulated airports and defence airfields	Applicable and consistent. <ul style="list-style-type: none"> <li>• The planning proposal applies to land identified on the Airport 'Obstacle Limitation Surface' Map as being in the "Outer horizontal surface 156 AHD".</li> <li>• The maximum building height permitted on the site is 9.5m and will not impact on the effective and safe operation of the airport.</li> </ul>
3.6	Shooting ranges	Not applicable. The planning proposal does not apply to land adjacent to or adjoining an existing shooting range.
3.7	Reduction in non-hosted short term rental accommodation period	Note applicable. The planning proposal does not apply to land in the Byron Shire Council.

Planning proposal – Compliance with section 9.1 directions		
Direction		Applicable/comment
<b>4</b>	<b>Hazard and risk</b>	
4.1	Acid sulfate soils	Applicable and consistent. <ul style="list-style-type: none"> <li>The planning proposal applies to land identified as part Class 3 and part Class 5 on Council's Acid Sulfate Soils Planning Map.</li> <li>Existing acid sulfate soils provisions will not be altered by the planning proposal.</li> <li>Any future works on the land will be undertaken consistent with LEP clause 6.1 Acid sulfate soils.</li> </ul>
4.2	Mine subsidence and unstable land	Not applicable. The planning proposal does not apply to land within a proclaimed Mine Subsidence District or to land identified as unstable.
4.3	Flood prone land	Applicable and consistent. <ul style="list-style-type: none"> <li>The planning proposal applies to land that located within a Flood Planning Area.</li> <li>Existing flood planning area provisions will not be altered by the planning proposal, and any development on the land will be undertaken consistent with LEP clause 6.3 Flood planning.</li> </ul>
4.4	Planning for bushfire protection	Not applicable. The planning proposal does not apply to land mapped as bushfire prone land.
<b>5</b>	<b>Regional planning</b>	
5.1 - 5.9	Strategies 5.1-5.9	Not applicable. These strategies do not apply to the Woollahra LGA.
5.10	Implementation of Regional Plans	Applicable and consistent. <ul style="list-style-type: none"> <li>The planning proposal is consistent with the objectives of the <i>Greater Sydney Regional Plan: A Metropolis of Three Cities</i>, particularly Objective 7 Communities are healthy, resilient and socially connected.</li> <li>Rezoning the site to RE2 Private Recreation and increasing the minimum lot size will support the ongoing use of the site for private recreation purposes and facilitate an “active and socially connected people” consistent with Objective 7.</li> </ul> <p>(Also refer to Section 6.2 of this report and direction 7.1 of this table.)</p>

Planning proposal – Compliance with section 9.1 directions		
Direction		Applicable/comment
5.11	Development of Aboriginal Land Council land	Not applicable. The planning proposal does not apply to land which <i>State Environmental Planning Policy (Aboriginal Land) 2019</i> currently applies.
<b>6</b>	<b>Local plan making</b>	
6.1	Approval and referral requirements	Applicable and consistent. The planning proposal does not include provisions that establish concurrence, consultation or referral requirements, or identify development as designated development.
6.2	Reserving land for public purposes	Not applicable. The planning proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.
6.3	Site specific provisions	Applicable and consistent. The planning proposal does include site specific provisions to allow a particular development proposal to be carried out on the site.
<b>7</b>	<b>Metropolitan Planning</b>	
7.1	Implementation of A <i>Metropolis of Three Cities</i> (March 2018)	Applicable. The planning proposal is consistent with the objectives of the <i>Greater Sydney Regional Plan: A Metropolis of Three Cities</i> , particularly: <ul style="list-style-type: none"> <li>Action 8 Deliver social infrastructure that reflects the needs of the community now and in the future.</li> <li>Action 15 Strengthen social connections within and between communities through better understanding of the nature of social networks and supporting infrastructure in local places.</li> <li>Action 67 Maximise the use of existing open space and protect, enhance and expand public open space by: a. providing opportunities to expand a network of diverse, accessible, high quality open spaces that respond to the needs and values of communities as populations grow.</li> </ul> (Also refer to Section 6.2 of this report and direction 5.10 of this table.)
7.2 – 7.12	Strategies 7.2 – 7.12	Not applicable. These strategies do not apply to the Woollahra LGA.



## Supplementary material

### Annexure 1 – Council resolution of 24 August 2020 [20/160227]

Woollahra Municipal Council  
Ordinary Council Meeting Minutes

24 August 2020

**Item No:** 16.2  
**Subject:** NOTICE OF MOTION - DOUBLE BAY BOWLING CLUB  
PRESERVATION OF LAND FOR PRIVATE RECREATIONAL USE  
**From:** Councillors Lucinda Regan, Claudia Cullen, Luise Elsing, Anthony Marano,  
Megan McEwin, Matthew Robertson, Mark Silcocks, Isabelle Shapiro,  
Susan Wynne and Toni Zeltzer  
**Date:** 19/08/2020  
**File No:** 20/148454

**Note:** Late correspondence was tabled by Merrill Witt of Vauchuse Residents' Association.

(Regan/Elsing)

132/20 Resolved:

THAT:

- A. Council prepare a planning proposal which sets out amendments to the Woollahra Local Environmental Plan 2014 in respect of the land described as Lot 101 in DP 614016, being the land including the bowling greens and clubhouse known as the Double Bay Bowling Club, 18 Kiaora Rd Double Bay to enable this land to be rezoned from *R3 Medium Density Residential* to *RE2 Private Recreation* in order to preserve this land for private recreational use.
- B. The planning proposal be forwarded to the Woollahra Local Planning Panel for advice.
- C. The advice of the Woollahra Local Planning Panel be reported to the Environmental Planning Committee.
- D. Council expedites the planning proposal for rezoning.

**Note:** In accordance with Council's adopted Code of Meeting Practice voting on the Motion is noted below.

**For the Motion**

**Against the Motion**

Councillor Cavanagh  
Councillor Cullen  
Councillor Elsing  
Councillor Jarvis  
Councillor Marano  
Councillor Maxwell  
Councillor McEwin  
Councillor Regan  
Councillor Robertson  
Councillor Shapiro  
Councillor Shields  
Councillor Silcocks  
Councillor Wynne  
Councillor Zeltzer

Councillor Price

14/1

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## LOCAL PLANNING PANEL DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>ITEM No.</b>	D3
<b>FILE No.</b>	DA226/2019/1
<b>ADDRESS</b>	351 & 353 New South Head Road DOUBLE BAY (S.P 2583 & Lot 2 in D.P 1081202)
<b>COUNCIL WARD</b>	Double Bay
<b>SITE AREA</b>	1,233m <sup>2</sup> (approx.)
<b>ZONING</b>	R3 Medium Density Residential
<b>PROPOSAL</b>	Demolition of existing buildings, construction of a new residential flat building including provision of affordable rental housing (SEPP ARH 2009) with basement parking
<b>TYPE OF CONSENT</b>	Integrated development
<b>COST OF WORKS</b>	\$6,521,183.00
<b>DATE LODGED</b>	25/06/2019 08/01/2020 – Replacement Application Received <b>05/06/2020 – Further Amended Plans Received</b>
<b>APPLICANT</b>	Kingsford Property Developments Pty Ltd c/o Hamptons Property Services
<b>OWNER</b>	The Owners - Strata Plan No. 02583 & Kingsford Property Developments Pty Ltd
<b>AUTHOR</b>	Mr W Perdigao
<b>TEAM LEADER</b>	Mr T Wong
<b>SUBMISSIONS</b>	57
<b>RECOMMENDATION</b>	Conditional 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:

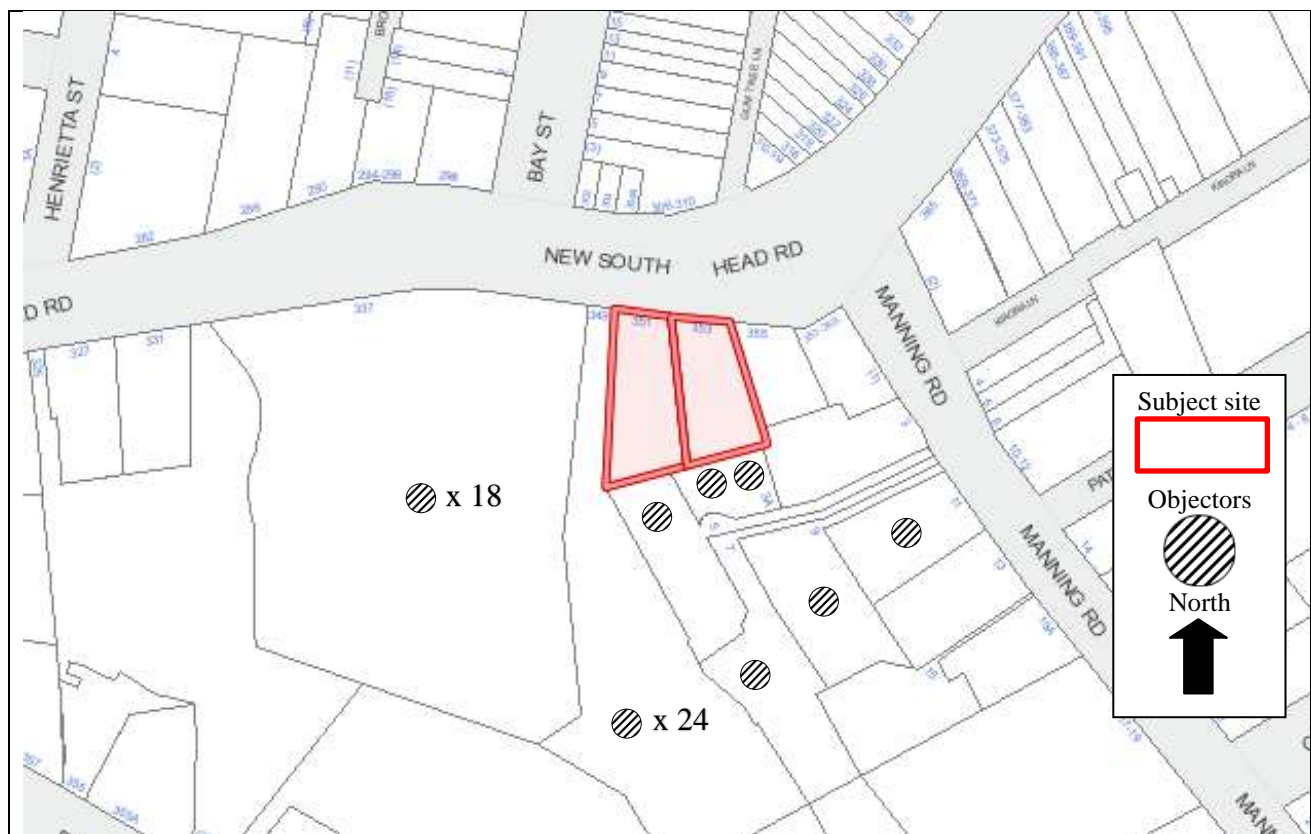
- Contentious development – Development that is the subject of 10 or more unique submissions by way of objection
- Departure from development standards – Development that contravenes a development standard imposed by an environmental planning instrument by more than 10%
- Sensitive development – Development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment* applies

## 2. REASONS FOR RECOMMENDATION

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

- It is considered to be satisfactory with all relevant planning policies including the objectives of SEPP 65 and applicable ADG, SEPP ARH 2009, Infrastructure SEPP 2007, WLEP 2014 and WDCP 2015;
- The provision of infill Affordable Rental Housing will provide for affordable accommodation in an accessible and appropriate location;
- 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.

## 3. LOCALITY PLAN



**Note:** Ten (10) objectors are located outside the above locality plan, including:

1. Bob Chambers (BBC Consulting Planners) on behalf of Golden Sheaf Hotel
2. Amanda Stewart of 343a Edgecliff Road
3. Kevin Purdy of 343a Edgecliff Road
4. Rhys Goodey of 18 Glendon Road;
5. Malcolm Young on behalf of Double Bay Residents Association;
6. Brian O'Dowd (Urban Designer + Town Planner) as a personal professional objection;
7. Neill Macpherson of unknown address;
8. Mark Wakely of unknown address;
9. Geri Ettinger of unknown address;

#### 4. PROPOSAL

The proposal, as amended, involves the demolition of existing buildings and structures and construction of a new part four (4) / part five (5) storey residential flat building with basement parking containing seventeen (17) units (i.e. 2 x Studios; 2 x 1-Bed; 10 x 2-Bed & 3 x 3-Bed). The proposal, as amended, is made under the provisions of the Affordable Rental Housing SEPP 2009 ('ARH SEPP') allocating four (4) units for the purposes of 'infill affordable housing' in the following configuration:

Basement Level (RL 5.20) – This level will require excavation (approx. 3,400m<sup>3</sup>) to provide for a total area of 672m<sup>2</sup> and comprise:

- Pedestrian access via two lifts and stair access to all levels;
- Single driveway ramp providing access to the basement parking area;
- 17 at-grade car parking spaces (6 in-tandem) with 2 adaptable spaces, 1 car waiting bay, 2 dedicated motorbike parking spaces;
- 19 storage cages;
- OSD and Rainwater Tank underneath driveway; and
- Site works, excavation and landscaping.

Ground Floor (RL 8.70) – This level will provide for a total gross floor area of 214.1m<sup>2</sup> and comprise:

- 1 x 1-bedroom and 1 x 2-bedroom units each comprising direct access to level areas private open space;
- Two pedestrian entry points servicing the two residential lobbies with two lifts and stair access to all levels;
- Two service/plant rooms;
- Dedicated waste/bin storage room at rear;
- Communal end-of-trip amenities and bicycle parking at the rear of the site for 18 bikes;
- Communal open space areas to the front, side and rear of the site; and
- Demolition of all existing structures, site works, excavation and landscaping.

Level 1 (RL 11.75) – This level will provide for a total gross floor area of 390m<sup>2</sup> and comprise:

- 2 x Studios, 1 x 1-bedroom and 3 x 2-bedroom units, each comprising direct access to a balcony; and
- Pedestrian access via two open lobbies with lift and stair access to all levels.

Level 2 (RL 14.80) – This level will provide for a total gross floor area of 391.5m<sup>2</sup> and comprise:

- 3 x 2-bedroom and 1 x 3-bedroom units with direct access to a balcony; and
- Pedestrian access via two open lobbies with lift and stair access to all levels.

Level 3 (RL 17.85) – This level will provide for a total gross floor area of 391.5m<sup>2</sup> and comprise:

- 3 x 2-bedroom and 1 x 3-bedroom units with direct access to a balcony; and
- Pedestrian access via two open lobbies with lift and stair access to all levels.

Level 4 (RL 21.70) – This level will provide for a total gross floor area of 169.8m<sup>2</sup> and comprise:

- 1 x 3-bedroom penthouse unit with direct access to a roof terrace of 84m<sup>2</sup>;
- Communal roof terrace of 58m<sup>2</sup> with BBQ amenities;
- Rooftop planters and inaccessible green roof areas
- Pedestrian access via open lobbies with lift and stair access to all levels.

Roof (RL 25.50) – This will be a low pitched skillion roof form.

A Replacement Application was lodged on 8 January 2020 (re-notified and advertised). Specifically, the amendments involved the following key changes:

- Modifying the proposal to now be made under the provisions of the Affordable Rental Housing SEPP 2009 ('ARH SEPP') allocating four (4) units for the purposes of 'infill affordable housing';
- Reduction in the extent of built form on to New South Head Road, via:
  - Increasing the Level 4 front setback by 3m from the principal building form below, achieved via removal of the front facing balconies;
  - Increasing the front setback at the north-western corner, from 2.73m to 3.2m;
- Reconfiguration of apartments within the development, resulting in a decrease in the number of apartments from eighteen (18) to seventeen (17);
- Adjusted layout of the roof terrace attaching to Apartment 17 on Level 4, with planting along the eastern boundary;
- Reconfiguration of the communal roof terrace to incorporate accommodation at the fourth level, namely Apartment 14, which extends from Level 3, below;
- Adjusted roof profile to lower the parapet height eave height is reduced to RL 24.70, from RL 25.50;
- Minor internal reconfiguration;

Subsequently a further set of amended plans were lodged on 5 June 2020 (not re-notified nor advertised). Specifically, the amendments involved the following key changes:

- Deletion of the accommodation at the fourth level, namely Apartment 14, which extended from Level 3, below i.e. reverting back to the originally proposed communal roof terrace area;
- Minor internal reconfiguration and refinements in the calculation of gross floor area (GFA).

## 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	5.5m or 52.4% departure from the 10.5m control	Satisfactory

## 5.2. Primary Issues and Summary of Submissions

Issue	Conclusion	Section
Excessive height: Non-compliance with the 10.5m maximum building height limit and inconsistency with the objectives of Clause 4.3: Height of Buildings of the Woollahra LEP 2014; The submitted Clause 4.6 written request fails	Acceptable – The proposal presents a 5.5m, or 52.4% departure from the Height of Buildings development standard (10.5m).  Despite the non-compliance, the written request provided by the applicant has adequately demonstrated that the contravention of the <i>Height of Buildings</i> development standard prescribed by <i>Part 4.3</i> of the Woollahra LEP 2014 is justified.  Pursuant to <i>Clause 4.6</i> , the consent authority is satisfied that the applicant's written request has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that sufficient environmental planning grounds have been demonstrated to justify the contravention of the standard.	17.3.3; 17.4
Excessive Bulk/FSR: Non-compliance with the 1:1 maximum floor space ratio development standard and inconsistency with the objectives of Clause 4.4: Floor Space Ratio of the Woollahra LEP 2014; The submitted Clause 4.6 written request fails;	Acceptable – The proposed development, as amended, has a FSR of 1.26:1 (or total GFA of 1,556.9m <sup>2</sup> ) and therefore complies with the maximum permitted floor space ratio of 1.5:1 (or 1,849.5m <sup>2</sup> ) for the site as restricted by the ARHSEPP 2009. A Clause 4.6 written request is therefore not required.	12.1.2; 17.3.4
Inconsistent with the R3 Medium Density Residential zoning of the site	Acceptable – The proposal is defined as a 'Residential Flat Building' development which is permitted and is consistent with the objectives of the R3 Medium Density Residential zoning.	
Inconsistency with the desired future character of the Wallaroy Precinct	Acceptable – The proposal meets the streetscape character and key elements of the precinct and desired future character objectives of the Wallaroy precinct, as noted in Part B1.4.2 of the Woollahra DCP 2015.	
Inadequate setbacks and non-compliance with the SEPP 65 including applicable ADG and the Woollahra DCP 2015	Acceptable – The proposal is considered to achieve consistency with the relevant Objective 3F-1 of the ADG which aims to ensure that, " <i>adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy</i> " and with the building envelope objectives (of the applicable front setback control) in Part B3.2 of the Woollahra DCP 2015.	11.5.6; 18.2.1
Adverse impacts to the health and viability of the heritage listed gardens of 337 and 349 New South Head Road known as 'Bibaringa' and 'Overthorpe' adjoining and adjacent to the subject site arising from the extent of overshadowing and proposed excavation works	Acceptable, subject to the recommended tree protection and preservation related standard conditions. Council's Tree and Landscape Officer is supportive of the scheme and is satisfied that the proposed development can be undertaken without significantly compromising the health and viability of the heritage listed gardens notwithstanding the proposed overshadowing and excavation works.	18.5
Loss of visual privacy	Acceptable – Any overlooking to the surrounding sites has been mitigated through the careful positioning of windows and openings to the building with a focus on primary orientation to the north. All the proposed western and eastern windows to habitable rooms are inset, angled or shielded to prevent direct sightlines to adjoining	11.5.6

Issue	Conclusion	Section
	habitable room windows and private open space of adjacent dwellings. Furthermore, the proposed balconies areas are also generally orientated towards the front boundary facing towards New South Head Road with no direct sightlines to adjoining private open spaces and habitable room windows. Further to this, the communal and rooftop open space areas are provided with planter boxes to along the edges of which aids in providing screening to adjacent properties.	
Loss of acoustic privacy and noise from rooftop terrace	Acceptable, subject to the recommended noise related standard conditions.	18.2.4
Loss of solar access and sunlight.	Acceptable – The proposal was accompanied by Shadow Diagrams (plans, elevations, and 3D views). As per the solar access assessment in Section 18.2.4 of this report, the proposal is considered to achieve consistency with the relevant Objective O1 in Part B3.5.2 of the Woollahra DCP 2015.	18.2.4
Sense of enclosure	Acceptable – The proposed residential flat building is of a modern contemporary design of high architectural quality. It would not result in any unreasonable sense of enclosure given that the majority of the building bulk is located to the front portion of the site and to the south-western corner providing building separation between the proposed buildings and surrounding buildings.	
Excessive volume (m <sup>3</sup> ) of excavation	Acceptable – The proposed amount of excavation has been minimised to primarily facilitate construction of a basement level containing a compliant amount of car parking and reasonable access thereto. The proposal achieves consistency with the relevant Objectives O1 through to O5 in Part B3.4: Excavation of the Woollahra DCP 2015.	18.2.3
Affordable housing tenancies cannot be enforced by Council ensuring that needy families shall be housed there for 10 years	Acceptable – The proposal incorporates ‘infill affordable housing’ under Part 2, Division 1 of State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP). Further to this, the subject site and development is permissible under the requirements of the ARHSEPP.  <b>Conditions F.2 and I.1</b> are recommended requiring that a restrictive covenant is registered on the title of the land prior to final occupation. Furthermore, the nominated infill housing units must be managed by a registered community housing provider. These restrictions on the land are to be maintained for a minimum period of 10 years thereby is consistent with the requirements of Clauses 17(1) & (2) of the ARH SEPP 2009.	12
View loss, including views towards harbour from: - No 337 New South Head Road (to the west and south-west); - No 349 New South Head Road (to the south); - 3A and 5 Manning Road (to the south); and - 343A Edgecliff road (further to the south)	Acceptable – It is acknowledged that there will be impacts on existing views from in particular No’s 337 and 349 New South Head Road. The proposal is however considered to be acceptable with regard to the four step assessment of view sharing planning principle established by <i>Tenacity Consulting v Warringah (2004) NSWLEC 140</i> and achieves consistency with the relevant controls and objectives in <i>Part B3.5.3: Public and Private Views</i> of the Woollahra DCP 2015.	18.2.4



Issue	Conclusion	Section
Traffic dangers with increased cars existing and entering the site via a major road that is New South Head Road	Acceptable – Council’s Development and Traffic Engineers have reviewed the proposal as amended and considered the proposed parking and driveway access design to be satisfactory, subject to recommended <b>Conditions</b> which ensures compliance with AS/NZS 2890.1:2004: <i>Parking Facilities - Off-Street Car Parking</i> .  Furthermore, Transport for NSW (Roads and Maritime Services) were notified and have provided concurrence via providing general terms of approval to the development subject to recommended <b>Condition A.6</b> raising no objections on the grounds of the design of vehicular access, the nature, volume or frequency of vehicles.	15; 18.3.3
Geotechnical hazards and risks associated with site instability during and after the excavation, demolition and during construction phase including potential structural damage, vibration and destabilisation of adjoining properties	Acceptable – Council’s Development Engineer is satisfied that the proposed excavation would be acceptable subject to imposition of standard Conditions requiring mitigating measures to ensure the maintenance of amenity on the surrounding neighbourhood and structural integrity of any existing and supporting structures during the excavation and construction phase of the development. These measures may include, but are not limited to, requirement for compilation of dilapidation reports, vibration monitoring, Geotechnical Certification & Monitoring, and dust mitigation controls.	17.5.3; 18.2.3
Loss of property values	This is not a relevant matter for consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979.	
Road noise from New South Head Road requires acoustic treatment and acoustic certification of the proposed development to ensure internal rooms achieve compliance with Clause 102 of SEPP (Infrastructure) 2007	Acceptable – Refer to recommended <b>Conditions C.20</b> and <b>F.12</b> which requires incorporation of acoustic measures to ensure the proposed building will comply with the interior noise levels criteria requirements of clause 102 of SEPP (Infrastructure) 2007.	15; 18.2.4
Removal of mature grown tree (Weeping Lilly Pilly ( <i>Waterhousea floribunda</i> ) at the rear of the site. This tree is a large very mature tree that is of great natural value to the area	Acceptable – Council’s Tree and Landscape Officer states:  <i>“This proposal call for the removal of a significant specimen of Weeping Lillypilly (Tree 5) from the rear centre of the site. This tree has self-sown from the larger specimen standing on the neighbouring property to the south at 5 Manning Road. Tree 5 is very poorly located against the eastern wall of the existing garage at 351 New South Head Road. Demolition of the garage would possibly result in destabilisation of the tree. The tree is within the footprint of the proposed basement. I do not believe it is practical to develop this site whilst retaining Tree 5.”</i>  Whilst it is acknowledged that the mature tree provides natural value to the area it is considered to be poorly located and therefore its removal is supported, subject to the recommended supplementary replacement tree plantings (refer to <b>Condition E.20</b> ).	18.5

Issue	Conclusion	Section
Inadequacy, misleading and inaccurate information, relating to the submitted documentation including deficiencies in the Arborist Report	Acceptable – The submitted plans and/or documentation is considered to be acceptable for the purposes of undertaking an assessment under Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i> . Furthermore, Council's Tree and Landscape Officer has reviewed the two independent Arborist Reports prepared by Dr Treegood dated August 2019 and February 2020 and is satisfied subject to the recommended standard tree related conditions that the proposal can be feasibly be achieved on landscaping grounds.	18.5
Lack of lift and lift overrun details	Acceptable – For the purposes of DA assessment sufficient detail has been provided. The proposed plans, sections and elevations indicate the constriction of two lift cores and stair access to all levels. Both the lift cores have basement level access and access to all levels, apart from the eastern lift core which terminates at Level 3.	

## PROPERTY DETAILS AND REFERRALS

### 6. SITE AND LOCALITY

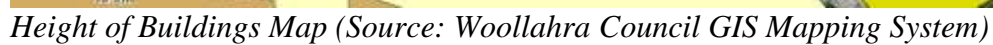
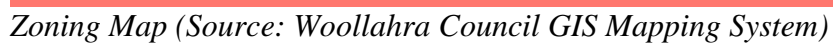
<b>Physical features</b>
The subject site is located on the southern side of New South Head Road. It comprises two allotments legally known as Strata Plan SP2583 (No. 351) and Lot 2 in Deposited Plan 1081202 (No. 353) respectively. The combined site has a total area of 1,233m <sup>2</sup> , a combined frontage to New South Head Road of 28.18 metres, a combined southern (rear) boundary of 40.41 metres, a western (side) boundary of 43 metres and an eastern (side) boundary of 30.92 metres.
<b>Topography</b>
The terrain within the subject site has a gradual site elevation slope from the street front (north) boundary to the rear (east) boundary of approximately 6m, roughly from AHD RL 8.0m, at the north-eastern corner to RL 14.0m at the south-western corner.
<b>Existing buildings and structures</b>
The site is occupied by a detached part one/part two storey building (at 351 New South Head Road) and a two-storey inter-war period masonry building (at 353 New South Head Road). The rear of both lots accommodate ancillary brick garages. Each lot currently has its own concrete driveway at the New South Head Road frontage.
<b>Surrounding Environment</b>
<p>The immediate surrounding site context is characterised by a mixture of residential and commercial uses, the latter of which are found directly to the north and east of the site in the Double Bay Centre which is zoned B2 Local Centre.</p> <p>The subject site is located on the edge of Wallaroy Precinct bordering Double Bay Commercial Centre. Wallaroy Precinct is primarily characterised by residential development of varying architectural styles including residential flat buildings, multi-unit dwelling developments and Inter-War flat buildings through to detached dwelling houses and semi-detached dwellings.</p> <p>Within the immediate context of the of the subject site along the southern side of New South Head Road, developments are generally characterised by Residential Flat Buildings of substantial height and scale, ranging from three (3) to thirteen (13) storey residential flat building developments. These include:</p> <ul style="list-style-type: none"> <li>- To the west, of the site is the access-handle for No 349 New South Head Road and directly west of this is No 337 New South Head Road which contain a residential flat buildings of up to seven (7) storeys. The buildings are located within the heritage listed gardens to former "Overthorpe" (State and local heritage listed site);</li> <li>- To the east, of the site No 355 New South head Road which contains a three (3) storey Inter-War Flat Building. Further to the east is 357-359 NSHRD currently a two (2) storey commercial building but recently approved for a five (5) storey shop-top housing development;</li> <li>- To the south-east and south, of the site is No 3 Manning Road and 3A Manning Road both three (3) storey Inter-War Flat Buildings;</li> </ul>

- To the south, of the site also lies No 5 Manning Road which contains heritage listed trees (local listing) including a Weeping Lilli Pilli, Bangalow Palms, Washingtonia Palm, Queen Palms, and Cabbage Palms;
- To the south-west, of the site is No 349 New South Head Road which contains thirteen (13) storey residential flat buildings that is located within the heritage listed gardens of the former house “Overthorpe” (local listed site).



*Subject Site – Aerial (Source: Woollahra Council GIS Mapping System)*







*Existing building on 353 New South Head Road*



*Existing building on 351 New South Head Road*



*Existing driveway of 351 New South Head Road*



*Existing side garage of 353 New South Head Road*



*Existing rear of 351 New South Head Road*





*The subject site as viewed upon New South Head Road*



*Photomontage of the proposed development (Source: Hill Thalys Architecture)*



*The subject site as viewed upon New South Head Road*



*Photomontage of the proposed development (Source: Hill Thalys Architecture)*

## 7. RELEVANT PROPERTY HISTORY

<b>Current use</b>
<ul style="list-style-type: none"> <li>351 New South Head Road: A two unit residential strata building;</li> <li>353 New South head Road: A dwelling-house and single office space.</li> </ul>
<b>Relevant Application History</b>
None relevant to the scope of work.
<b>Relevant Compliance History</b>
None relevant to the scope of work.
<b>Pre-DA</b>
None.
<b>Requests for Additional Information and Replacement Applications</b>



<p>03.07.2019 – A Stop the Clock letter was sent to the applicant requesting the following additional information:</p> <ul style="list-style-type: none"> <li>• Amended Vehicular Access and Parking Arrangement;</li> <li>• Owners Consent;</li> <li>• ARH SEPP 2009 – Assessment of <i>Part 3: Retention of existing affordable rental housing</i>;</li> <li>• SEPP 65 Design Verification Statement;</li> <li>• Integrated DA Fees;</li> </ul> <p>The above-mentioned additional information was satisfied on 31.07.2019.</p> <p>11.10.2019 – A first unsatisfactory DA email was sent to the applicant raising the issues raised by Council's Urban Design Officer primarily relating to street wall height, inadequate landscaping, internal unit amenity concerns and inadequate setbacks. Planning concerns regarding non-compliance with the FSR control was also raised. Amended plans and additional information was requested to address the issues raised.</p> <p>The applicant lodged a Replacement Application on 08.01.2020 in an attempt to address the above-mentioned matters.</p> <p>26.03.2020 – A second unsatisfactory DA email was sent to the applicant raising the issues raised by Council's Urban Design Officer primarily relating to bulk and scale, inadequate landscaping and unit amenity concerns. Planning concerns regarding non-compliance with the FSR control was also raised including the calculation of Gross Floor Area (GFA). Amended plans and additional information was requested to address the issues raised.</p> <p>The applicant submitted a full set of amended architectural plans and additional information on 05.06.2020 including an updated urban design report/urban design response addressing the matters raised in the second unsatisfactory DA email.</p>
<b>Land and Environment Court Appeal(s)</b>
N/A

## 8. REFERRALS

Internal Referrals	Summary of Referral Response	Annexure
Urban Design	<p>Unsatisfactory, Council's Urban Design Officer, concludes inter-alia the following:</p> <p><i>The proposed development requires further amendments to respond to my above comments in order to satisfy the ADG and SEPP 65 requirements and provide a better urban design outcome. I recommend:</i></p> <ul style="list-style-type: none"> <li>• <i>that the proposed height is reduced to create a less dominant bulk and scale that maintains the dominance of the existing tree canopies on the streetscape. Considering the role of the existing dense tree canopies including heritage trees in providing a natural buffer between Double Bay Centre and Wallaroy Residential Area, I believe a less dominant bulk and scale provides a better urban design outcome.</i></li> <li>• <i>that the proposal provides opportunities for more mature trees on front setback area.</i></li> <li>• <i>that the proposal provides a better amenity for residents in terms of the location of the principle communal open space, pedestrian entry and internal unit amenity.</i></li> </ul> <p>Notwithstanding the above the proposal is supported on planning merit. Refer to SEPP 65 assessment in Section 11 of the report.</p>	4
Technical Services (Development Engineer)	Satisfactory, subject to recommended standard <b>conditions</b> .	5
Technical Services (Traffic Engineer)	Satisfactory, subject to recommended standard <b>conditions</b> .	6
Technical Services (Drainage Engineer)	Satisfactory, subject to recommended standard <b>condition</b> .	7
Trees and Landscaping	Satisfactory, subject to recommended standard <b>conditions</b> .	8

Internal Referrals	Summary of Referral Response	Annexure
Heritage	Satisfactory, subject to recommended standard <b>conditions.</b>	9
Environmental Health	Satisfactory, subject to recommended standard <b>conditions.</b>	10
Fire Safety	Satisfactory, subject to recommended standard <b>conditions.</b>	11
External Referrals		
Roads and Maritime Services (RMS)	Satisfactory, subject to general terms of approval in recommended <b>Condition A.6.</b>	12

## ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

The relevant matters for consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979 include the following:

- (a) *the provisions of:*
- (i) *any environmental planning instrument, and*
  - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
  - (iii) *any development control plan, and*
  - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
  - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
  - (v) *(Repealed)*

*that apply to the land to which the development application relates,*

- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

## 9. ADVERTISING AND NOTIFICATION

### 9.1. Submissions

The application was advertised and notified on three occasions in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019, from:

- 24 July 2019 to 22 August 2019;
- 4 September 2019 to 3 October 2019; and
- 15 January 2020 to 29 January 2020;

During the advertising and notification periods submissions were received from the following properties and/or stakeholders:

Manning Road

1. Sascha Epstein of 5 Manning Road
2. Joanna Park of 7 Manning Road;
3. Paula Tardy of 3/9 Manning Road;
4. Patrick & Fiona Sullivan of 7/11 Manning Road

3A Manning

5. Hal Epstein of 3A Manning Road;
6. Brett Daintry (Daintry Associates) on behalf of the owners of 3A Manning Road;

New South Head Road

7. Bob Chambers (BBC Consulting Planners) on behalf of Solotel Hotel Management: Golden Sheaf Hotel at 429 New South Head Road

*No. 337 NSHRD – ‘Overthorpe’*

8. Henri & Robin Aram of 29/337 New South Head Road
9. Eva Santo of 8/337 New South Head Road
10. Michael & Barby Fischer of 25/337 New South Head Road
11. Michael & Judy Green of 16/337 New South Head Road
12. Lawrence Chan of 6/337 New South Head Road
13. Vivian & Naomi Diamond of 28/337 New South Head Road
14. Peter & Megan Benjamin of 5/337 New South Head Road
15. Peter & Judy Eshel of 1/337 New South Head Road
16. Peter Rohl of 13/337 New South Head Road
17. Yvonne White of 12/337 New South Head Road
18. Timothy Rohl of 11/337 New South Head Road
19. Paul McGrath of 11/337 New South Head Road
20. Hai Yap & Siew Yun Teoh of 10/337 New South Head Road
21. Jack & Rosalind Fisher of 33/337 New South Head Road
22. John Joyce of 27/337 New South Head Road
23. Anthony & Anna Kwok of 7/337 New South Head Road
24. Diane Patrick of 30/337 New South Head Road
25. Nicholas Buckland of 19/337 New South Head Road
26. Nikki Gurevich On behalf of mother at 4/337 New South Head Road
27. Nessa & Ralph Joseph of 15/337 New South Head Road
28. David Kent of 9/337 New South Head Road
29. Rodney Leffers of 24/337 New South Head Road
30. Susan Hauser of 14/337 New South Head Road
31. Yvonne Severn of 2/337 New South Head Road

*No. 349 NSHRD – ‘Bibaringa’*

32. Scott Lockrey (Lockrey Planning and Development Solutions) on behalf of the owners of ‘Bibaringa’ at 349 New South Head Road;
33. Rosemary Mann on behalf of the Owners Corporation 349 New South Head Road;
34. Bill & Margaret Hunt of 1202/349 New South Head Road;
35. Jan Sheller of 1201/349 New South Head Road;
36. Nancy Handler-Radnai of 103/349 New South Head Road;
37. Rosemary Mann of 303/349 New South Head Road;
38. Leslie Macpherson of 901/349 New South Head Road;

39. Joan Platt-Hepworth of 801/349 New South Head Road;
40. Stewart Matheson of 503/349 New South Head Road;
41. Jane Dunn of 703/349 New South Head Road;
42. Margaret Wilcox of 1101/349 New South Head Road;
43. Susan Shaw of 603/349 New South Head Road;
44. Melissa Penfold of 401/349 New South Head Road;
45. Gabrielle Casper of 1001/349 New South Head Road;
46. John Allen of 701/349 New South Head Road;
47. Helen Moppett of 301/349 New South Head Road;
48. Terry Hagley of 349 New South Head Road;
49. Judith Babich of 349 New South Head Road;

#### Edgecliff Road

50. Amanda Stewart of 343a Edgecliff Road
51. Kevin Purdy of 343a Edgecliff Road

#### Other

52. Rhys Goodey of 18 Glendon Road;
53. Malcolm Young on behalf of Double Bay Residents Association;
54. Brian O'Dowd (Urban Designer + Town Planner) as a personal professional objection;
55. Neill Macpherson of unknown address;
56. Mark Wakely of unknown address;
57. Geri Ettinger of unknown address;

The issues raised have been summarised in Section 5.2 and where relevant, are addressed in the body of the report.

### **9.2. Replacement Application and Amended Plans**

The replacement application dated 8 January 2020 as noted in Section 4 of this report was renotified to surrounding residents and previous objectors in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019 under as the proposed changes have the potential for additional impacts upon neighbours.

The amended plans dated 5 June 2020 (drawing set dated 4 June 2020) as noted in Section 4 of this report was not renotified to surrounding residents and previous objectors because it was considered to have no greater cumulative environmental or amenity impact than the previously notified and advertised plans.

### **9.3. Statutory Declaration**

The applicant has completed the statutory declaration declaring that the site notice for DA226/2019/1 was erected and maintained during the notification period in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019.

## **10. STATE ENVIRONMENTAL PLANNING POLICY 55: REMEDIATION OF LAND**

The aims of SEPP 55 are to *promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment:*

- a) *By specifying when consent is required, and when it is not required, for a remediation work*
- b) *By specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular*
- c) *By requiring that a remediation work meet certain standards and notification requirements*

Under Clause 7(1)(a) of SEPP 55 – Remediation of Land, consideration has been given as to whether the subject site on which the development is occurring is contaminated.

A search of Council's Contaminated Land GIS mapping register does not indicate the subject site as being potentially contaminated. Notwithstanding this, the subject site is located within close proximity to potentially contaminated sites within the Double Bay Centre.

Due to existing buildings and paving on the site that limits extensive ground testing, the applicant has provided a *Preliminary Site Investigation* has been prepared by Martens Consulting Engineers (Ref: P1806950JR01V01) and dated 4 June 2019 for the subject site.

The conclusions and recommendations of the report indicate that the land has been a residential use prior to 1930 but it may have deposited contaminants such as asbestos, pesticides and heavy metals (all associated with the construction of the buildings/sheds on the site, localised filling and/or storage of building materials). These contaminants are not readily identifiable until demolition of site structures and pavement. The recommendation of the report states:

*“Overall, the site is considered to generally have a risk of contamination of localised hot spots in the vicinity of the dwellings and sheds, and in areas of localised fill. To determine potential risk of harm to human health and environment under proposed development conditions, assessment of the identified AEC should be undertaken prior to any future development.”*

Council's Environmental Health Officer has reviewed the documentation and found the application to be acceptable, subject to **Condition C.16: Land Contamination:**

- *Given the limited nature of the Preliminary Investigation due to site constraints, confirmation of the contamination status of the site in the form of a Detailed Investigation will need to be undertaken post –demolition of the existing buildings. The Detailed Investigation shall be undertaken in accordance with the NSW EPA Sampling Guidelines (1995), the DECCW's Guidelines for the NSW Site Auditor Scheme, 2<sup>nd</sup> Edition, 2006.*
- *If the land is contaminated then a remedial action plan sufficient for compatibility with the proposed use, supported by a Site Audit Statement must be provided to the Council's satisfaction, and*
- *After completion of any remedial works required by the remedial action plan, that the applicant provide a copy of a validation report, supported by a Site Audit Statement to Council's satisfaction before the issuing of any occupation certificate.*

The proposal is therefore acceptable with regard to the relevant consideration in SEPP 55: Remediation of Land.

## **11. STATE ENVIRONMENTAL PLANNING POLICY 65: DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT**

SEPP 65: Design Quality of Residential Flat Development applies to all new residential flat buildings (or substantial redevelopment) where it comprises three or more storeys and four or more self-contained dwellings. In this instance, the proposed residential flat building comprises three or more storeys and seventeen (17) self-contained units. Based on the composition of this development, the SEPP applies.

### **11.1. Clause 2: Aims and Objectives**

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

- a) *To ensure that it contributes to the sustainable development of New South Wales:*
  - (i) *By providing sustainable housing in social and environmental terms, and*
  - (ii) *By being a long-term asset to its neighbourhood, and*
  - (iii) *By achieving the urban planning policies for its regional and local contexts*
- b) *To achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and*
- c) *To better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and*
- d) *To maximise amenity, safety and security for the benefit of its occupants and the wider community, and*
- e) *To minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions*
- f) *To contribute to the provision of a variety of dwelling types to meet population growth*
- g) *To support housing affordability*
- h) *To facilitate the timely and efficient assessment of applications for development to which this Policy applies*

The proposed development is seen as a positive outcome with respect to the above aims, by providing a well-designed and accessible accommodation with an appropriate presentation to New South Head Road. The proposed residential flat building with infill affordable housing is of a contextual fit with the surrounding area, satisfying the desired future character objectives of the Wallaroy precinct and the Objectives of the R3 Medium Density Residential zoning.

This policy provides clarification and further detail for the design of a Residential Flat Building having regard to the 9 *Design Principles* outlined in SEPP 65 and the relevant *Apartment Design Guide*, which is assessed below.

A Design Review Panel has not been established for the Woollahra Council area. However, a SEPP 65 Design Verification Statements have been prepared by a suitably qualified architect (Hill Thalys, Principal Registered Architect of Hill Thalys Architecture + Urban Projects) which has been submitted with the application (Refer to **Annexure 3**)

The proposal is considered to be acceptable with regard to the *Clause 2: Aims and Objectives* of the SEPP. Refer to assessment below:

## PART 4 APPLICATION OF DESIGN PRINCIPLES

### 11.2. Clause 30(1): Standards that cannot be used as grounds to refuse development consent or modification of development consent

Clause 30(2) of SEPP 65 states that a consent authority must not refuse consent to a development application on any of the following:

Total Site Area: 1,233m <sup>2</sup>	Proposed	Control	Complies
Parking (minimum) Clause 30(1)(a)	17 car spaces	Max 29 spaces (Equal to Part 3J of the ADG)	Yes
Dwelling Size (minimum) Clause 30(1)(b)	Studio: 37.2-37.8m <sup>2</sup> 1-bed dwellings: 57.9m <sup>2</sup> 2-bed dwellings: 80.5-98.5m <sup>2</sup> 3-bed dwellings: 121.5-171m <sup>2</sup>	Studio: 35m <sup>2</sup> 1-bed dwelling: 50m <sup>2</sup> 2-bed dwelling: 70m <sup>2</sup> 3-bed dwelling: 90m <sup>2</sup> (Equal to Part 4D of the ADG)	Yes
Ceiling heights (minimum) Clause 30(1)(c)	Min 2.7m	2.4m / 2.7m (Equal to Part 4C of the ADG)	Yes

The proposal satisfies the requirements of Clause 30(1) of SEPP 65.

### 11.3. Clause 30(2): Design Quality Principles

Clause 30(2) of SEPP 65 requires the assessment of the application against the 9 *design quality principles* in Schedule 1 and against the relevant design criteria and objectives as specified in the associated *Apartment Design Guide* (ADG).

This assessment has been undertaken by Council's Urban Design Officer and where relevant, comment from Council's Planning Assessment Officer is included below:

#### 11.3.1. Principle 1: Context and Neighbourhood Character

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

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

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

#### Urban Design Planner Comments

Council's Urban Design Officer in re-referral response, dated 24 February 2020, states:

*"The proposal has responded to my previous comments with regards to the 'corner character' and has removed the five-storey element facing New South Head Road (NSH Rd). However, it still concerns me with regards to the following:*



*The subject site is located adjacent to the Overthorpe Garden State Heritage Garden and No. 5 Manning Road Local Heritage Item. The Overthorpe Site provides a continuous green streetscape at this section of New South Head Road. The existing character of the subject site contributes to the landscape character of Overthorpe Garden. This results in creating a green node emphasising an endpoint for Double Bay Centre and the beginning of Wallaroy Residential Precinct. ”*



*Despite being numerically compliant with the front setback requirements, the proposed excessive 4-5 storey bulk and scale is still highly visible from the public domain. It dominates the existing landscape setting of its immediate surrounding context. It disrupts the character of the existing landscape cluster at this location and creates a building with a more 'town centre' character.*



*It does not enhance the landscape character of NSH Rd as recommended by WDCP 2015 B1.4.2.*

*(O1) To respect and enhance the streetscape character and key elements of the precinct.\*.*

*(O8) To retain and reinforce the green setting of mature street trees, private trees and garden plantings.*

*\*Streetscape character and key elements of the precinct:*

*g) the highly visible tree canopy providing a dense green backdrop to views from Sydney Harbour and surrounding lands.*

#### Planner's Comments

Notwithstanding the above, the proposal is considered to be appropriate to the Context and Neighbourhood Streetscape Character, for the following reasons:

- Council's Heritage Officer supports the development in terms of views towards the state heritage listed Overthorpe site, stating, in part:

*“The proposed development has been set back to retain the Port Jackson Fig on the northern boundary. This HIS notes that this tree is not belonging to the former gardeners however its location to the street boundary does form part of the heritage items setting. Therefore the retention of the tree is in keeping with the setting of the heritage item and maintaining the views of this area which are predominately landscaped with large, mature trees.*

*Significant views of Overthorpe will be retained, which are predominately from across the street looking south to Overthorpe, or whilst directly in front of the property. Views of the area whilst travelling up New South Head Road from the east will be retained, which is of a highly dense tree canopy with buildings intermixed and setback from the street boundary. Views of Overthorpe from the west are retained.*

*The proposed development is in keeping with the existing development along New South Head Road and will not impede the setting or views of the heritage item.”*

- The proposed part four/ part five-storey development relates to both the higher density and scale of buildings within the visual catchment to the west and south of the subject site which range from the seven to thirteen storey residential flat buildings (No’s 337 and 349 New South Head Road) to the smaller scale buildings to the south and south-east of the site, ranging from three and four storey residential flat buildings situated on Manning Road (No’s 3, 11 and 13);
- The proposal will maintain highly visible tree canopy (the Port Jackson Fig on the northern boundary, being one of the key elements of the precinct) achieving consistency with the desired future character objectives of the Wallaroy precinct. Refer to the *Wallaroy Precinct* desired future character assessment in Section 18.1 of this report.

### Conclusion

The proposal satisfies this principle.

### **11.3.2. Principle 2: Built Form and Scale**

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

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

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

### Urban Design Planner Comments

Council’s Urban Design Officer in the original referral response, dated 15 August 2019, states:

*“In addition to Principle 1, the proposed development exceeds the maximum allowable building depth on the western side inconsistent with Chapter B3 of the DCP. This reduces the chance for an adequate landscape buffer on the southern boundary and increases the perceived bulk and scale.*

*The proposed GFA calculation (as per Drawing DA 2.015) does not appear to consider the horizontal circulation area. This may affect the proposed density on the subject site. Pending the planning officer's assessment, recalculation may be required to provide the correct proposed FSR.*

*The excessive height and scale result in unsatisfactory overshadowing impacts on the heritage garden to the west and south compared to the existing building on the site and/or a compliant development. According to the SEE, the gardens are affected by the existing tree canopies for the majority of the day and the vegetation are shade tolerant. However, the key point is that the proposed non-compliant built form causes significant overshadowing on adjoining sites. Also, there are a number of palm trees on the eastern boundary which require high levels of solar access.”*

Council’s Urban Design Officer in subsequent re-referral response, dated 24 February 2020, states:

*“The proposed largest consolidated communal open space is located on the southern part of the subject site. It does not appear that this area receives sufficient solar access as required by the ADG (DA 2.605). I require further information which demonstrates that the proposed communal open spaces satisfy the ADG requirements.*

*The proposed GFA calculation does not consider the horizontal circulation spaces on the ground level. Considering the location of the entry gate (lobby), this volume of space affects the overall density of the building.*

*It does not also provide a high-quality pedestrian entrance (refer to my comments in Section 3G).”*

#### Planner’s Comments

Notwithstanding the above, the proposal is considered to be satisfactory with Principle 2: Built Form and Scale, for the following reasons:

- The proposal provides approximately 42% (or 520m<sup>2</sup>) of the site area as communal open space, on all sides of the proposed building including a communal rooftop terrace, that is well in excess of the minimum area requirement. However, due to the orientation and sitting of the proposed building the total useable communal area, in particular the rear area of the site, would not receive direct sunlight access for a minimum period of 2hrs in mid-winter. Notwithstanding this, a large portion of the communal area to the front and sides of the site receive direct sunlight access to greater than 50% of its area for a minimum of 2 hours in mid-winter achieving the intent of design objective 3D-1 of the ADG;
- The proposal, as amended, has been calculated consistent with the *Landmark Group Australia Pty Ltd v Sutherland Shire Council [2016] NSWLEC 1577 LEC judgement* i.e. the proposed gross floor area has included areas of common horizontal circulation were required consistent with the judgement. Note: the ground floor level entry corridors have been included in the GFA calculations.

- The proposed development, as amended, has a FSR of 1.26:1 (or total GFA of 1,556.9m<sup>2</sup>) and therefore complies with the maximum permitted floor space ratio of 1.5:1 (or 1,849.5m<sup>2</sup>) for the site as restricted by the ARHSEPP 2009. A Clause 4.6 written request is therefore not required.



#### Amended GFA Calculation (Source: Hill Thalys Architecture and Urban Projects)

- The proposal achieves the intent of the intent of *Part 3F: Visual Privacy* of the ADG providing an appropriate design response to ensure adequate protection of visual privacy of surrounding properties;
- The proposal provides an appropriate front setback and design response and it is considered to achieve consistency with regards to the Objectives O1, O2 and O3 in Part B3.2.2 of the WDCP 2015. Refer to the Front Setback assessment in Section 18.2.1 of this report.

#### Conclusion

The proposal satisfies this principle.

#### 11.3.3. Principle 3: Density

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

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

### Urban Design Planner Comments

Council's Urban Design Officer in re-referral response, dated 24 February 2020, states:

*"I refer to my previous referral response dated 15 August 2019: 'The overall dwelling density responds to the existing character and desired future character of the area. However, the appropriateness of the overall density is dependent on the proposed bulk and scale, achieving suitable amenity and streetscape outcomes'"*

### Planner's Comments

The aforementioned stance is concurred with. Furthermore, the proposal is considered to be satisfactory with regards to Principle 3: Density, for the following reasons:

- The proposed development, as amended, has a FSR 1.26:1 (or 1,556.9m<sup>2</sup>) therefore complies with the maximum permitted floor space ratio of 1.5:1 (or 1,849.5m<sup>2</sup>). The proposal is compliant with the maximum permissible FSR for the site under the WLEP 2014 and the applicable ARHSEPP 2009;
- The proposed development will achieve a high level of amenity for future occupants of the building, as demonstrated in the *Part 4: Designing the Building (Amenity)* of the *Apartment Design Guide* assessment in the Section 11.6 of this report which details how the development meets the minimum design criteria standards and in many instances exceeds these minimum standards with regards to Solar and Daylight Access, Natural Ventilation, Ceiling Heights, Apartment and Room Size and Private Open Space/Balcony size;
- The desired future character of the subject site within a R3 Medium Density Zone envisages increasing density. The proposal will provide 17 residential units on the subject site which currently contains 3 dwellings (a net increase of 14) which will achieve an appropriate increase in density for the subject site;
- The subject site is also located within proximity to local amenities including shops, services, cafes at the Double Bay and Edgecliff Commercial Centres and a variety of public transportation options including bus, train and ferry services.

### Conclusion

The proposal satisfies this principle.

### **11.3.4. Principle 4: Sustainability**

***Good design combines positive environmental, social and economic outcomes.***

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

### Urban Design Planner Comments

Council's Urban Design Officer in re-referral response, dated 24 February 2020, states:

*“The applicant has responded to my previous comments with regards to the deep soil and cross ventilation calculation.*

*The proposed landscape area on the western boundary is calculated as a deep soil area (DA 2008). However, it appears to have a hard landscape in the majority of the area as a communal open space. Further clarification is required regarding this matter.”*

#### Planner’s Comments

The aforementioned stance is concurred with. The proposal is considered to be satisfactory with regards to Principle 4: Sustainability, for the following reasons:

- The proposed total landscape area and the total communal open space are well in excess of the minimum requirements of Part 3D and 3E of the ADG. As noted, on the provided landscape plans the western landscape area is designated as ‘decomposed granite’ and interspersed with landscaping i.e. it is entirely a permeable area;
- A BASIX certificate accompanying the development application sets out commitments within the proposed development in relation to thermal comfort, water conservation and energy efficiency sustainability measures as required by the NSW Government;
- The proposed development achieves natural cross-flow ventilation to 100% of its units.

#### Conclusion

The proposal satisfies this principle.

#### **11.3.5. Principle 5: Landscape**

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

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

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

#### Urban Design Planner Comments

Council’s Urban Design Officer in original referral response, dated 15 August 2019, states:

*“To preserve and enhance the existing dense landscape along this section of NSH Rd it is recommended that the development provide a larger front setback to accommodate more mature trees.*

*To the western boundary, the majority of the proposed landscape appears to be paved areas. A dense soft landscape is recommended at this side to mitigate the perceived bulk and scale and reinforce the continuity of the existing heritage landscape.”*

Council’s Urban Design Officer in subsequent re-referral response, dated 24 February 2020, states:

*“Please refer to Principle one with regards to the landscape character of the subject site as well as my previous comments dated 15 August 2019.*

*Also, the proposed deep soil area on the south-western part of the site appears to be disconnected from the rest of the landscape area. Is there any specific reason why this section does not integrate with the rest of the landscape area?”*

#### Planner’s Comments

Notwithstanding the above, the proposal is considered to be satisfactory with Principle 5: Landscape, for the following reasons:

- The south-western corner of the site is not at the same level as the main area of rear communal open space however it still remains directly accessible from the main rear communal area via a set of stairs. This limits the need for additional excavation and also provides a green buffer to the adjacent sites;
- Council’s Tree and Landscape Officer, supports the proposed development on landscaping grounds subject to the recommended standard conditions requiring appropriate tree preservation, protection and replacement planting measures to be undertaken prior to and during the demolition and construction phase of the development. These conditions ensure the protection and preservation of significant street trees and those significant trees within adjacent sites.

#### Conclusion

The proposal satisfies this principle.

#### **11.3.6. Principle 6: Amenity**

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

#### Urban Design Planner Comments

Council’s Urban Design Officer in re-referral response, dated 24 February 2020, states: *“Narrow windows on side boundaries compromise the amenity (outlook) of the proposed units.”*

#### Planner’s Comments

Notwithstanding the above, the proposal is considered to be satisfactory with regards to Principle 6: Amenity, for the following reasons:



- As described by the applicant, *“The windows adjoining the side boundaries are carefully designed to allow good sunlight and natural ventilation while obviating privacy from, or overlooking to, the neighbours. The bedrooms greatly exceed of the quantum of window and ventilation required under the NCC, so we reject any inference that they are inadequate or substandard and would need to understand which statutory instrument this claim is being tied to.*

*We note the preponderance of development today which provides floor to ceiling and wall to wall glass to bedrooms – creating a predominant urban expression of the backs of drawn curtains to the urban realm. Our research and experience informs us that bedrooms require some sense of ‘refuge’ from the exterior realm – as opposed to more active living spaces in apartments that should enjoy a greater relationship of ‘prospect’ and openness. We consider this balance is effectively met in this proposal.”*

- The proposal generally complies with the applicable design criteria prescribed by the Apartment Design Guide;
- The proposal also incorporates design measures specifically intended to reduce the potential for overlooking of neighbours with angled and highlight windows which will ensure visual privacy is adequately maintained between the development and neighbouring properties and also ensures a high level of privacy for the future occupants of the building;
- The proposed landscaping to surrounds of the development will provide an attractive outlook for all apartments.

#### Conclusion

The proposal satisfies this principle.

#### **11.3.7. Principle 7: Safety**

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

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

#### Urban Design Planner Comments

Council’s Urban Design Officer states, *“The proposal provides an appropriate response to this principle.”*

#### Planner’s Comments

The aforementioned stance is concurred with. The proposal is considered to be satisfactory with regards to Principle 7: Safety, for the following reasons:

- The proposal contributes to casual and passive surveillance to the street and areas of communal open space from the increased number of dwellings within the development;

- The pedestrian entry point is well defined in a central location which is able to be well lit and readily visible from the public domain;
- The proposal provides area of public and private spaces which are clearly defined.

#### Conclusion

The proposal satisfies this principle.

#### **11.3.8. Principle 8: Housing diversity and social interaction**

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

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

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

#### Urban Design Planner Comments

Council's Urban Design Officer states, "The proposal provides an appropriate response to this principle."

#### Planner's Comments

The aforementioned stance is concurred with. The proposal is considered to be satisfactory with regards to Principle 8: Housing diversity and social interaction, for the following reasons:

- The proposed development comprises a seventeen (17) unit residential flat building (2 x Studio apartments (28.6%), 2 x 1-Bed apartments (28.6%), 10 x 2-Bed apartments (58.8%), 3 x 3-Bed apartments (17.6%). This includes:
  - the provision of four (4) units (Apartments 7, 8, 11 and 14) are to be allocated for the purpose of infill affordable housing for a minimum of 10 years;
  - the provision of two (2) (Apartments 7 and 11) that are able to be easily adaptable for accessibility purposes.
- The proposed mix of housing is considered appropriate and will cater for a range of demographics, living needs and household budgets;
- It is considered that the development responds positively to the existing and future housing needs of the local community. The proposed apartments range in floorplates from 37.2m<sup>2</sup> to 171m<sup>2</sup> offering an appropriate contribution to the mix of housing stock within Double Bay and the wider local area;
- The proposal also provides a total of 520m<sup>2</sup> of communal area which can foster social interaction between future occupants.

#### Conclusion

The proposal satisfies this principle.

### 11.3.9. Principle 9: Aesthetics

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

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

#### Urban Design Planner Comments

Council's Urban Design Officer states, "The proposal provides an appropriate response to this principle."

#### Planner's Comments

The aforementioned stance is concurred with. The proposed development provides for a contemporary development which is compatible with the existing and desired future character of the Wallaroy precinct. No issues raised in this regard.

#### Conclusion

The proposal satisfies this principle.

### 11.4. Apartment Design Guide

#### 11.4.1. Compliance Table [Note: non-compliances are **bolded**]

Site Area: 1,233m <sup>2</sup> No of Units: 17	Proposal (as amended)	Control	Meets
3D-1 (1) Minimum Communal Open Space	42% (520m <sup>2</sup> )	25% of the Site (308m <sup>2</sup> )	Yes
3D-1 (2) Minimum Solar Access to the Principal Useable Portion of Communal Space	<b>&lt;50% for 2hours Between 9am and 3pm on June 21</b>	50% for 2 Hours Between 9am and 3pm on June 21	<b>No</b>
3E-1 (1) Minimum Deep Soil Zone	22.8% (277m <sup>2</sup> ) with minimum 3m dimension / 33% (410m <sup>2</sup> ) total DSA	7% of the Site (86.3m <sup>2</sup> ) 3m (Min dimension)	Yes
3F-1 (1) Min Separation From Buildings – <u>Habitable Rooms &amp; Balconies</u> - Up to 12m (4 Storeys) / 25m (5-8 Storeys)	<b>Min 3m-14.5m (side) Min 3m-15m (rear)</b>	6m / 9m from boundaries	<b>No (part) No (part)</b>
3F-1 (1) Min Separation From Buildings – <u>Non-Habitable Rooms</u> - Up to 12m (4 Storeys) - Up to 25m (5-8 Storeys)	Min 3m / 4.5m (from boundaries)	3m / 4.5m from boundaries	Yes
3J-1 Number of Car Parking Spaces – Within 800m of Train Station or Centre zone	17	Max 29 Spaces (Part E1.4: WDCP 2015 requirements)	Yes
4A-1 (1) Direct Sunlight to Living Rooms and Private Open Spaces	100% of Dwellings (17/17 units receive direct sunlight for 2hrs between 9am and 3pm on June 21)	Minimum 70% of Apartments (Min 12) (Min 2 Hrs Between 9am and 3pm on June 21)	Yes

<b>Site Area: 1,233m<sup>2</sup> No of Units: 17</b>	<b>Proposal (as amended)</b>	<b>Control</b>	<b>Meets</b>
4A-1 (3) No Direct Sunlight to Apartments Between 9am and 3pm on June 21	0% (All units receive min 1hr direct solar access between 9am and 3pm on June 21)	Maximum 15% of Apartments (Max 3)	Yes
4B-3 (1) Minimum Cross Ventilation	100% (17/17 Units)	60% of Apartments (11)	Yes
4B-3 (2) Maximum Building Depth of Cross-through units	Less than 18m (approx. maximum is 17m)	18m	Yes
4C-1 (1) Minimum Ceiling Height – - Habitable Rooms - Non-Habitable Rooms	>2.7m >2.4m	2.7m 2.4m	Yes Yes
4D-1 (1) Minimum Apartment Layout	Studio: 37.2-37.8m <sup>2</sup> 1-bed dwellings: 57.9m <sup>2</sup> 2-bed dwellings: 80.5-98.5m <sup>2</sup> 3-bed dwellings: 121.5-171m <sup>2</sup>	Studio: 35m <sup>2</sup> 1-bed dwelling: 50m <sup>2</sup> 2-bed dwelling: 70m <sup>2</sup> 3-bed dwelling: 90m <sup>2</sup>	Yes
4D-1 (2) Habitable Room – Minimum Window Surface	100% of Habitable Rooms	10% of Floor Area and Not Borrowed	Yes
4D-2 (1) Max Habitable Room Depth from a window	<6.75m (17/17 Units)	2.5m x Ceiling Height (Max 6.75m)	Yes
4D-2 (2) Max Habitable Room Depth from a Window (Open Plan Design)	<8m (17/17 Units)	8m	Yes
4D-3 (1) Minimum Bedroom Size (Excluding Wardrobes)	Min 9m <sup>2</sup> Min 10m <sup>2</sup>	9m <sup>2</sup> (Other Beds) 10m <sup>2</sup> (Master Beds)	Yes Yes
4D-3 (2) Minimum Bedroom Dimension (Excluding Wardrobes)	Min 3m	3m	Yes
4D-3 (3) Minimum Width of Living Rooms	Min 3.6m Min 4m	3.6m (Studio/1-Bed units) 4.0m (2/3-Bed units)	Yes Yes
4D-3 (4) Minimum Width of Cross Over/Cross Through Apartments	Min 4m	4.0m	Yes
4E-1 (1) Minimum Balcony Dimensions (Area m <sup>2</sup> / Min Dimension)	>4m <sup>2</sup> Min 10.7m <sup>2</sup> / Min 2.63m Min 10m <sup>2</sup> / Min 2.47m Min 20.8m <sup>2</sup> / Min 2.4m	4m <sup>2</sup> (Studio) 8m <sup>2</sup> / 2m (1Bed) 10m <sup>2</sup> / 2m (2Bed) 12m <sup>2</sup> / 2.4m (3+Bed)	Yes Yes Yes Yes
4E-1 (2) Private Open Space (Ground Floor Units) – Minimum Area / dimension	15m <sup>2</sup> / Min 3.7m (Apt. 6) 15m <sup>2</sup> / Min 3.7m (Apt. 5)	15m <sup>2</sup> / 3m	Yes
4F-1 (1) Maximum Number of Units in a Corridor	Max 3 per level	Max eight (8) per level	Yes
4G-1 (1) Minimum Storage Area	7m <sup>3</sup> per unit 7.32m <sup>3</sup> per unit 11.3-13.4m <sup>3</sup> per unit 16.4-19.1m <sup>3</sup> per unit (19 storage cages in basement + storage within units)	4m <sup>3</sup> (Studio) 6m <sup>3</sup> (1Bed) 8m <sup>3</sup> (2Bed) 10m <sup>3</sup> (3Bed +)	Yes Yes Yes Yes
4G-1 (1) Provision of Storage Within Apartment	Min 50% or more within units	50%	Yes

## **11.5. Part 3 – Siting the Development**

### **11.5.1. Part 3A: Site Analysis**

Objective 3A-1 aims to ensure, *“that a site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context”*

The proposal has considered the surrounding built-form in terms of its relationship to surrounding development and constraints of the subject site.

Refer to ‘*Design Quality Statement*’ (Ref: Job no 18.41 PT/BD; dated 18.12.2019) and ‘*Response to Issues Raised by Council*’ (Ref: Job no 18.41 PT dated 24.04.2020) prepared by a Philip Thalís, Principal Registered Architect of Hill Thalís Architecture + Urban Projects Pty Ltd attached at **Annexure 3**.

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

### **11.5.2. Part 3B: Orientation**

Objective 3B-1 aims to ensure that, *“Building types and layouts respond to the streetscape and site while optimising solar access within the development”* & Objective 3B-2 aims to ensure, *“Overshadowing of neighbouring properties is minimised during mid-winter”*

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

### **11.5.3. Part 3C: Public Domain Interface**

Objective 3C-1 aims to encourage, *“transition between private and public domain is achieved without compromising safety and security”* and Objective 3C-2 aims to ensure, *“amenity of the public domain is retained and enhanced”*

Council’s Urban Design Officer in original referral response, dated 15 August 2019, states:

*The proposed northern facade dominates the streetscape. To achieve a contextually appropriate built form outcome, a larger front setback and lower street wall height is recommended.*

*The proposal provides a five-storey built form element with a length of 25m within close proximity to its western boundary adjacent to a heritage landscape. A lower wall height with a high degree of soft landscaping at this side is recommended to provide a suitable transition to the heritage item.*

The proposal as amended has increased the front setback and removed the five-storey street wall built form element via deletion of the north-facing balcony to the penthouse level unit. The proposed development now reads as four storey building with a recessed fifth storey.

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

#### **11.5.4. Part 3D: Communal and Public Open Space**

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

Objective 3D-1 aims to provide, *“an adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping”*

The design criteria requires a minimum of 25% (or 308m<sup>2</sup>) of the site area to be allocated for communal open space. This space must also have 50% of direct sunlight access to its principal part in mid-winter.

Council’s Urban Design Officer states, *“It appears that the proposed communal open space on the rear setback area receives less than 2 hours of solar access for 50% of its area.”*. The proposal provides approximately 42% (or 520m<sup>2</sup>) of the site area as communal open space, on all sides of the proposed building including a communal rooftop terrace, that is well in excess of the minimum area requirement. However, due to the orientation and siting of the proposed building the total useable communal area, in particular the rear area of the site, would not receive direct sunlight access for a minimum period of 2hrs in mid-winter. Notwithstanding this, a large portion of the communal area to the front and sides of the site receive direct sunlight access to greater than 50% of its area receiving a minimum of 2 hours of direct sunlight access in mid-winter and therefore considered to achieve intent of design objective 3D-1.

The proposal provides each unit with useable and accessible private and communal open space compliant with the terms of this Guide. In this regard, the proposal satisfies the objective of the design criteria.

#### **11.5.5. Part 3E: Deep Soil Zones**

Objective 3E-1 aims to, *“...provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality”*

The design criteria requires a minimum of 7% (or 86.3m<sup>2</sup>) of the site as Deep Soil Zone with a minimal dimension of 3m.

The proposal provides 22.8% (or 277m<sup>2</sup>) with minimum 3m dimension of deep-soil landscaped area throughout the site. Further to this, the proposal provides a combined total of 33% (410m<sup>2</sup>) of landscaped area that is either below the minimum 3m dimension and/or partially above subterranean structures. Furthermore, a substantial amount of additional landscaped area in the form of planter boxes and planting on structures throughout the building. These areas contribute to opportunity for substantial tree plantings and vegetation to be able to be accommodated throughout the subject site, as detailed in the submitted *Landscape Plan*, dated March 2019, prepared by *Melissa Wilson Landscape Architect*. The landscape design will enhance the residential amenity of the development.

The proposal satisfies the relevant objective and design criteria prescribed by this Part.

#### **11.5.6. Part 3F: Visual Privacy**

Under Clause 6A(1) and (2) of the SEPP 65, any controls in the Woollahra DCP 2015 relating to visual privacy are overridden by objectives, design criteria and design guidance set out in SEPP 65.

Objective 3F-1 aims to ensure that, *“adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy”*

Design Criteria 1 prescribes a minimum separation distance of 6-9m between habitable room windows and balconies to the side and rear boundaries, & 3-4.5m for non-habitable rooms.

The proposed development includes a new building with habitable room windows and balcony openings within a minimum of 3m-14.5m from side boundaries and minimum of 3m-15m from the rear boundary, which is less than the 6-9m contemplated by this part. Note: non-habitable rooms are located a minimum of 3m (on first four levels) and a minimum of 4.5m (at the fifth level), from a side and/or rear boundary as contemplated by this part of the ADG.

Furthermore, Council’s Urban Design Officer states:

*“I have reviewed the applicant’s response on page eight of the SEE. However, this is my opinion that the proposed arrangement of the habitable windows on side boundaries compromises the amenity and outlook of the proposed bedrooms. This is not a good urban design outcome. With greater separation distances, the proposed bedroom windows would be able to face the side boundary landscape have a bigger size.*

*With regards to the proposed Units 7 & 10 in each level, using proper screens and louvres to redirect the views would satisfy my previous comments.”*

Notwithstanding the above, the proposal is considered to be satisfactory with regards to Part 3F: Visual Privacy for the following reasons:

- The proposal is compliant with the minimum required side setback control of 3m in Part B3.2.3 of the WDCP 2015;
- Full compliance with the building separation design criteria of 6-9m as per the ADG would result in a building that can merely occupy a width of 10.22m<sup>2</sup> to 16.2m<sup>2</sup> (or only 36-57% of the total site width) which is inconsistent with typical separation distances of buildings along New South Head Road and would unreasonably restrict development on the subject site. It is acknowledged that with greater separation distances from side boundaries it would potentially be possible to have more side-facing windows however this would also compromise the ability for these rooms to gain northern solar access; and would also likely result in adverse privacy impact to the adjoining properties, in particular the residential flat building at No 355 New South Head Road, to the east of the subject site, which is located a mere 0.5-3.8m from the shared side boundary with the subject site;
- Any overlooking to the surrounding sites has been mitigated through the careful positioning of windows and openings to the building with a focus on primary orientation to the north. All the proposed western and eastern windows to habitable rooms are inset, angled or shielded to prevent direct sightlines to adjoining habitable room windows and private open space of adjacent dwellings;
- The proposed balconies areas are also generally orientated towards the front boundary facing towards New South Head Road with no direct sightlines to adjoining private open spaces and habitable room windows. Further to this, the communal and rooftop open space areas are provided with planter boxes to along the edges of which aids in providing screening to adjacent properties.



The proposal nevertheless satisfies the objective of the design criteria which states, “*adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy*”

#### **11.5.7. Part 3G: Pedestrian Access and Entries**

Objective 3G-1 aims to ensure that, “*...building entries and pedestrian access connects to and addresses the public domain*”.

The proposal provides two pedestrian entry points to the New South Head Road frontage which addresses the public domain. The proposal also provides direct rear access to the communal areas of the site.

Notwithstanding this, Council’s Urban Design Officer states, “*The proposed pedestrian entry gate and lift lobby are located deep into the façade. They are not visible and legible from the public domain. This does not satisfy ADG 3G-2. I recommend an entry gate at the beginning of the pedestrian hallway to enhance its safety and visibility.*” **Condition C.1(a)** is recommended which requires that the entry door is relocated further to the north and closer to the front building façade.

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

#### **11.5.8. Part 3H: Vehicle Access**

Objective 3H-1 aims to ensure, “*vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes*”

The proposal involves a single vehicular driveway access point to New South Head Road, consolidating the existing two driveways into one.

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

#### **11.5.9. Part 3J: Bicycle and Car Parking**

Objective 3J-1 aims to ensure, “*car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas*” & Objective 3J-2 aims to facilitate, “*...other modes of transport*”,

The proposal provides 17 at-grade resident car spaces (6 spaces in tandem), 18 x bicycle spaces and 2 x motorcycle spaces. The proposal does not seek to provide the maximum number of car parking spaces (29) as permitted by Part E1.4 of the WDCP 2015 but does comply with the minimum required bicycle and motorbike spaces.

The subject site is well situated in close proximity to public transport in the form of several bus buses within a 400m radius, and Edgecliff train station and Double Bay Ferry within an 800m radius. Thus, the proposal providing less than the maximum number of parking spaces is consistent with Objectives 3J-1 and 3J-2, in that it seeks to facilitate the use of other modes of transport. Furthermore, the proposal achieves compliance with the requirements of *Chapter E1: Parking and Access* of the Woollahra DCP 2015.

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

## **11.6. Part 4 – Designing the Building (Amenity)**

### **11.6.1. Part 4A: Solar and Daylight Access**

Objective 4A-1 aims “to optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space”

Design criteria 1 requires that living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter. The proposal results in 100% (17 of the 17 units) of the units that will receive a minimum of two hours solar access in mid-winter, achieving the design criteria. Furthermore, none of the proposed units within the building will receive no direct sun between 9am and 3pm in mid-winter, which complies with design criteria 3.

The proposal therefore satisfies the relevant objective and design criteria prescribed by this Part.

### **11.6.2. Part 4B: Natural Ventilation**

The proposal provides 100% of the apartments which are cross-ventilated. The proposal satisfies the relevant objectives and design criteria prescribed by this Part.

### **11.6.3. Part 4C: Ceiling Heights**

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

### **11.6.4. Part 4D: Apartment Size and Layout**

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

### **11.6.5. Part 4E: Private Open Space and Balconies**

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

### **11.6.6. Part 4F: Common Circulation and Spaces**

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

### **11.6.7. Part 4G: Storage**

Objective 4G-1 aims to ensure that, “Adequate, well designed storage is provided in each apartment”

Design Criteria 1 requires a minimum of 4m<sup>3</sup> for studios to 10m<sup>3</sup> for 3-Bed apartments/per unit with a minimum of 50% contained within the apartment. Council’s Urban Design Officer, states,

*“The proposed storage area, as shown in DA 2.022 – 2.024 includes the bedroom/bathroom storages. This does not satisfy the minimum requirements under the ADG. A new calculation excluding this area is required.”*

Notwithstanding the above, the proposal provides a minimum of 7m<sup>3</sup> of storage to a maximum of 19.1m<sup>3</sup> per apartment. This volumetric storage area (m<sup>3</sup>) is provided in the form of 19 storage cages (minimum 6m<sup>3</sup> each) located within the basement and in the form of built-in storage with the apartments which is calculated in addition to robes. Note: the design guidance states that bedrooms are to allow a minimum length of 1.5m for robes which has been excluded from the applicant provided storage calculations. This is considered to meet the minimum ADG storage requirements of design criteria 1 and objective 4G-1.

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

#### **11.6.8. Part 4H: Acoustic Privacy**

The proposal satisfies the relevant objectives prescribed by this Part. Further discussion is provided in *Part B3.5.4 Acoustic Privacy* assessment of the report.

#### **11.6.9. Part 4J: Noise and Pollution**

The proposal satisfies the relevant objectives prescribed by this Part.

### **11.7. Part 4 – Designing the Building (Configuration)**

#### **11.7.1. Part 4K: Apartment Mix**

Objective 4K-1 aims to provide for, “*A range of apartment types and sizes is provided to cater for different household types now and into the future*”.

The proposal is for a seventeen (17) unit residential flat building comprising:

- 2 x Studio apartments;
- 2 x 1-Bed apartments;
- 10 x 2-Bed apartments;
- 3 x 3-Bed apartments;
- 2 x Adaptable Designed apartments;
- 3 x 2-Bed apartments allocated for infill affordable housing; and
- 1 x 3-Bed apartment allocated for infill affordable housing;

Therefore, the proposed development provides a mix of accommodation to support the needs of a future population of differing household types and needs.

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

#### **11.7.2. Part 4L: Ground Floor Apartments**

Objective 4L-1 aims to encourage, “*Street frontage activity is maximised where ground floor apartments are located*” and Objective 4L-2 aims to encourage the “*design of ground floor apartments delivers amenity and safety for residents*”.

The proposal provides two ground floor apartments with direct access to communal open space at the front of the site including casual surveillance opportunities to New South Head Road.

The proposal satisfies the relevant objectives prescribed by this Part.

### **11.7.3. Part 4M: Facades**

Objective 4M-1 aims to encourage, *“building facades provide visual interest along the street while respecting the character of the local area”*

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

### **11.7.4. Part 4N: Roof Design**

Objective 4N-1 aims to encourage, *“Roof treatments are integrated into the building design and positively respond to the street”*.

A low pitched roof is proposed which assists in mitigating bulk and scale, and any adverse overshadowing impacts and is consistent with the contemporary architectural style of the proposed development and in keeping with surrounding development.

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

### **11.7.5. Part 4O: Landscape Design**

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

### **11.7.6. Part 4P: Planting on Structures**

Objective 4P-3 aims to encourage *“Planting on structures contributes to the quality and amenity of communal and public open spaces”*

The proposed provides a substantial amount of landscaped areas in the form of planting at roof level which is in addition to the landscaped front, side and rear setback areas of communal open space.

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

### **11.7.7. Part 4Q: Universal Design**

Objective 4Q-3 3 aims to encourage *“Apartment layouts are flexible and accommodate a range of lifestyle needs”*. The proposal provides units of an adaptable design and apartments of varying configurations and size.

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

## **11.8. Part 4 – Designing the Building (Performance)**

### **11.8.1. Part 4U: Energy Efficiency**

The proposal is subject to the provisions of a BASIX certificate No. **992642M** relating to commitments within the proposed development in relation to thermal comfort and energy efficiency sustainability measures. The proposal satisfies the relevant objective and design guidance prescribed by this Part.

### **11.8.2. Part 4V: Water Management and Conservation**

The proposal is subject to the provisions of a BASIX certificate No. **992642M** relating to commitments within the proposed development in relation to thermal comfort, water conservation and energy efficiency sustainability measures. The proposal satisfies the relevant objective and design guidance prescribed by this Part.

### **11.8.3. Part 4W: Waste Management**

Objective 4W-1 aims to ensure that, *“Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents”*

The proposed design has a dedicated waste storage room at the rear of the ground floor level which is not visible from the public domain but is readily accessible to residents.

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

### **11.8.4. Part 4X: Building Maintenance**

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

## **11.9. Conclusion**

For the reasons discussed above, the proposed development is considered to be satisfactory with regard to the 9 *Design Principles* in Schedule 1 of SEPP 65: Design Quality of Residential Flat Development and the associated *Apartment Design Guide*.

## **12. STATE ENVIRONMENTAL PLANNING POLICY (AFFORDABLE RENTAL HOUSING) 2009**

### **12.1. PART 2 – NEW AFFORDABLE RENTAL HOUSING**

SEPP (Affordable Rental Housing) 2009 relates to development that is defined as infill affordable housing, secondary dwellings, boarding houses, supportive accommodation and group homes and, where applicable, allows certain concessions in appropriate locations.

The proposal incorporates ‘infill affordable housing’ under Part 2, Division 1 of State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP).

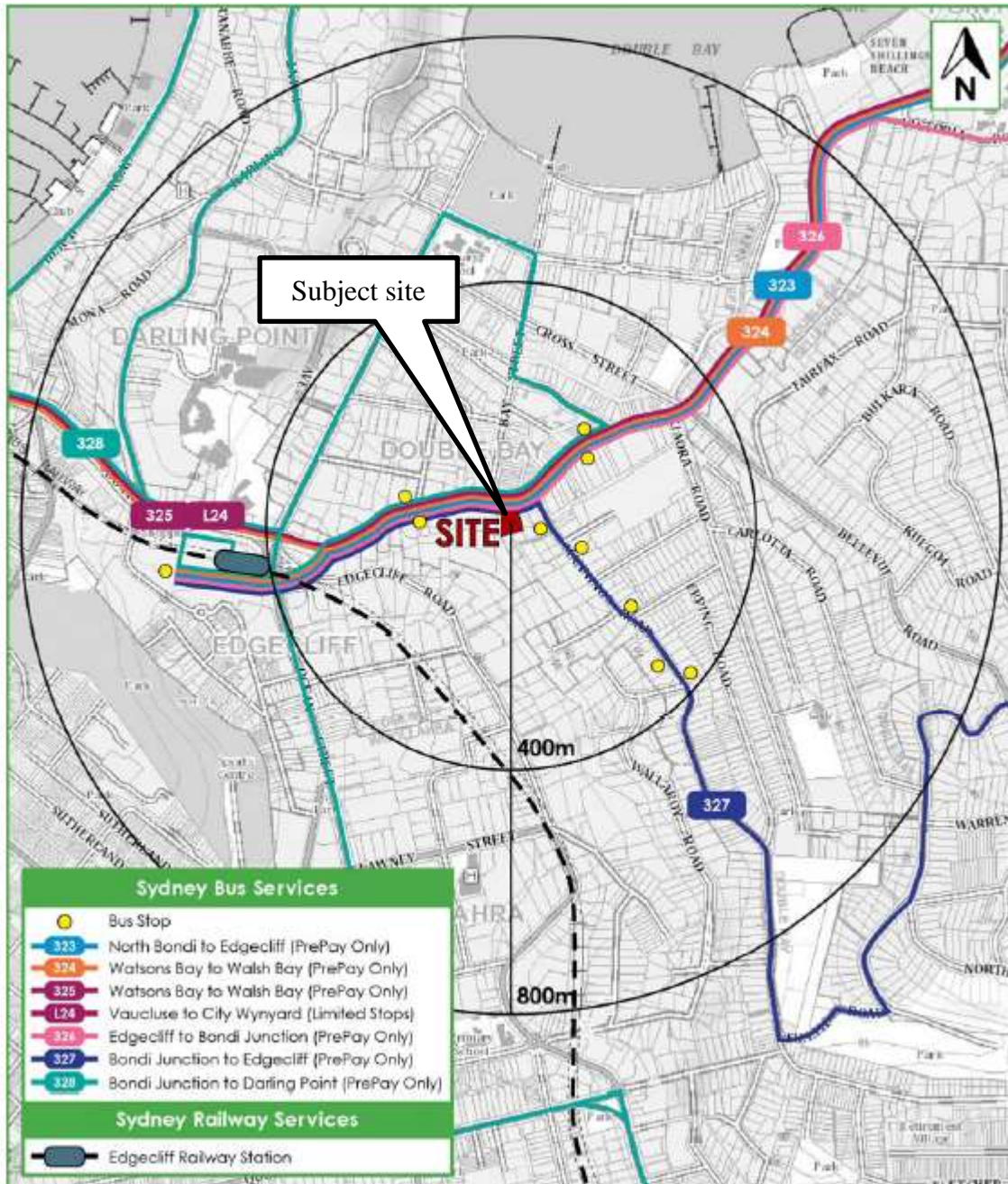
#### **12.1.1. Clause 10: Development to which Division applies**

Clause 10 states that the Division applies to residential flat buildings that are permitted with consent under another environmental planning instrument, to land that does not contain a heritage item and on land that is located in an accessible area.

The proposal development satisfies the relevant provisions as follows:

- The proposed development comprises a residential flat building which is permitted with consent in the R3 Medium Density Residential zone in the Woollahra LEP 2014;
- The site does not contain any heritage items and there are no current interim heritage orders that apply to the site;

- The subject site is located within the Sydney region and is located within 400m walking distance to several bus stops on New South Head Road and Manning Road with at least one bus per hour servicing the bus stops between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday. Refer to **Figure** below.



Sydney Bus Routes (Source: Traffic Report Ref: 18.671r01v04)

### 12.1.2. Clause 13: Floor space ratios

Site Area: 1,233m <sup>2</sup>	Proposal (as amended)	Control	Complies
Gross floor area for affordable housing (minimum) Clause 13(1)	26.7% of the permissible gross floor area as infill affordable housing (or 328.8m <sup>2</sup> )	Min 20% of the gross floor area as affordable housing (or 246.6m <sup>2</sup> )	Yes
Floor space ratio for affordable housing (maximum) Clause 13(2)(a)(i)	1.26:1 (or 1,556.9m <sup>2</sup> )	Max 1.5:1 (or 1,849.5m <sup>2</sup> ) (i.e. 1:1 + 0.5:1)	Yes

Clause 13(1) states that a minimum of 20% of the gross floor area is to be used for the purposes of infill affordable housing.

The proposal complies with the requirement.

Clause 13(2)(a)(ii) permits development to exceed the maximum FSR permitted under another environmental planning instrument (in this case the Clause 4.4 of WLEP 2014) by a bonus that is calculated on a pro-rata basis of the amount of GFA which is nominated to be used for the purposes of affordable housing.

The proposal nominates the provision of **328.8m<sup>2</sup>** (equating to **26.7%** of the permissible GFA for the site) for infill affordable housing purposes which will achieve the 20% minimum requirement prescribed in Clause 13(1).

Clause 13(2)(a)(ii) therefore allows a **0.267:1 FSR bonus** with the provision of **328.8m<sup>2</sup>** of GFA as infill affordable housing or a maximum FSR of **1.26:1** (1:1 + 0.5:1) for the site.

The proposal complies with the requirements of Clause 13(1) and 13(2).

### 12.1.3. Clause 14: Standards that cannot be used to refuse consent

Clause 14 provides standards whereby the consent authority cannot refuse consent if there is compliance with the standards. These standards do not impose maximum or minimum standards and the consent authority may approve a development where it exceeds the following provisions:

Total Site Area: 1,233m <sup>2</sup>	Proposed	Control	Complies
Site Area (minimum) Clause 14(1)(b)	1,233m <sup>2</sup>	450m <sup>2</sup>	Yes
Landscaped Area (minimum) Clause 14(1)(c)	33% (410m <sup>2</sup> )	30% (370m <sup>2</sup> )	Yes
Deep Soil Zone (minimum) Total Clause 14(1)(d)(i)	22.8% (277m <sup>2</sup> ) with minimum 3m dimension / 33% (410m <sup>2</sup> ) total DSA	15% (185m <sup>2</sup> )	Yes
Deep Soil Zone (minimum) Dimensions Clause 14(1)(d)(ii)	>3m	3m	Yes
Deep Soil Zone (minimum) Rear Clause 14(1)(d)(iii)	182m <sup>2</sup> / 410m <sup>2</sup> Less than two-thirds of total DSA	Two-thirds deep soil zone located at the rear (if practicable)	Yes* (On merit)
Solar Access To Living Rooms & Private Open Spaces – Between 9am and 3pm on June 21 Clause 14(1)(e)	100% of Dwellings (17/17 units)	70% of Dwellings & Private Open Spaces for 3 Hours	Yes
Parking (minimum) Clause 14(2)(a)(ii)	17 parking spaces	Studio: 0 spaces (0) 1-bed dwelling: 0.5 space (1) 2-bed dwelling: 1 space (10) 3-bed+ dwelling: 1.5 spaces (4.5) Min total required: 16 (15.5)	Yes
Dwelling Size (minimum) Clause 14(2)(b) (i – iv)	Studio: >35m <sup>2</sup> 1-bed dwellings >50m <sup>2</sup> 2-bed dwellings >70m <sup>2</sup> 3-bed dwellings >95m <sup>2</sup>	Studio: 35m <sup>2</sup> 1-bed dwelling: 50m <sup>2</sup> 2-bed dwelling: 70m <sup>2</sup> 3-bed dwelling: 95m <sup>2</sup>	Yes Yes Yes Yes

*\*Not practicable due to extent of basement, non-compliance arises due to exceedance of minimum deep-soil and landscaped area requirements on the site.*



### Landscaped area

‘Landscaped area’, defined in the standard instrument Standard Instrument (Local Environmental Plans) Order 2006, means:

*“...a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area”*

The proposal complies with the landscaped area requirement, as per Clause 14(1)(c) of the ARH SEPP 2009.

### Deep soil zone

‘Deep soil zone’, defined in Clause 14(d)(i) means:

*“...that part of the site area (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed:  
(i) there is soil of a sufficient depth to support the growth of trees and shrubs”*

The proposal complies with the deep soil zone requirement, as per Clause 14(1)(d)(i) of the ARH SEPP 2009.

### Conclusion

The proposal complies with the requirements of Clause 14 of the ARH SEPP 2009.

#### **12.1.4. Clause 15: Design requirements**

Clause 15(2) states that this clause does not apply to development to which SEPP 65 applies. As such, this clause is not applicable to the proposal.

#### **12.1.5. Clause 16: Continued application of SEPP 65**

Clause 16 states that that nothing in this Policy affects the application of SEPP 65. As such, an assessment of the proposal in relation to SEPP 65 is included in **Section 11** of this report.

#### **12.1.6. Clause 16A: Character of local area**

Clause 16A states that a consent authority must consider whether the design of the development is compatible with the character of the local area.

Consideration of compatibility with the character of the local area is provided in the assessment against Principal 1 and 2 of the SEPP 65 assessment in **Section 11** of this report and in assessment against the desired future character objectives of the Wallaroy Precinct, in **Section 18.1** of this report.

The proposal complies with the requirements of Clause 16A of the ARH SEPP 2009.

#### 12.1.7. Clause 17: Must be used for affordable housing for 10 years

Clause 17(1) states that a consent authority must not consent to development to which this Division applies unless conditions are imposed to the effect that for 10 years from the date of the issue of the occupation certificate:

- The dwellings proposed to be used for the purpose of affordable housing will be used for the purpose of affordable housing, and
- All accommodation that is used for affordable housing will be managed by a registered community housing provider.

Clause 17(1)(b) states that a restriction is required to be registered, before the date of the occupation certificate, against the title of the property in accordance with Section 88E of the Conveyancing Act 1919 to ensure the above requirements are carried out.

The Applicant has nominated the following units for the purpose of affordable housing:

- Level 1: Apartment 7 (81m<sup>2</sup>) and Apartment 8 (85.4m<sup>2</sup>);
- Level 2: Apartment 11 (81m<sup>2</sup>); and
- Level 3: Apartment 14 (81m<sup>2</sup>).

**Conditions F.2** and **I.1** are recommended requiring that a restrictive covenant on the land be provided for the provision of **Apartments 7, 8, 11 and 14** as affordable housing for 10 years, and that the affordable housing to be managed by a registered community housing provider in accordance with Clause 17(1)(a) and (b) of the ARH SEPP 2009.

#### 12.1.8. Clause 18: Subdivision

Clause 18 permits subdivision to be carried out with development consent.

The proposed development does not involve strata subdivision. The recommended **Condition A.5** reaffirms this stance.

### 12.2. PART 3 – RETENTION OF EXISTING AFFORDABLE RENTAL HOUSING

Part 3 of ARH SEPP 2009 is applicable as there is the potential for the reduction of existing availability of affordable housing.

#### 12.2.1. Clause 49: Buildings to which Part applies

Clause 49(1), states:

*“This Part applies only to those buildings that were low-rental residential buildings as at 28 January 2000, and does not apply to any building that becomes a **low-rental residential building** after that date.”*

Clause 49(2), states:

*“This Part applies only to those buildings that were low-rental residential buildings as at 28 January 2000, and does not apply to any building that becomes a low-rental residential building after that date.”*

*This Part does not apply to a building:*

- (a) *that has been approved for subdivision under the Strata Schemes (Freehold Development) Act 1973,*

Therefore, based on the above the building located at:

- 353 New South head Road, containing a single three bedroom dwelling and office space may have been a 'low-rental residential buildings' as at 28 January 2000, as per Clause 49(1); and
- 351 New South Head Road is excluded as it has been approved for strata subdivision, per Clause 49(2).

#### **12.2.2. Clause 50: Reduction of availability of affordable housing**

A 'low-rental dwelling' is defined as:

*"low-rental dwelling means a dwelling that (at any time in the 24 month period prior to the lodgment of a development application to which this Part applies) was let at a rental not exceeding the median rental level for that time (as specified in the Rent and Sales Report) in relation to a dwelling of the same type, having the same number of bedrooms and located in the same local government area."*

At the time of DA lodgement, the applicant confirms that the building at 351 New South Head Road is being used for commercial and residential purposes, under a lease arrangement. A Rent and Sales Report provided with the application has noted that:

*"Table 4 of the 51<sup>st</sup> Rent & Sales Report provides details of the weekly rents for the March quarter of 2000 for dwellings within the Woollahra Local Government Area. At that time, Table 2 indicates that the median rental for a three-bedroom dwelling was \$650 per week."*

*In order for the apartments to be classified as 'low-rental dwellings' they need to have been rented out below the median weekly rent within the 24 months preceding this development application."*

The applicant has presented that the weekly rental figures for 353 New South Head Road from May 2013 to July 2019, was ranging from \$1,901 to \$2,212.

The median weekly rents for new bonds of 3 bedroom dwellings in the greater metropolitan region in 2017-19 was ranging from \$1,115 to \$1,400.

The subject application seeks demolition of the building however as the cost of rent for the property was well above the median rental rates, the building at 351 New South Head Road is not subject to classification as a 'low rental dwelling'.

Therefore, there is no loss nor reduction in availability of affordable housing as a result of the demolition of the existing buildings.

The proposal complies with the requirements of Part 3 of the ARH SEPP 2009.

### 12.3. Conclusion

The proposal is therefore acceptable with regard to ARH SEPP 2009.

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

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

The development application was accompanied by BASIX Certificate demonstrating compliance with the SEPP. These requirements are imposed in recommended **Conditions**.

### 14. INTEGRATED DEVELOPMENT (DIVISION 4.8 of the EP&A Act 1979)

Section 4.46 of the Act provides that development is integrated development if it requires consent and it requires approval under certain other Acts. The proposed development is integrated as it requires development consent under Section 138 of the *Roads Act 1993* (Roads Act) for:

- (a) *erect a structure or carry out a work in, on or over a public road, or*
- (d) *pump water into a public road from any land adjoining the road, or*
- (e) *connect a road (whether public or private) to a classified road*

Section 4.47(3) provides that a consent must be consistent with the general terms of approval of an approval body. S.4.47(4) provides that if an approval body informs a consent authority that it will not grant a required approval, the consent authority must refuse consent to the application. Section 4.47(5) provides that if an approval body fails to inform a consent authority the consent authority may determine the DA.

Under cl.70 of the Environmental Planning and Assessment Regulation 2000, an approval body is required to advise its decision in relation to the general terms of approval within 21 days after receiving the last of the submissions received during the submission period.

A response was received from Transport for NSW (Roads and Maritime Services) providing general terms of approval, refer to **Condition A.6**.

A copy of the determination is also required to be forwarded to RMS in accordance with S4.47(6).

### 15. STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007

#### 15.1. Division 17: Roads and traffic

SEPP Infrastructure applies to the development based on its location adjacent to a road that has an average daily traffic volume of more than 40,000 vehicles. The subject site and proposed residential development is located in close proximity of New South Head Road, a classified road with a daily traffic volume of more than 40,000 vehicles. Division 17 of the Infrastructure SEPP is therefore applicable. The relevant considerations are:

#### Clause 100: Development on Proposed Classified Road

Concurrence with the Roads and Maritime Services is required under Clause 100. The proposal seeks to carry out works on the New South Head Road reserve associated with demolition of existing driveways and construction of a new driveway and connection of stormwater drainage system (including dewatering of the site).

Transport for NSW (Roads and Maritime Services) were notified and have provided concurrence via providing general terms of approval to the development subject to **Condition A.6**.

#### Clause 101: Development with Frontage to Classified Road

Clause 101 requires consideration of the impact upon the safety, efficiency and ongoing operation of a classified road (New South Head Road), including the design of vehicular access, the emission of smoke or dust, the nature, volume or frequency of vehicles.

Clause 101(2) states in part:

*“The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*

- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, ...”*

New South Head Road is the only road frontage whereby access is possible as it has no alternate secondary frontage for access. It is acknowledged that, the subject development is an intensification of the existing use i.e. an increase in the number of dwellings. Notwithstanding this, RMS have raised no objections on the grounds of the design of vehicular access, the emission of smoke or dust, the nature, volume or frequency of vehicles.

#### Clause 102: Impact of Road Noise or Vibration on Non-Road Development

Clause 102 requires that for development involving residential accommodation in close proximity to classified roads the consent authority is required to be satisfied that appropriate measures will be taken to ensure that the following noise (*LAeq*) levels are not exceeded:

- (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,*
- (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

Refer to recommended **Conditions C.20** and **F.12** which requires incorporation of acoustic measures to ensure the proposed building will comply with the above-mentioned interior noise levels criteria.

### **15.2. Conclusion**

The proposal is therefore acceptable with regard to SEPP (Infrastructure) 2007.

## **16. SYDNEY REGIONAL ENVIRONMENTAL PLAN (SYDNEY HARBOUR CATCHMENT) 2005**

The proposed development is partially obscured from the waterway and the foreshores by existing development and landscaping. The subject site is not a land/water interface development but notwithstanding, Division 2 of the SREP prescribes matters for consideration for interrelationship of waterway and foreshore uses as well as maintenance, protection and enhancement of views.

The proposal does not result in any detrimental impact on the wetlands or cause pollution or siltation of the waterway. It does not detrimentally impact on existing vegetation or drainage patterns and does not obstruct vistas of the waterway from the public domain.

The proposal therefore satisfies the relevant criteria prescribed by the SREP.

## **17. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014**

### **17.1. Part 1.2: Aims of Plan**

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

### **17.2. Part 2.3: Zone Objectives and Land Use Table**

The proposal is defined as a Residential Flat Building which permitted and is consistent with the objectives of the R3 Medium Density Residential zone.

### **17.3. Part 4 Principal Development Standards**

#### **17.3.1. Compliance Table**

<b>Development Standard</b>	<b>Existing</b>	<b>Proposed Development (as amended)</b>	<b>Control</b>	<b>Complies</b>
Minimum Lot Size (Part 4.1A(2))	Site Area: 1,233m <sup>2</sup> (562.8m <sup>2</sup> + 670.3m <sup>2</sup> )	Site Area: 1,233m <sup>2</sup>	700m <sup>2</sup> for a Residential Flat Building	Yes
Height of Buildings (Part 4.3(2))	<10.5m	<b>16m</b>	10.5m	<b>No</b>
Floor Space Ratio (Part 4.4(2))	N/A – Existing on site are dwellings an FSR control is not applicable.	1.26:1 (or 1,556.9m <sup>2</sup> )	Max 1.5:1* (i.e. 1:1 + 0.5:1) (or 1,849.5m <sup>2</sup> )	Yes*

*\*As per Clause 13: Floor Space Ratios of the ARH SEPP 2009 which overrides WLEP 2014.*

#### **17.3.2. Part 4.1A: Minimum Lot Sizes for a Dual Occupancies, Multi Dwelling Housing and Residential Flat Building**

Part 4.1A(2) requires a minimum lot size of 700m<sup>2</sup> for the purposes of a residential flat building.

The subject site has a total area of 1,233m<sup>2</sup>. The proposal complies with 4.1A(2) of Woollahra LEP 2014.

#### **17.3.3. Part 4.3: Height of Buildings**

Part 4.3 limits development for the purposes of a residential flat building to a maximum height of 10.5m on the subject site.

The proposal does not comply with the maximum building height prescribed by Part 4.3 of Woollahra LEP 2014 but it is considered to be acceptable with regard to the relevant objectives under Part 4.3 of Woollahra LEP 2014. Refer to *Clause 4.6* assessment below.

#### **17.3.4. Part 4.4: Floor Space Ratio**

Part 4.4 limits development to a maximum floor space ratio of 1:1 for a residential flat building development on the subject site.

The proposal exceeds the maximum floor space ratio development standard prescribed by Part 4.4(2) of the Woollahra LEP 2014. Notwithstanding this, *Clause 13: Floor Space Ratios* of the ARH SEPP 2009 allows exceedance of the applicable Floor Space Ratio development standard of an additional 20-50% additional GFA above the FSR control for infill affordable housing.

The proposal provides 328.8m<sup>2</sup> of GFA for the purpose of infill affordable housing and therefore benefits from an additional 0.267:1 bonus FSR pursuant to Clause 13(2)(ii) of the ARH SEPP 2009.

The subject development, as amended, has a FSR of 1.26:1 (or total GFA of 1,556.9m<sup>2</sup>) and therefore complies with the maximum permitted floor space ratio of 1.5:1 (or 1,849.5m<sup>2</sup>).

Note: The proposal, as amended, has been calculated consistent with the *Landmark Group Australia Pty Ltd v Sutherland Shire Council [2016] NSWLEC 1577* LEC judgement i.e. the proposed gross floor area has included areas of common horizontal circulation were required consistent with the judgement.

#### **17.4. Part 4.6: Exceptions to Development Standards (Height of Buildings)**

The following is an assessment under the relevant heads of consideration of Clause 4.6:

##### **17.4.1. Departure**

The proposal involves non-compliance with the maximum height of buildings development standard under Clause 4.3 of the Woollahra LEP 2014.

The proposal exceeds the 10.5m maximum Height of Buildings development standard under Clause 4.3 of the Woollahra LEP 2014. The proposed building height, as amended, of up to 16m represents a 5.5m, or 52.4% non-compliance with the development standard.

The proposed works above the 10.5m development standard consists of the part of Level 3 and Level 4.



**Figure 1** below illustrates the existing and proposed development in relation to the 10.5m height plane within the surrounding context:



**Figure 1 3D Diagram of Proposed Development (within the surrounding context) in relation to the height plane** (Source: Woollahra Council 3D Planning Portal)

#### **17.4.2. Purpose**

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

#### **17.4.3. Written Request**

Part 4.6(3) stipulates that a written request is required from the applicant that justifies the contravention of the development standard by demonstrating that compliance with is unreasonable or unnecessary and there are sufficient environmental planning grounds to justify the contravention. The applicant has provided a written request in relation to the departure. Refer to **Annexure 2**.

#### **17.4.4. Assessment**

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

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

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

Comment: The applicant's written request has adequately demonstrated that the objectives of the *Height of Buildings* development standard are achieved, notwithstanding the numerical non-compliance.

The applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a). The objectives of the development standard are discussed further in the assessment of Clause 4.6(4)(a)(ii).

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

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

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

S1.3 of the EPA Act reads as follows:

*1.3 Objects of Act*

*(cf previous s 5)*

*The objects of this Act are as follows:*

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicant's written request, which supports the proposed non-compliance with the height of buildings development standard, has adequately demonstrated that the proposed development promotes the delivery and maintenance of affordable housing, good design and local amenity of the built environment, in accordance with objects 1.3(d) and 1.3(g) of the EPA Act.

The applicant's written request has demonstrated sufficient environmental planning grounds to justify the contravention of the development standard as required by Clause 4.6(3)(b) and the consent authority can be satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

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

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

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

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the *Height of Buildings* development standard, and the zone objectives of the R3 Medium Density Residential zone. An assessment against these objectives is provided below.

#### **Clause 4.3 – Height of Buildings**

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

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

**Comment:** The proposed development is consistent with the desired future character of the neighbourhood that is encapsulated within the zone objectives and the desired future character statement for the Wallaroy Precinct, contained in the Woollahra DCP. It is contextually appropriate in terms of its height, as required by sub-clause (a). Refer to desired future character assessment in Section 18.1 '*Chapter B1: Wallaroy Precinct*' of this report and **Figure 1** above);

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

**Comment:** The proposed development is located within the R3 Medium Density Residential zone in a locality which is characterised by residential buildings with those in close vicinity of the site generally of a much taller built form than that proposed on the subject site. The proposed development is also directly adjacent to the Double Bay Centre (B2 Local Centre zone) which allows buildings of a greater bulk, scale and density. Therefore, it is considered that the subject development provides an appropriate transition, as required by sub-clause (b);

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

Comment: The proposal is satisfactory with regards to maintaining adequate solar access to adjoining private sites main areas of private open space and north-facing habitable room windows, as per the solar access requirements of the Woollahra DCP 2015. This satisfies the intent of sub-clause (c);

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

Comment: The proposal is satisfactory with regards to privacy, views, overshadowing and visual intrusion, for reasons detailed in the relevant sections of this report, as required by sub-clause (d);

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

Comment: The proposal would not result in any loss of publicly available views, as required by sub-clause (e).

### **Objectives of the R3 Medium Density Residential zone**

The proposal is assessed against the Objectives of the R3 Medium Density Residential zone which specify the following objectives:

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

Comment: The proposal is satisfactory with the intent of the aforementioned zone objectives and there are sufficient environmental planning grounds to justify the contravention, as follows:

- The following environmental planning grounds are provided in support of the variation sought:
  - *There is no adverse solar impact on the adjoining properties as a result of the non-compliant form to the south of the subject site; it is the compliant component of the building that causes effect before the non-compliant component does, such that reducing the scale of this provides no material benefit to adjoining properties.*
  - *The proposed development provides a compliant quantum of deep soil planting areas to be enjoyed in association with the development and is not compromised as a result of the height of the building.*
  - *The affected part of the building at Levels 3 and 4 provides a reasonable setback to the eastern boundary, having regard to the site constraints.*

- *The setback distance in the south-western corner of the site is sufficient having regard to the limited use of this area on the adjoining property, which is dominated by landscaping, but does not necessarily form part of a meaningful open space area, nor part of the habitable area of a dwelling.*
- *From the public domain, the non-compliant part of the building does not compromise the overall streetscape, being in context with the built form as it extends down the hill from the Edgecliff Centre and suitably transitions into the Double Bay Village, without compromising the visual landscaping, in particular, which is dominated by Overthorpe's gardens to its rear. The non-compliant form is instead recessed in visual terms, particularly with the upper floor having an increased setback from the levels below, such that it fits within this landscape context and, by virtue of its materials and finishes, appears blended with the broader visual form.*
- *The additional height does not compromise views from the public domain surrounding the site.*
- *The additional height does not take away from the visual presence of the landscape setting that is provided by Overthorpe and the enjoyment of this is retained and can continue to be appreciated from New South Head Road and other vantage points in proximity to the site, despite the height of the building. The overall presence of landscaped form remains clear and evident when the property is viewed in the surrounding context.*
- *The quantum of height that is afforded by non-compliance with the development standard allows for the provision of additional residential accommodation of an affordable nature, in a location that is well serviced in terms of facilities, services and transport. As stated in the Architectural Design Statement:*

*The site is located adjacent to the important regional centres of Double Bay and Edgecliff. Within a 5 minute/500 metres are Edgecliff train station and bus interchange, the main Double Bay shopping areas and Edgecliff commercial centre. Both centres contain many services for the benefit of residents and workers. Over 170 years of urban development, the area is evolving as a heterogeneous mix of major retail and entertainment, apartment buildings of all types and sizes, terraces and remnant individual houses.*

*The site has convenient access to Sydney's city centre, to multiple transport modes, shops, many public facilities and open spaces, and thus is well suited to this proposal as it provides high levels of amenity in an established and diverse neighbourhood.*

*The Design Statement also states that:*

*The site is well located close to excellent public transport, shopping and a wide range of public facilities including Council's new Library and schools, which are all within a 10 minute or less walk. There are a number of new buildings either newly built, under construction or proposed in the vicinity that accord to the proposed floor space ratios and heights.*

*Given the extent of such facilities in immediate proximity, it makes strategic planning sense to utilise the location of this site to accommodate an in situ residential population, including in a circumstance of increased affordability, where there are sound opportunities for employment and a reduced reliance on private transport. This has positive environmental outcomes, such as reduced traffic movements and utilisation of infrastructure.*

- *By utilising additional building height provides a significant opportunity for meaningful communal open space as part of the proposal. An alternative scenario would see this area hemmed in by the natural topography, with limited solar access. The additional height proposed allows for this space to benefit from solar access and natural light, despite its positioning on the southern side of the building. That said, given the quantum of traffic along New South Head Road on a daily basis, communal space on the northern orientation would be a poor environmental planning outcome from an amenity perspective. The Design Statement provides that:*

*To supplement the extensive though more shaded communal gardens to the rear at the ground floor, a generous communal roof terrace has been provided. This area, more than 6 metres in width, is open to the sky and mature vegetation to the rear, and so receives excellent sun – satisfying the ADG requirement. It allows all residents to enjoy the available district views. There are planters to the rear and concrete ledges and balustrades to minimise overlooking of neighbours. Therefore, the opportunity to elevate this space and ensure that it is afforded positive aspect in terms of privacy, view and solar access will ensure a meaningful space in association with the development. This represents a sound environmental planning response.*

- *Despite certain apartments being above the development standards, from an amenity perspective, the Architectural Design Statement provides the following, having regard to the non-compliant component of the development, as well as the development as a whole:*

*All apartments receive controlled solar access to living areas and their various balconies and terraces.*

*All windows and sliding doors have projecting slabs and wide balcony overhangs. Winter sun will penetrate deep into all apartments as the apartment plans have a slender depth ratio. The setbacks and screen planting provides privacy to the neighbours to the south, west and east.*

*The site planning and building design maximise the benefits of passive solar design to all dwellings;*

- *17 out of 17 dwellings (100%) have windows facing north to their primary habitable rooms*
- *17 out of 17 dwellings (100%) receive more than the minimum 2 hours mid-winter sun between 9am and 3pm – with many units receiving sun extended sunlight between 9am and 3pm*
- *all dwellings have private outdoor space that is open to sun and outlook;*
- *all communal areas have fresh air and daylight*

- *Therefore, the proportion of the development above the development standard in fact improves the amenity of the building such that an equal, if not, better outcome is achieved. As such, there are sufficient environmental planning grounds to permit variation to the development standard for height.*
- Despite the numerical non-compliance with the Height of Buildings development standard, the proposal will reflect and enhance the use and character of the existing locality, in an locality which is characterised by large scale multi-storey buildings;
- The proposed density, bulk and scale of the development is appropriate and acceptable given the context of the site, being adjacent to large scale residential flat buildings to the south and south-east and is in keeping of the desired future character of the area;
- The proposal is contextually appropriate to the existing surrounding development, as viewed from vantage points along New South Head Road;
- The provision of a residential flat building on the subject site will allow for an appropriate response to the intent of the R3 Medium Density Residential zone which encourages a variety of housing types;
- It has been demonstrated throughout the assessment report that the exceedance of the applicable development standard will not result in any adverse overshadowing, view loss and/or acoustic and visual privacy impacts to the adjoining properties having regard to the Woollahra DCP 2015 requirements;
- The proposal achieves the desired future character of the Wallaroy Precinct which is achieved despite the numerical non-compliance with the Height of Buildings development standard;
- For reasons as outlined in the applicants written request pursuant to Clause 4.6 of the WLEP 2014.

#### **Clause 4.6(4)(b) - Assessment**

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

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

The Department issued a Planning Circular No.PS18-003 (dated 21 February 2018) which notified Councils of arrangements “...where the Director General’s concurrence may be assumed for exceptions to development standards under environmental planning instruments which adopt clause 4.6 ...of the Standard Instrument...” Clause 64 of the EPA Regulations provides that Council may assume the Director-General’s [Secretary’s] concurrence for exceptions to development standards, thus satisfying the terms of this clause.

#### **17.4.5. Conclusion**

The written submission from the applicant has adequately demonstrated that the contravention of the *Height of Buildings* development standard prescribed by *Part 4.3* of the Woollahra LEP 2014 is justified pursuant to the relevant matters for consideration prescribed by Clause 4.6.



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

The consent authority is satisfied that the proposal is in the public interest as it is consistent with the objectives of the development standard and those applicable to development within the zone.

Accordingly, the proposal is in the public interest and is consistent with the objectives of the Clause 4.3 development standard. Departure from the control can therefore be supported.

## **17.5. Part 5 Miscellaneous provisions**

### **17.5.1. Part 5.10: Heritage Conservation**

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

The subject site is not located within a heritage conservation area nor heritage item. It is however located within proximity to a state and locally listed items as listed under Schedule 5 of the Woollahra LEP 2014. The descriptions of the heritage items located in the vicinity are extracted as follows:

<b>Suburb</b>	<b>Item name</b>	<b>Address</b>	<b>Property description</b>	<b>Significance</b>	<b>Item no</b>
<b>Double Bay</b>	Gardens to former "Overthorpe", including 3 Small-Leaved Figs, Coolamon or Watermelon Tree, Silver Quandong, 2 Moreton Bay Figs, Bunya Pine, Queen Palm, Cabbage Palms, 9 Canary Island Date Palms, service driveway, front retaining wall and fence, gates	337-347 New South Head Road	SP 20175	State	206
<b>Double Bay</b>	Vegetation associated with the gardens of the former house "Overthorpe", including Silver Quandong, Norfolk Island Pine, Bunya Pine, rainforest specimen, Bangalow Palms, Queen Palms, Cabbage Palms	349 New South Head Road	SP 62056	Local	207
<b>Double Bay</b>	Weeping Lilli Pilli, all Bangalow Palms (approx 30), Washingtonia Palm, Queen Palms, Cabbage Palms	5 Manning Road	Lot 6, DP 15038	Local	205



*The subject site and the nearby Heritage Items (source: Councils GIS Mapping System)*

Council's Heritage Officer has undertaken a heritage impact assessment as per Clause 5.10(4) of the Woollahra LEP 2014, providing, inter alia, the following comments:

#### ***"Existing Buildings***

*The existing buildings have no heritage significance and do not make any contribution to the heritage significance of Double Bay. The properties are not heritage listed and are not located within a heritage conservation area.*

*The construction of the buildings is not associated with any known prominent architect and have no distinctive landmark qualities or other features that would make them potentially significant or rare. The report by Weir Philips has assessed the potential heritage significance of the existing buildings and has concluded that the properties do not meet the criteria for identification as a place of local significance. The report by Weir Philips, together with further research, has determined the properties to not be of local significance. Accordingly, the properties are not of heritage value and therefore no objection is raised to the proposed demolition of the existing buildings.*

*Given that the buildings still retain some of the Federation and Inter War style, it is considered that the buildings and setting should be archivally recorded prior to being demolished.*

#### ***Trees***

*The analysis contained within the Construction Impact Assessment and Management Plan prepared by Botanics Tree Wise People Pty Ltd has determined that there are no trees remaining on the site that predate construction phase of either No. 351 New South Head Road, Double Bay or No. 353 New South Head Road, Double Bay.*

*The HIS states:*

*No. 351 New South Head Road contains limited landscaping mostly located to the perimeter of the site. In December 2018, a Construction Impact Assessment and Management Plan was prepared by Botanicas Tree Wise People Pty Ltd. This assessment identified an African Olive (*Olea europea*) to the northern boundary. Several other environmental weed species, or trees dating from the modern phase of occupation, such as: Privet (*Ligustrum*); Frangipani (*Plumeria acutifolia*); and Avocado (*Persea Americana*) were identified along the eastern site boundary. A mature Bull Bay Magnolia (*Magnolia grandiflora*), and an established Kentia Palm (*Howea forsteriana*), were identified along the western boundary. The rear yard to the south of the lot is a small concrete and tiled space which contains limited perimeter planting.*

*No. 353 New South Head Road is set back to the rear of the block. The front boundary is defined by sandstone wall with sandstone columns and timber infill panels. Behind this fence is a mature Port Jackson Fig Tree (*Ficus Rubiginosa*). Vehicular access is achieved to the eastern boundary of the site and a timber pedestrian gate. The former front yard has been paved and repurposed as a parking area. The eastern boundary is defined by a timber fence near to which is a small single garage, a Bangalow Palm (*Archontophoenix cunninghamiana*) and three Frangipani (*Plumeria acutifolia*). The small rear yard is bound to the south by a metal hurricane style fence and to the west by the neighbouring brick garage. The garden contains a Weeping Lilly Pilly, identified in the 2018 Construction Impact Assessment and Management Plan as being self-seeded, (see Figure 34) a Kentia Palm (*Howea forsteriana*) two Frangipani (*Plumeria acutifolia*) to the northern boundary and a mix of modern planting such as ferns, yuccas and jasmine.*

*The proposed works include extensive landscaping including the removal of privet (*Ligustrum*) and African olive (*Olea europea*). The plans include the retention of several mature trees including Port Jackson Fig (*Ficus Rubiginosa*), Bull bay Magnolia (*Magnolia Grandiflora*) and Kentia Palm (*Howea forsteriana*). Supplementary planting will be added to the property which is in keeping with the landscape of the area.*

*Therefore, the proposed removal of trees on the subject property will not have a heritage impact as the trees post-date the construction of the existing buildings and were not part of the original trees planted by Sir John Hay.*

### ***Heritage items in the vicinity***

#### ***Views***

*The proposed development has been set back to retain the Port Jackson Fig on the northern boundary. This HIS notes that this tree is not belonging to the former gardeners however its location to the street boundary does form part of the heritage items setting. Therefore the retention of the tree is in keeping with the setting of the heritage item and maintaining the views of this area which are predominately landscaped with large, mature trees.*

*Impacts to views of Overthorpe from the western section of the subject property are minimised by the lower storey of the rear section of the proposal than of the frontage, which is supported.*

*Significant views of Overthorpe will be retained, which are predominately from across the street looking south to Overthorpe, or whilst directly in front of the property. Views of the area whilst travelling up New South Head Road from the east will be retained, which is of a highly dense tree canopy with buildings intermixed and setback from the street boundary. Views of Overthorpe from the west are retained.*

*The proposed development is in keeping with the existing development along New South Head Road and will not impede the setting or views of the heritage item.*

*Direct and indirect impacts*

*The proposed development will not directly impact the heritage items in the vicinity or their curtilages.*

*The proposed building is to be set back from the southern corner to minimise potential impacts to the significant Weeping Lilly Pilly (*Waterhousea floribunda*) located on the neighbouring site.*

*The Flora & Fauna Assessment concludes that:*

*Presently, the understorey and ground cover within the Overthorpe Gardens receive sunlight during the late afternoon. However, the Gardens are in shade for the majority of the day due to the dense canopy of mature trees. It is evident that the Gardens are tolerant of dense shade and have persisted due to the current low light conditions. The shadow diagrams prepared by Hill Thalys (Appendix E) indicate minimal shade will be cast over the east frontage of the Gardens. Thus, any future development within the study area is unlikely to result in any adverse impact on the vegetation within the Overthorpe Gardens.*

*Therefore, the proposal will not cause indirect impacts through overshadowing to Overthorpe.*

**Woollahra DCP 2015**

**Chapter B1 Residential Precincts**

**B 1.4 Wallaroy Precinct**

**Desired Future Character**

*The proposal is consistent with the Desired Future Character of the area from a heritage perspective. The proposal responds to the sloping topography of the site and has been setback to retain the significant Weeping Lilly Pilly (*Waterhousea floribunda*) located on the neighbouring site and the Port Jackson Fig on the northern boundary, which contributes to the setting of the heritage listed Overthorpe. The use of a flat roof retains views of the green canopy of the area. The proposal retains significant vegetation on the property and has a landscape design that is compatible with the neighbouring heritage items of significance. The proposal retains and rebuilds the existing sandstone garden wall to the street.*

**Archaeology**

*The existing buildings were the first known structures to be built on the subject properties. Prior to this the land was used as the grounds for Guyong Estate, and prior to this as Sir John Hay's experimental nursery. It is likely that the existing buildings disturbed any previous remains when they were constructed. Therefore it is unlikely that potential historical archaeology to remain.*

*The AHIMS basic search revealed 0 recorded Aboriginal sites within 200m of the subject site. As the site has been previously disturbed when the existing structures and landscaping were constructed, it is unlikely that any archaeological evidence will remain, therefore no further actions under the Due Diligence Code of Practice were required.*

*Although, it is noted that the geotechnical report specifies that the site is underlain with natural Aeolian sand located beneath topsoil/fill. Therefore, the construction/demolition team are to be made aware of potential unexpected archaeological finds on the site during excavation works and the appropriate procedures for dealing with unexpected archaeological finds.”*

Council’s Heritage Officer has no objection to the proposal and it is considered it to be satisfactory in terms of Clause 5.10 of the Woollahra LEP 2014 subject to the following recommended

**Conditions:**

- **B.1** requiring the archival recording of the buildings prior to demolition;
- **E.31** requiring notification to the NSW Heritage Division of new evidence of any aboriginal archaeological remains and/or deposits identified during any development work;

Conclusion

The proposed demolition of the buildings and structures on the subject site is supported as they are not considered to be of local significance nor do they meet threshold for listing.

In terms of the construction of a residential flat building it is not considered to result in any adverse direct and indirect impacts to adjoining heritage items in the vicinity in terms of views, impacts upon the heritage listed trees on adjacent sites. This includes both overshadowing impacts and direct impacts arising from the construction potentially compromising their health and viability. (Note: Council’s Tree and Landscape Officer is also satisfied that the proposed development can be achieved from a landscape perspective).

The proposal is therefore considered to be acceptable with regard to relevant heads of consideration in Part 5.10 of the Woollahra LEP 2014.

**17.5.2. Part 6.1: Acid Sulfate Soils**

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

The subject site is within a Class 5 area as specified in the Acid Sulfate Soils Map. However, the subject site and proposed excavation works are located within 500m of Class 2 and 3 land and the impacts of groundwater and potential acid sulfate soil affectation is therefore unknown.

Part 6.1(2) stipulates that works to Class 5 soils that are “*within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land,* development consent is required.

Part 6.1(3) stipulates that development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.

Part 6.1(4) stipulates that despite sub-clause (2), development consent is not required under this clause for the carrying out of works if:

- (a) *a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and*
- (b) *the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.*

A preliminary assessment has been provided in section 4 ‘Acid Sulfate Soil (ASS) Assessment’ of the submitted Preliminary Geotechnical, Acid Sulfate Soil and Hydrogeological Assessment: 351-353 New South Head Road, Double Bay, NSW Project No. P1806950JR02V01. Dated June 2019, which states, inter-alia:

*“Laboratory chromium suite analytical results indicate that only one of the tested soil samples, i.e. sample taken from 4 m depth in BH103, has exceeded the action criteria for acid trail. Sample taken from 5.5m depth in BH103 is ASS. Considering that these sample are located in the northern portion of the site and they are below the proposed excavation depth, no ASSMP is required.*

*Should materials be identified during construction works, which do not resemble materials identified in this report, or in case of any change in bulk excavation level, Martens and Associates should be contacted to inspect the material and assess the need for further testing / advice.”.*

It is therefore concluded that an Acid Sulfate Soil Management Plan is therefore not required for the proposed works.

The proposal is therefore acceptable with regard to the relevant matters for consideration in Part 6.1 of the Woollahra LEP 2014.

### **17.5.3. Part 6.2: Earthworks**

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

The proposal involves the following excavation:

- A total of approximately 3,400m<sup>3</sup> of bulk excavation material to be removed from the site to accommodate the proposed construction of a residential flat building with basement car parking including site levelling works;
- The extent of excavation for the basement floor subsurface walls are setback 1.5-3.6m from the boundaries of the site; and
- It will occur to a maximum depth of approximately 5.6-8.2m to underside of the basement level slab, as measured from the existing ground level.

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

- (a) *The likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development*
- (b) *The effect of the development on the likely future use or redevelopment of the land*
- (c) *The quality of the fill or the soil to be excavated, or both*

- (d) The effect of the development on the existing and likely amenity of adjoining properties*
- (e) The source of any fill material and the destination of any excavated material*
- (f) The likelihood of disturbing relics*
- (g) The proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area*
- (h) Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development*

The proposal is acceptable with regards to Part 6.2 of the Woollahra LEP 2014 for the following reasons:

- In terms of ESD principles, the extent of soil being removed from the site is considered to be acceptable. It is considered that the majority of the proposed excavation is required to facilitate accommodate a compliant amount of car parking, as per Part E1 of the DCP and therefore not considered to be unreasonable or atypical for Residential Flat Building development;
- It is considered that excavation would result in short-term disruption to local amenity during the construction phase, these disruptions are off-set by the long term benefits to the wider community given the proposed excavation is to ensure the sufficient provision of off-site car parking without compromising local amenity in terms of reducing on-street parking;
- The proposed excavation works are supported by a technical engineering report which form part of the approval documentation (**Condition A.3**), including a Geotechnical Report (Ref: P1806950JR02V01) prepared by Martens and dated June 2019;
- Council's Development Engineer is satisfied that the proposed excavation would be acceptable subject to imposition of standard **Conditions** requiring mitigating measures to ensure the maintenance of amenity on the surrounding neighbourhood and structural integrity of any existing and supporting structures during the excavation and construction phase of the development. These measures may include, but are not limited to, requirement for compilation of dilapidation reports, vibration monitoring, Geotechnical Certification & Monitoring, and dust mitigation controls.

#### **17.5.4. Part 6.3: Flood Planning**

Part 6.3 seeks to minimise the flood risk to life and property development, allow development on land that is compatible, consider projected changes as a result of climate change and avoid significant adverse impacts on flood behaviour and the environment in flood prone areas.

The subject site, namely, No 351 New South Head Road, is located in a 'Flood Planning Area', as identified on the flood planning map of the Woollahra LEP 2014. Part 6.3(3) states:

- (3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—*
  - (a) is compatible with the flood hazard of the land, and*
  - (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
  - (c) incorporates appropriate measures to manage risk to life from flood, and*
  - (d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*



- (e) *is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

Council's Technical Services department is satisfied that the proposed development has made adequate provision of flood protection measures, subject to recommended **Condition C.14: Flood Protection**, which requires:

- a) A permanent flood risk management plan is to be installed in a frequented area of the basement carpark.*
- b) All fences and walls are to be designed to be structurally stable during all flood events including the PMF.*
- c) The proposed below ground car park is to be protected by a physical threshold set at or above the flood planning level of RL8.7m AHD*
- d) All habitable floors have to be at or above or protected from flooding to the flood planning level RL9.5 m AHD*
- e) Flood compatible materials shall be used for all flood exposed construction below the flood planning level of RL9.5m AHD*
- f) All electrical wiring and fixed electrical equipment shall be located above or waterproofed to the flood planning level of RL9.5m AHD.*
- g) Emergency self-powered lighting, indicating the safe exits is to be installed in the car parking area.*
- h) All flood protection measures are to be inspected and certified as fit for purpose after the construction is complete by an engineer experienced in flood mitigation.*

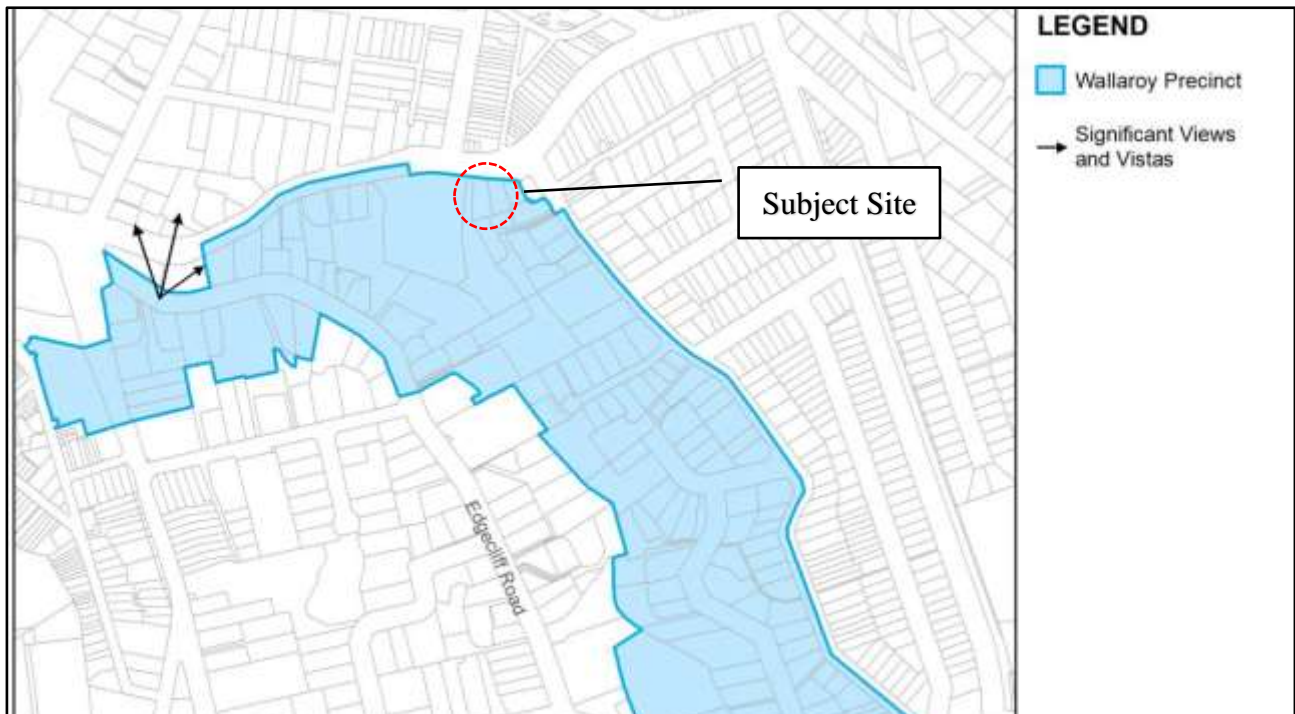
The proposal is therefore acceptable with regard to the relevant matters for consideration in Part 6.3 of the Woollahra LEP 2014.

## **18. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015**

### **18.1. Chapter B1: Wallaroy Precinct**

Part B1.4.2 Desired future character statement, states:

*“Residential flat buildings are permitted in the northern part of the precinct up to a height of six storeys. Where these sites adjoin properties with a lower height limit, development is to establish a sympathetic transition to the boundaries; this may be through a graduation of building bulk and height, increased setbacks, or both.”*



Extract from Wallaroy Precinct Map (Source: Woollahra DCP 2015, Chapter B1.4)

The proposal meets the streetscape character and key elements of the precinct and desired future character objectives of the Wallaroy precinct, as noted in Part B1.4.2 of the Woollahra DCP 2015, for the following reasons:

- The proposed building respects and enhances the streetscape and key elements of the precinct, achieving consistency with Objective O1, as:
  - The proposed five-storey built form element is located at the higher part of the site whilst the four-storey built form element is located at the lower part of the site. This provides a gradual transition and stepping of development down the hillside from the ridgeline at Edgecliff to Double Bay;
  - It provides a shallow pitched roof form which is in keeping with the architectural style of buildings within the precinct namely inter-war flat buildings;
  - It is in keeping with the character of the immediate surrounding context that includes a range of three to thirteen storey residential flat buildings;
  - It will contribute to the precinct in terms of providing a rich mixture of architectural building styles and forms via the introduction of a well-designed contemporary building;
  - It will be situated within a highly visible front garden with substantial landscaping throughout the site;
  - It will retain the significant canopy tree within the front setback at the front of the site;
- The proposed development provides for a part four/part five-storey residential flat development is of a height, scale and density that is considered to provide a transition from the smaller scale buildings ranging from three and four storey residential flat buildings situated to the south and south-east of the site, on Manning Road (No's 3, 11 and 13) and ranging from the seven to thirteen storey residential flat buildings to the south and west of the site (No's 337 and 349 New South Head Road). This is consistent with the Wallaroy Precinct desired future character statement that states, "*...Residential flat buildings are permitted in the northern part of the precinct up to a height of six storeys*", which is consistent with its R3 zoning. The proposal achieves consistency with the intent of Objective O2;



**Built Form Context (Source: Hill Thalys Architecture)**

- The proposed amount of excavation has been minimised to primarily facilitate construction of a basement level containing a compliant amount of car parking, as per Part E1 of the WDCP 2015 (Objective O3);
- The proposal is of a modern contemporary design of high architectural quality involving appropriate articulation and modulation in the form of a varied palette of materials which contribute to visual interest as viewed from the public domain and add to the existing character of the area and evolution of residential building styles (Objective O4);
- There are no significant views or vistas identified available across the subject site from public areas. The proposal will have no adverse impact on views from public land. In terms of private view affectation the proposal is considered to achieve appropriate view sharing consistent with the four step assessment of view sharing planning principle established by *Tenacity Consulting v Warringah (2004) NSWLEC 140*. Therefore, achieving consistency with Objective O5 and O6;
- The proposed development provides substantial deep-soil landscaping and landscaped area throughout the site via planting of low to medium scale vegetation in the form of deep-soil landscaping, roof gardens and planting above structures. The proposal also retains the significant mature street tree at the front of the site which provides a significant streetscape presence and provides substantial tree canopy cover. Council's Tree and Landscape Officer is supportive of the scheme in landscape terms describing the proposed landscape treatment as "...of a very good standard with a generous proportion of new plantings of native trees proposed.". Thereby, achieving consistency with Objective O8.

## 18.2. Chapter B3: General Development Controls

### 18.2.1. Part B3.2: Building Envelope

Site Area: 1,233m <sup>2</sup>	Existing	Proposed (as amended)	Control	Complies
Front Setback (NSH RD) (C1)	12.1m & 3.3m	1.73-5.6m – G 1.73-5.6m – L1 1.73-5.6m – L2 1.73-5.6m – L3 6-8.6m – L4	2.34m	No (part)
Rear Setback (Southern) (C3)	2.8-6.3m	3-12.2m – G 3-12.2m – L1 3-12.2m – L2 3-12.2m – L3 15m – L4	10.03- 14.86m*	No (part)*
Minimum Rear Setback (C4)	2.8-6.3m	3-12.2m – G 3-12.2m – L1 3-12.2m – L2 3-12.2m – L3 15m – L4	3m*	Yes*
Side Boundary Setbacks (Western) (C2)	1.98-2.7m	3.09m – G 3.09m – L1 3.09m – L2 3.09m – L3 3.09m – L4	3m*	Yes*
Side Boundary Setbacks (Eastern) (C2)	5.3-7.9m	3m – G 3m – L1 3m – L2 3m – L3 12.5-14.5m – L4	3m*	Yes*
Maximum Unarticulated Wall Length to Street	N/A	Less than 6m	6.0m	Yes
Maximum Unarticulated Wall Length to side elevations - North elevation - South elevation	N/A	Less than 12m	12m	Yes

*\*Note: Under Clause 6A of SEPP 65, the rear and side setbacks are overridden by the visual privacy and separation design criteria in Part 3F: Visual Privacy of the ADG, as already discussed in the report. Nevertheless, side and rear setbacks are provided for comparative purposes.*

#### Part B3.2.2: Front Setback (Northern – New South Head Road)

Control C1 states that the front setback of the building envelope is to be determined by averaging the three most typical setbacks of the four closest residential buildings that face the same side of the street. This is calculated at 3.45m (i.e. based upon the average of No's 327, 331 and 355 New South Head Road which have front setbacks of 3m, 3.1 and 0.9m, respectively. Note: the front setback of No 337 NSHRD is as per the Control considered to be the most 'atypical' front setback of the four closest residential buildings).

The proposed front setback varies from a minimum of 1.73m and 3.2m at the western and eastern corners of the building to 5.6m at the centre of the proposed building, representing non-compliance with Control C1.

Notwithstanding the above, the proposal is considered to achieve consistency with regards to the Objectives O1, O2 and O3 in Part B3.2.2: Front Setback of the Woollahra DCP 2015 in the following manner:

- Whilst there are components of the building which have a front setback which is less than 2.34m, the reduced setback is minor and is more than offset by the majority of the building which is set back well behind the 2.34m front building line (up to 5.6m);
- It is considered that strict compliance with the front setback control would in fact discourage any substantial planting to be located in the front yard. The proposed 5.6m front setback to the central portion of the building which is beyond the applicable control, facilitates the retention of a tree of significant landscape and streetscape significance which is currently located in the front yard of the subject site. Thereby, achieving consistency with Objective O1;
- The proposal provides sufficient landscape area forward of the front building alignment providing 56% (39.5m<sup>2</sup>) of the front setback area as deep-soil landscaping including two consolidated areas of 28m<sup>2</sup> and 30m<sup>2</sup> (partly within Buildable Area but forward of front building alignment, achieving consistency with Objective O3;

#### Part B3.2.3: Side Setback and Part B3.2.3: Rear Setback

Under Clause 6A of SEPP 65, the rear and side setbacks are overridden by the visual privacy and separation design criteria in Part 3F: Visual Privacy of the ADG.

Notwithstanding this, the proposal generally complies with the minimum required rear and side setbacks of Control C2 in Part B3.2.3 and Controls C3, C4 in Part B3.2.4 of the WDCP 2015, apart from the minor protrusions associated with the rear, south-western corner of the proposed building that is located within the rear setback (occupying approximately 27% of the site width). The numerical setback non-compliances are not considered to result in any significant amenity impacts in terms of solar access, views, privacy or visual intrusion.

#### Part B3.2.5: Wall Height and Inclined Plane

The wall height and inclined plane controls do not apply to land or development types where an FSR applies which includes Residential Flat Buildings on land zoned R3 Medium Density Residential.

#### Conclusion

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

### **18.2.2. Part B3.3: Floorplates**

The floorplate controls do not apply to land or development types where an FSR applies which includes Residential Flat Buildings on land zoned R3 Medium Density Residential.

### 18.2.3. Part B3.4: Excavation

Site Area: 1,233m <sup>2</sup>	Existing	Proposed	Control	Complies
Maximum Volume of Excavation (C2 + C4)	Unknown*	3,400m <sup>3</sup>	1,359m <sup>3</sup> (1,233m <sup>3</sup> + 8m <sup>3</sup> /per unit)	No
Excavation, Piling and Subsurface Wall Setback (C7)	N/A	Min 3.6m – Front (north) Min 1.5m – Rear (south) Min 2.2m – Side (west) Min 2.8m – Side (east)	1.5m	Yes Yes Yes Yes
Geotechnical Report (C9)	N/A	Provided a Geotechnical Report & Excavation Methodology	Required Where > 2.0m	Yes

\*Not applicable, any excavation is likely to have occurred prior to an excavation control applying to the subject site.

Objectives: O1, O2, O3, O4, O5

Controls: C2, C4a), C4c), C7, C9

Control C2 specifies a maximum volume of bulk excavation of 1,233m<sup>3</sup>. The proposal requires approximately 3,400m<sup>3</sup> of bulk excavation, representing non-compliance with Control C2.

Control C4 permits a variation to the maximum volumetric excavation control only being the amount needed to accommodate:

- car parking to comply with the maximum rates in Part E1 of the DCP including reasonable access thereto; and
- Storage at rate of 8m<sup>3</sup> per unit

Control C7 requires a minimum setback of excavation of 1.5m. The proposal complies with the required excavation setback to all boundaries, ranging from a minimum setback of 1.5-3.6m to all sub-surface walls.

Notwithstanding the numerical non-compliance with Control C2, the proposal achieves consistency with the corresponding Objectives O1 through to O5 in Part B3.4 of the Woollahra DCP 2015, as:

- The proposed development provides car parking that is less than the maximum rates contained in the DCP; as such, the provision of car parking spaces is not considered to be excessive in such that it results in exceeding the control for excavation to accommodate additional spaces.
- The proposed development has been designed to be sited to generally relate to the topography of the subject site (O1);
- The majority of the proposed excavation is required to facilitate accommodating a compliant amount of car parking, as per Part E1 of the DCP. This is to be located within a basement level including its associated vehicular access/turning area, minimal storage areas and reasonable access thereto via a single lift and stairwell servicing the above units. The proposal is consistent with the maximum permitted volumetric excavation for the site when taking into account the variations permitted in Control C4, therefore achieving consistency with Objective O2 which aims, “to minimise excavation”;
- The proposal involves the retention of a significant Port Jackson Fig Tree (12m x 8m) within the front yard of the subject site. Council’s Tree and Landscape Officer is also satisfied that the proposed development, can be achieved from a landscape perspective without directly or indirectly compromising the health and viability of the trees being retained on the subject site nor the mature trees on surrounding sites. This is subject to the recommended conditions relating to tree preservation and protection measures (O3);

- Council's Development Engineer is satisfied with the proposed development, subject to the recommended standard **Conditions** requiring engineering certification prior to issuing of a construction certificate. This includes, but is not limited to, a requirement for the preparation of a Geotechnical / Hydrogeological Monitoring Program prepared by a professional engineer, who is suitably qualified and experienced in geotechnical and hydrogeological engineering which is to be adhered to during any development work. This is considered to minimise any structural risks to adjoining property (O4);
- Standard **Conditions** minimise any adverse amenity impacts to adjoining and adjacent properties (in relation to dust and noise) arising from excavation works. Furthermore, excavation works are considered to be temporary in nature, therefore minimising associated noise, vibration, dust and other amenity impacts (O5).

#### 18.2.4. Part B3.5: Built Form and Context

	Existing	Proposed	Control	Complies
Significant Trees (C2)	Several significant trees	Retained	Retained	Yes
Casual Surveillance – Windows Facing Street/Public Area (C9)	> 1	> 1	Min One window	Yes
Solar Access to Main Ground Level Private Open Space of Adjacent Properties (C1a)	< 50% for a min of 2 hours	< 50% for a min of 2 hours	50% for 2 hours on 21 June between 9am to 3pm	No
Solar Access to Nth Facing Habitable Room Windows at Upper Level of Adjacent Properties (C1b)	GF: <3hrs FF: >3hrs 2FL: >3hrs	GF: < 3hrs FF: >3hrs 2FL: >3hrs	3 hours on 21 June between 9am to 3pm, over a portion of surface	Yes
Distance of New Habitable Room Windows to Habitable Room Windows/POS of Adjoining Properties (C4)	Windows within 9m of boundaries	New windows have no direct line of sight within 9m of habitable rooms	Min 9.0m	Yes*
Distance of Private Open Space (above ground) to Habitable Room Windows/POS of Adjoining Properties (C7)	N/A	New above ground terraces/balconies, >9m direct line of sight from POS	Min 9.0m	Yes*

*\*Note: Under Clause 6A of SEPP 65, the required window and balcony separations of the DCP are overridden by the visual privacy and separation design criteria in Part 3F: Visual Privacy of the ADG, as already discussed in the report.*

#### **Part B3.5.1: Streetscape and Local Character**

Controls: C1, C2, C4-C7

Objective: O1-O4

Given the existence of varieties of different roof forms, the proposed flat roof is considered to be contextually fit in the streetscape, achieving Objective O4.

The proposal is considered to be acceptable with regard to the relevant streetscape and local character controls and objectives in Part B3.5.1 of the Woollahra DCP 2015.

#### **Part B3.5.2: Overshadowing**

Controls: C1a, C1b, C2

Objective: O1



The proposed development involves the following additional overshadowing, on 21 June, when compared to the existing situation:

- 9am – Additional overshadowing upon the communal gardens of No 337 NSHRD, the access driveway of No 349 NSHRD and upon the garden at the rear-northern corner of No 5 Manning Road *Note:* already largely in shadow due to dense tree cover. No overshadowing of north-facing habitable room windows of No 3A Manning Road;
- 10am – Minor additional overshadowing upon the communal gardens of No 337 NSHRD and the access driveway of No 349 NSHRD. Additional overshadowing upon the trees and garden at the northern portion of No 5 Manning Road *Note:* ground area already largely in shadow due to dense tree cover. No overshadowing of north-facing habitable room windows of No 3A Manning Road;
- 11am – Additional overshadowing upon the trees and garden at the northern portion of No 5 Manning Road *Note:* ground area already largely in shadow due to dense tree cover. No additional overshadowing of upper level north-facing habitable room windows of No 3A Manning Road, the proposal results in a minor improvement to solar access of 1<sup>st</sup> floor level windows;
- 12pm – Additional overshadowing upon the trees and garden at the northern portion of No 5 Manning Road *Note:* ground area already largely in shadow due to dense tree cover. No additional overshadowing of upper level north-facing habitable room windows of No 3A Manning Road. The proposal results in a minor improvement to solar access of some 1<sup>st</sup> floor level windows and does result in complete overshadowing of ground floor level north-facing habitable room windows of No 3A Manning Road;
- 1pm – Additional overshadowing upon the trees and garden at the northern portion of No 5 Manning Road and the rear communal area of No 3A Manning Road *Note:* ground area already largely in shadow due to dense tree cover. Complete overshadowing of ground floor level north-facing habitable room windows of No 3A Manning Road. The proposal results in a minor improvement to solar access of some 1<sup>st</sup> floor level windows and additional overshadowing of other 1<sup>st</sup> floor level windows. Complete solar access is retained to the 2<sup>nd</sup> floor level;
- 2pm – Additional overshadowing upon the trees and garden at the northern portion of No 5 Manning Road and the rear communal area of No 3A Manning Road *Note:* ground area already largely in shadow due to dense tree cover. Complete overshadowing of ground floor level north-facing habitable room windows of No 3A Manning Road. Complete overshadowing of ground floor level north-facing habitable room windows of No 3A Manning Road and several windows at 1<sup>st</sup> floor level. Partial overshadowing of several windows at 2<sup>nd</sup> floor level;
- 3pm – Minor additional overshadowing upon the trees and garden at the northern portion of No 5 Manning Road and the rear communal area of No 3A Manning Road *Note:* ground area already largely in shadow due to dense tree cover and the building at No. 337 NSHRD. Complete overshadowing of all north-facing habitable room windows of No 3A Manning Road.

With regard to the above, the proposal achieves consistency with the relevant Objective O1 in Part B3.5.2 of the Woollahra DCP 2015 for the following reasons:

- Control C1(b) states that *north facing windows to upper level habitable rooms of neighbouring dwellings do not have sunlight reduced to less than 3 hours between 9am and 3pm on 21 June over a portion of their surface* and Control C2 states, “*Lot orientation may make C1 above difficult to achieve so a reduced amount of solar access may be considered, provided the proposed building complies with all setback controls.*”. Based on the assessment above it is evident that the proposed development will result in additional overshadowing to ground floor level, 1<sup>st</sup> floor and 2<sup>nd</sup> floor level north-facing windows at 3A Manning Road throughout the day from 9am to 3pm. However, in some instances the proposal provides improved solar access to existing in shadow, north-facing windows at ground and first floor level between 9am and 1pm. It is acknowledged that the majority of north-facing windows at 3A Manning Road at 2pm and 3pm, however solar access is largely retained to all upper north-facing windows (i.e. 1<sup>st</sup> and 2<sup>nd</sup> floor levels) between 9am and 12pm. Thereby achieving compliance with Control C1(b);
- Control C1(a) stipulates solar access is to be provided to at least 50% (or 35m<sup>2</sup>) of the main ground level private open space of adjacent properties for a minimum of two hours between 9am and 3pm on 21 June. Based on the assessment above it is evident that the proposed development will result in additional overshadowing to open space areas of the adjoining sites at No 337 NSHRD, No 5 Manning Road and No 3A Manning Road. These areas are already largely in shadow due to the dense tree canopy and surrounding buildings. It will therefore not result in the ground floor areas receiving less direct solar access than the existing situation. It is however acknowledged that filtered solar access will be reduced.

### **Part B3.5.3: Public and Private Views**

#### **Public Views and Vistas**

There are no significant views or vistas identified available across the subject site from public areas. The proposal will have no adverse impact on views from public land. The proposal achieves consistency with the relevant Objectives O1 and O2 with regard to protection of public views and vistas in Part B3.5.3 of the Woollahra DCP 2015.

#### **Private Views**

Owners and/or owner’s corporations from adjoining residential flat buildings and properties and/or those acting on their behalf have objected to the proposal, on the basis of private view loss. They are from:

1. No 337 New South Head Road (to the west and south-west);
2. No 349 New South Head Road (to the south);
3. 3A and 5 Manning Road (to the south); and
4. 343A Edgecliff road (further to the south)

**Note:** While inspections have not been undertaken from the aforementioned properties, a comprehensive and thorough desktop analysis has been undertaken via the use of Council’s 3D mapping system, known as “*AAM GEOCIRRUS 3D Viewer*”. A view analysis is provided via providing multiple “existing” and “proposed” viewpoints from the 3D model.

In assessing the reasonableness or otherwise of the degree of view loss, this report has had regard to the case law established by *Tenacity Consulting v Warringah (2004) NSWLEC 140* which has established a four step assessment of view sharing. The steps are as follows:

## 1. The assessment of the views affected

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

The views affected primarily relate to:

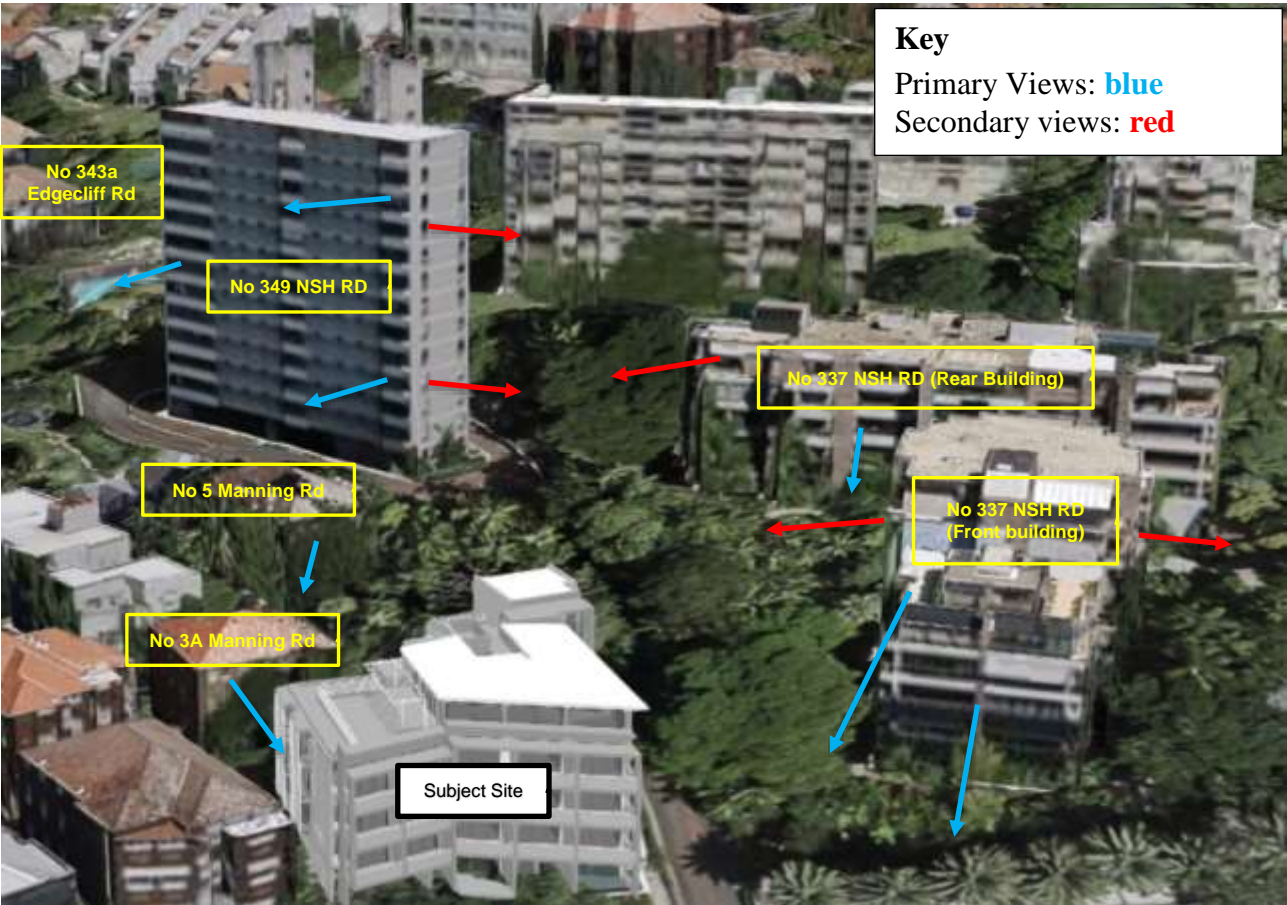
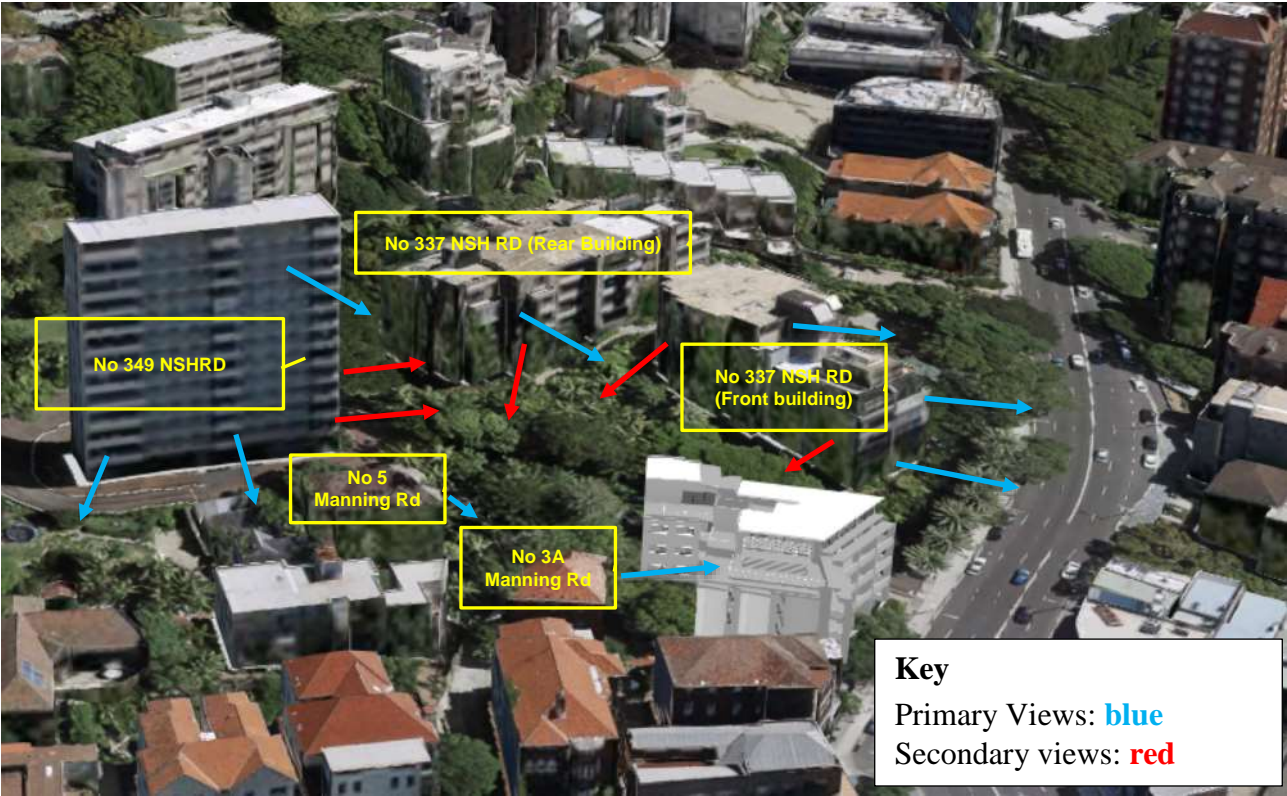
- Water views of Sydney Harbour;
- Land/water interface views of the Harbour land associated with Darling Point, Double Bay, and the northern suburbs of Sydney;
- Views of Darling Point, Point Piper and Double Bay suburbs;
- Views of the sky and outlook.

There are also no identified ‘iconic views’ available from any of the aforementioned properties that will be affected.

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

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

The existing views afforded from adjoining properties vary depending on the location of the adjoining buildings, their elevation and orientation. For assistance, the following illustration (Source: Woollahra Council 3D Planning Portal; AAM Geocirrus) generally depicts the subject and adjoining sites and the likely view affectation:





The following 3D model extracts identify the primary and secondary views available from the objectors' properties. A gauge on the type of views afforded from these properties is depicted in the following series of 3D imagery:

**3A Manning Road (to the south)**

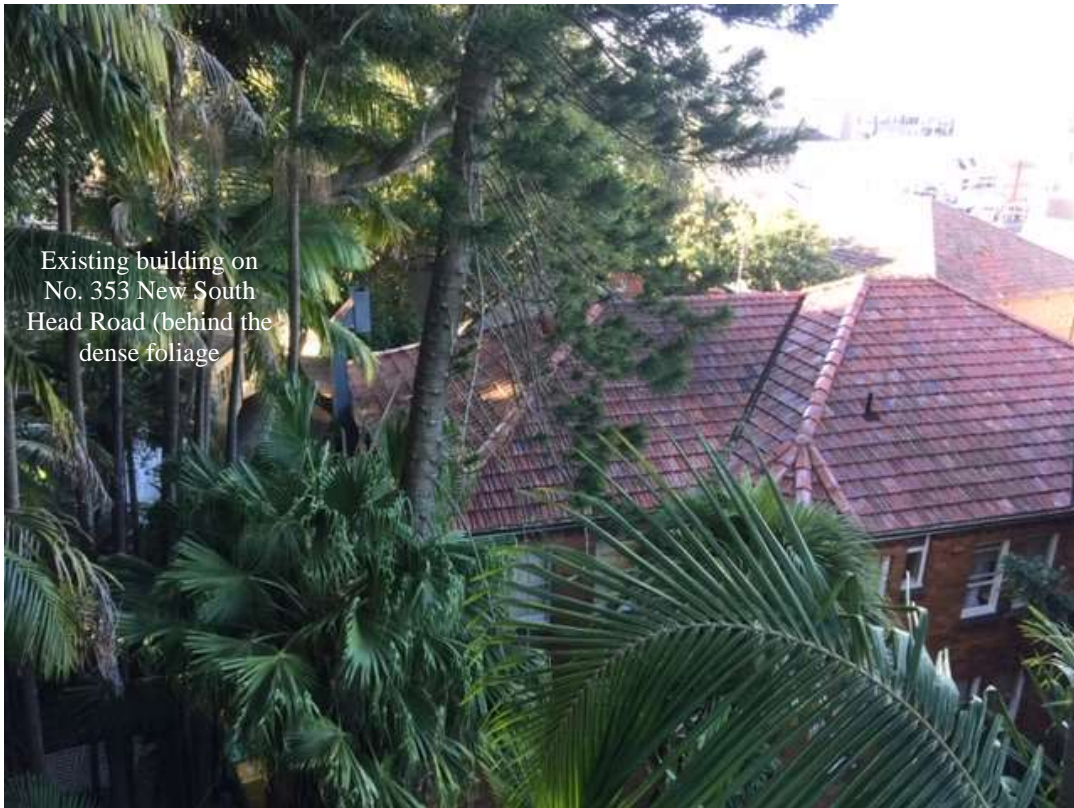


*Existing north-views from the windows of 3A Manning Road*



*Proposed north-views from the windows of 3A Manning Road*

**5 Manning Road (to the south)**



*Existing north-east views from the balcony of 5 Manning Road (Source: objector)*

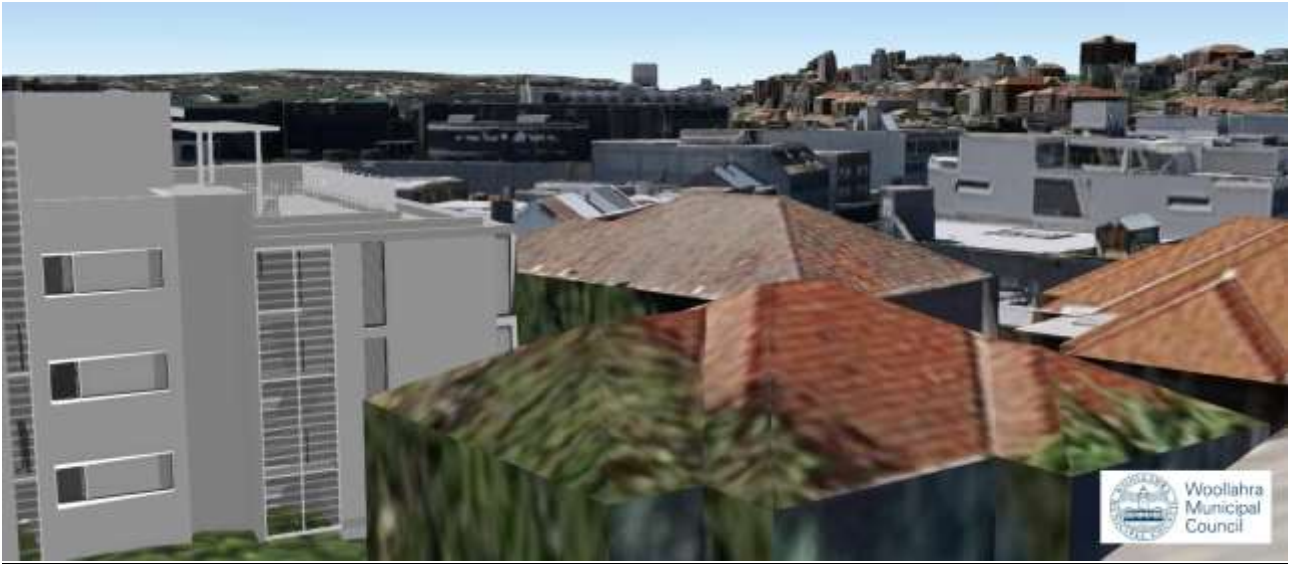


*Existing north-east views from the balcony of 5 Manning Road (Source: objector)*





*Existing north-east views from 5 Manning*



*Proposed north-east views from 5 Manning*



**337 New South Head Road (to the west and south-west)**



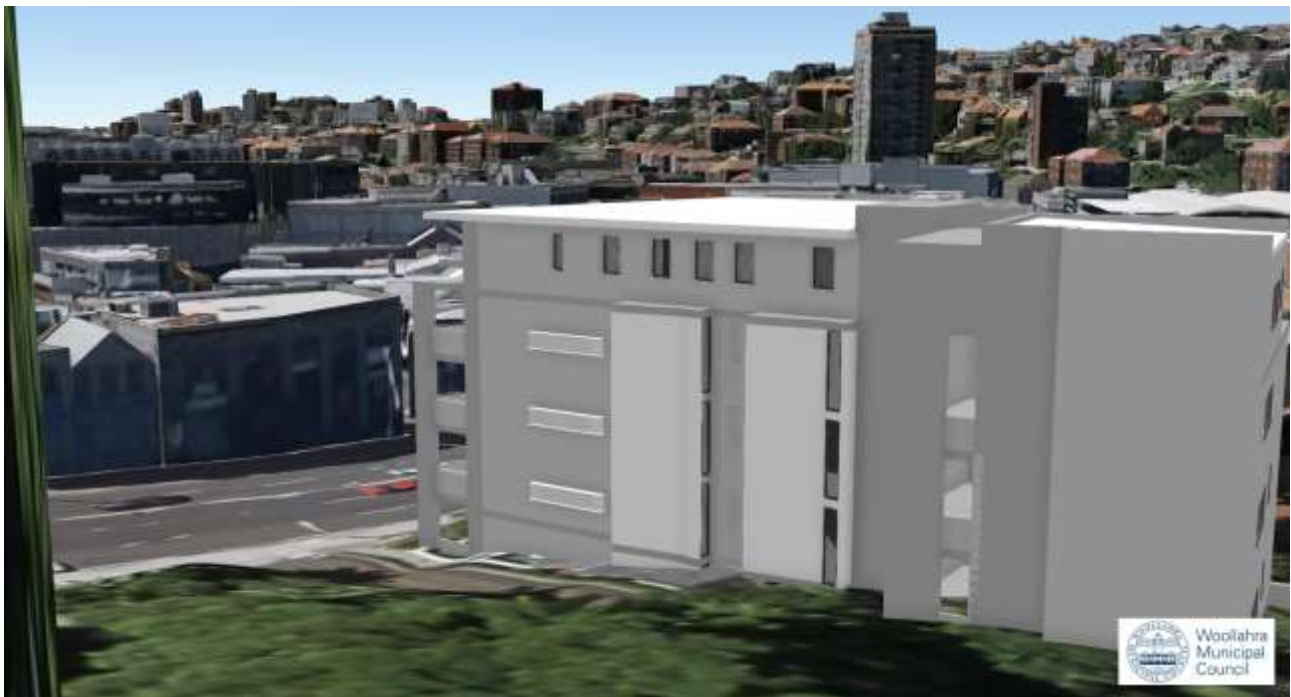
*Northern views from rooftop terraces at 337 NSH RD (front building) (unaffected)*



*Views from north-facing windows/balconies at 337 NSH RD (front building) (unaffected)*

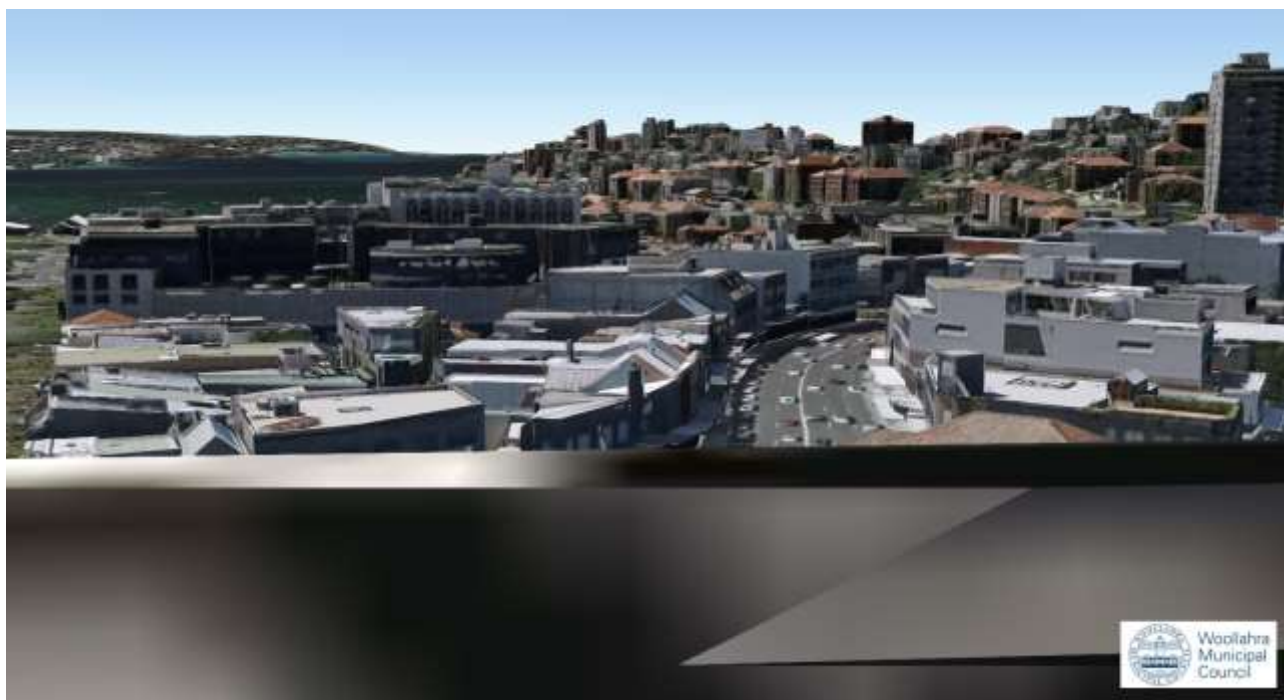


*Existing views from north-east facing windows/balconies at 337 NSH RD (rear building)*

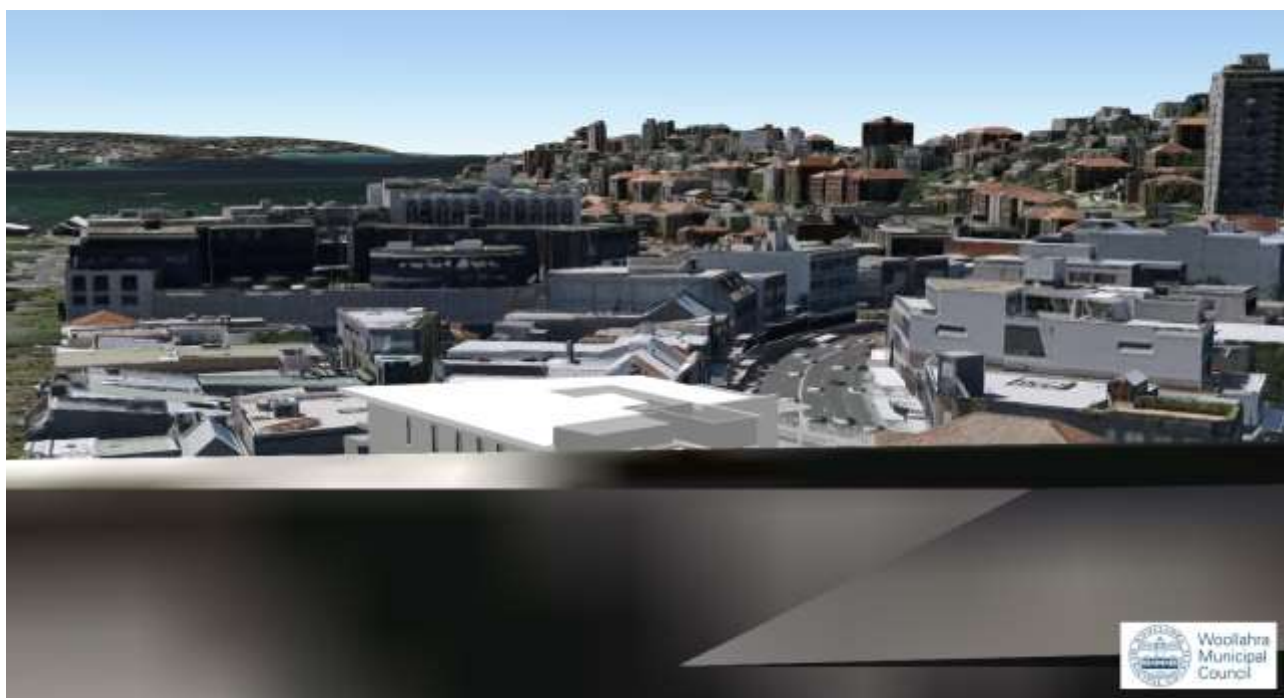


*Proposed views from north-east facing windows/balconies at 337 NSH RD (rear building)*





*Existing north-east view from the roof-top of No 337 NSH RD (rear building)*



*Proposed north-east view from the roof-top of No 337 NSH RD (rear building)*

**349 New South Head Road (to the south)**

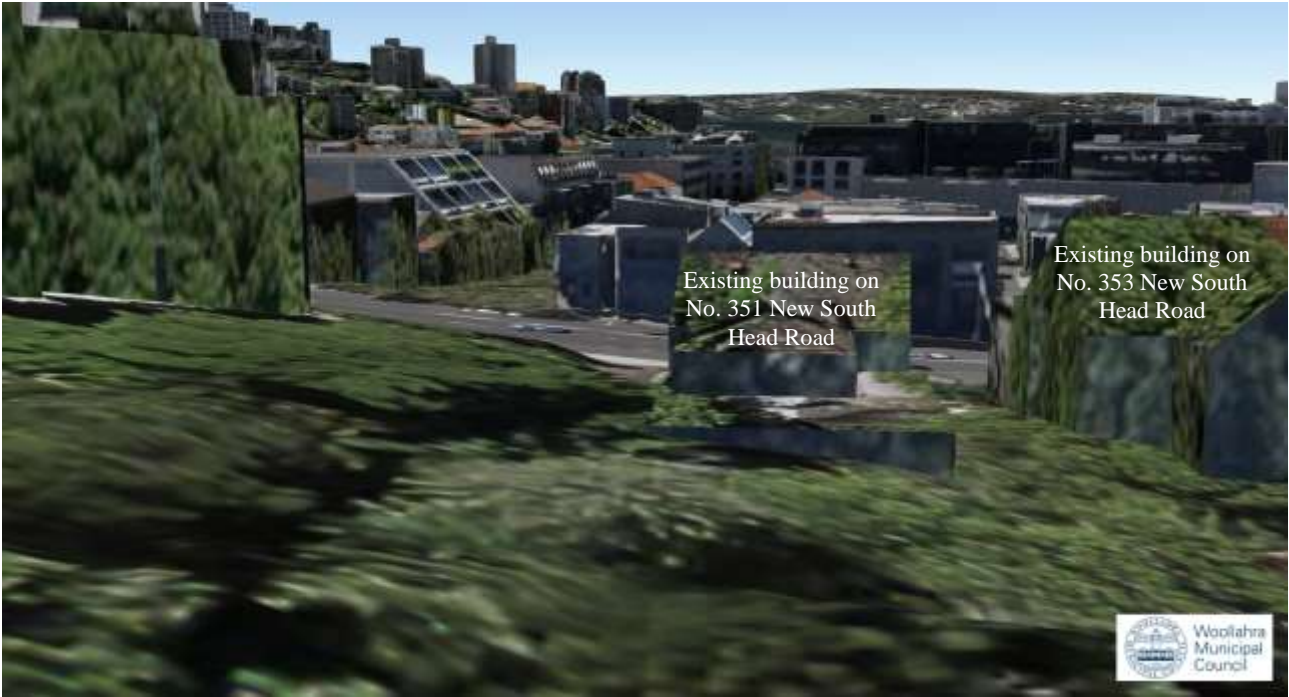


*Proposed north-east outlook from No 349 New South Head Road*



*Existing easterly views from No 349 New South Head Road (unaffected)*





*Existing northerly views from lower level units of No 349 NSH RD*



*Proposed northerly views from lower level units of No 349 NSH RD*



*Existing northerly views from upper level units of No 349 NSH RD*



*Proposed northerly views from upper level units of No 349 NSH RD*



**No 343A Edgecliff Road**



*Easterly views from the balcony of 343A Edgecliff Road (with proposal – unaffected)*



*Northerly views from the balcony of 343A Edgecliff Road (with proposal – unaffected)*



### 3. The extent of the impact

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

Based on the totality of views afforded to these adjoining residences, the degree of impacts are summarised as follows:

1. **No 337 New South Head Road (to the west and south-west);**
  - a. **Primary views** – Existing primary views available to the north that includes water views of Sydney Harbour, land/water interface views of the harbour land associated with Darling Point, Double Bay, and the northern suburbs of Sydney, views of Darling Point, Point Piper and Double Bay suburbs and views of the sky / outlook – remain unaffected, thereby representing no loss of views;
  - b. **Secondary views** – Existing secondary views to the north-east and east that includes, views of the Double Bay suburbs and views of the sky remain largely unaffected apart from negligible-minor loss of these views;
2. **No 349 New South Head Road (to the south);**
  - a. **Primary views** – Existing primary views available to the north-east and east remain unaffected thereby representing no loss of views;
  - b. **Secondary views** – Existing secondary views available to the north that includes water views of Sydney Harbour, land/water interface views of the harbour land associated with Darling Point, Double Bay, and the northern suburbs of Sydney, views of Darling Point, Point Piper and Double Bay suburbs and views of the sky / outlook are partially affected from the lower level units. Therefore, resulting in a minor-moderate loss of views.
3. **3A Manning Road (to the south)** – Existing views are already largely obstructed by the existing buildings on the subject site and therefore there is negligible loss of views as a result of the proposal;
4. **5 Manning Road (to the south)** – Existing views are already largely obstructed by the existing buildings and/or vegetation on the subject site and therefore there is negligible loss of views as a result of the proposal;
5. **343A Edgecliff road (further to the south at a substantially higher level)** – Existing views remain unaffected thereby representing no loss of views.

The affected views relative to the overall available view is considered to have a minor impact. This is considering that the majority of the available views are largely retained

#### 4. The reasonableness of the proposal that is causing the impact

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

The Court poses two questions in *Tenacity Consulting vs Warringah (2004) NSWLEC 140*. The first question relates to whether a non-compliance with one or more planning controls results in view loss.

The portions of the proposed development resulting in view impacts is associated with the height of the proposed development.

The second question posed by the Court relates to whether a more skilful design could provide the same development potential whilst reducing the impact on views.

It is considered that the siting of the development and the distribution of bulk across the site has been well articulated to minimise view impacts.

On balance the proposal would not compromise achievement of equitable view sharing between the surrounding properties and in the circumstances the loss of views when considered in totality is reasonable.

#### Conclusion

The proposal is considered to be acceptable with regard to the four step assessment of view sharing planning principle established by *Tenacity Consulting v Warringah (2004) NSWLEC 140* achieving consistency with the relevant controls and objectives in Part B3.5.3: Public and Private Views of the Woollahra DCP 2015.

#### **Part B3.5.4: Acoustic and Visual Privacy**

##### *Acoustic Privacy*

Controls: C2a), C2b), C3  
Objective: O1

The proposal achieves consistency with regard to the relevant Objective O1 in Part B3.5.4 of the Woollahra DCP 2015 for the following reasons:

- The proposed development is within close proximity to a busy roadway (New South Head Road) which may give rise to adverse noise impacts on future residents of the development due to road noise. To ensure that adequate acoustic privacy is achieved for future occupants **Conditions C.20** and **F.12** require incorporation of any building measures as deemed necessary by an acoustic engineer certifying that the proposed residential building complies with the interior noise levels criteria, as set out in Clause 102 of the State Environmental Planning Policy (Infrastructure) 2007. (Control C2 & Objective O1);
- Control C3 states that mechanical equipment is housed so that it does not create an ‘offensive noise’ as defined in the Protection of the Environment Operations Act 1997 either within or at the boundaries of any property at any time of the day. The proposal includes the installation of mechanical equipment including A/C units and a lift. The proposed location of the mechanical equipment is considered to be acceptable as they are all to be housed in an enclosed room/area thereby minimising acoustic impact;
- Subject to the recommended noise related **Conditions C.18, C.19, C.20, F.12, I.10, I.11** and **I.12**, it is considered that adequate acoustic privacy is maintained to surrounding neighbours;

#### *Visual Privacy*

The proposal achieves consistency with regard to the relevant Objectives O2, O3 in Part B3.5.4 of the Woollahra DCP 2015 for reasons as discussed in the assessment in *Part 3F: Visual Privacy of the ADG* in Section 11.5.6 of the report.

#### **Part B3.5.5: Internal Amenity**

Under Clause 6A(1) and (2) of the SEPP 65, any controls in the Woollahra DCP 2015 relating to solar and daylight access and natural ventilation are overridden by objectives, design criteria and design guidance set out in Part 4A and Part 4B of SEPP 65.

Notwithstanding the, the proposal is considered to achieve consistency with the relevant internal amenity objectives in Part B3.5.5 of the Woollahra DCP 2015, for the following reasons:

- The proposed dwellings within the development are generally considered to provide good internal amenity;
- **Condition C.17** requires that all internal sanitary rooms and laundry facilities not provided with natural ventilation must be provided with a system of mechanical exhaust ventilation. Furthermore, the recommended standard **Conditions D.1 & E.1** require compliance with BCA requirements which set out minimum standards for light and ventilation.

#### **18.2.5. Part B3.6: On-Site Parking**

The proposed basement car parking and single driveway crossover to access the subject site is consistent with intent of the relevant objectives and controls in Part B3.6 of the Woollahra DCP 2015.

### 18.2.6. Part B3.7: External Areas

Site Area: 1,233m <sup>2</sup> Buildable Area: 580m <sup>2</sup> (Area Outside of Buildable Area: 643m <sup>2</sup> )	Existing	Proposed	Control	Complies
Deep Soil Landscaping – Total (C1)	Unknown (approx. 25% of Area Outside Buildable as DSA)	<b>43%</b> (277m <sup>2</sup> ) with minimum 3m dimension / 63.8% (410m <sup>2</sup> ) total DSA	50% of Area Outside Buildable Area (321.5m <sup>2</sup> )	<b>No</b>
Deep Soil Landscaping – Front Setback (C2)		56% (39.5m <sup>2</sup> )	40% of Front Setback (28m <sup>2</sup> )	Yes*
Deep Soil Landscaping – Front Setback Consolidated Area (C2a)		28m <sup>2</sup> & 30m <sup>2</sup> (partly within Buildable Area)	Min 1 x 20m <sup>2</sup> Area	Yes
Deep Soil Landscaping – Rear Setback (C4)		<b>42.4% (195m<sup>2</sup>)</b> 71% (330m <sup>2</sup> )*	50% of Rear Setback (230m <sup>2</sup> )	<b>No</b> Yes*
Private Open Space (C11) Total Area Minimum dimension	N/A	>8m <sup>2</sup> Min 2m	Min 8m <sup>2</sup> Min 2m	Yes Yes
Location of Private Open Space (C12)	To the South and North	To the North	To the North/ North-west	Yes
Existing Trees (C16)	Port Jackson Fig	Port Jackson Fig	Incorporated Into Landscaping	Yes
Maximum Height of Front Fencing (C4)	Unknown	Approx. 1.2m front walls	1.5m and 50% transparent/open	Yes
Minimum Vehicular Entrance Splay for fences over 0.9m (C8)	None	Not provided	45° splay Min 2m x 2m	Yes (refer to <b>C.4</b> )
Side and Rear Fence Height (C9)	Approx. 1.8m	No change	Max 1.8m	Yes
Lockable Mailboxes (C1)	N/A	Lockable Mailboxes Provided	Provided at Street Entrance	Yes (refer to <b>C.1b</b> )
Lockable Storage Space (C2)	N/A	Min 8m <sup>3</sup>	Min 8m <sup>3</sup> per Dwelling	Yes
Clothes Drying Facilities (C3)	N/A	External Drying area provided	At Least One per Development	Yes (refer to <b>C.1c</b> )
Mechanical Plant Equipment: Air Conditioning Units/Lift Overruns (C7, C8, C9)	Unknown	Lift overrun centrally located on rooftop at rear	Not Visible from Public Domain and/or suitably screened	Yes
Location of Site services including hydrants, boosters and meters (C12)	Unknown	OSD and RWT below EGL i.e. integrated into Landscape Design	Integrated into Landscape Design	Yes

\* Includes landscaped areas within the side and rear setback which is partly above the basement garage (this figure is provided for reference and comparison only).

#### Part B3.7.1: Landscaped Areas and Private Open Space

Controls: C1, C2, C4, C16

Objectives: O1, O2, O3, O7, O9

Notwithstanding the numerical non-compliances with the deep-soil landscaping Controls C1 and C4, the proposal achieves consistency with the corresponding Objectives O1 through to O3 in Part B3.7.1 of the Woollahra DCP 2015, as:

- It is acknowledged that the proposal does not entirely comply with the DCP definition of ‘deep soil landscaped area’ which states, “*the area of the site that contains landscaped area which has no above ground, ground level or subterranean development*”.

However, the proposed development will provide over a total of 410m<sup>2</sup> of landscaped area throughout the site via planting of low to medium scale vegetation in the form of deep-soil landscaping, roof gardens and planting above structures. It is considered that these areas cumulatively contribute to achieving consistency with Objective O1 which aims “...to ensure that the areas outside the floorplate contribute to the desired future character of the location...” and Objective O9 “...to ensure that landscaping contributes positively to the streetscape and the amenity of adjoining residents.” which encourages maintaining the landscaped character of the precinct;

- The proposed landscaped areas above the basement level are provided with substantial soil volumes which can aid in accommodating substantial vegetation (Objective O2);
- Subject to recommended standard **Conditions**, Council’s Development Engineer supports the proposal in terms of stormwater management (Objective O3);
- The proposal involves the retention of a significant Port Jackson Fig Tree (12m x 8m) within the front yard of the subject site. Council’s Tree and Landscape Officer is also satisfied that the proposed development, can be achieved from a landscape perspective without directly or indirectly compromising the health and viability of the trees being retained on the subject site nor the mature trees on surrounding sites. This is subject to the recommended conditions relating to tree preservation and protection measures. Therefore, achieving consistency with Objective O7.

#### Part B3.7.2: Fences

The proposal is considered to achieve consistency with the relevant controls and objectives in Part B3.7.2 of the Woollahra DCP 2015.

#### Part B3.7.3: Site Facilities

Subject to the recommended **Condition C.1(b)** and **C.1(c)**, the proposal is considered to achieve consistency with regard to the site facilities controls and objectives in Part B3.7.3 of the Woollahra DCP 2015.

#### Conclusion

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

#### **18.2.7. Part B3.8: Additional Controls for Development Other Than Dwelling Houses**

Site Area: 1,233m <sup>2</sup>	Proposed	Control	Complies
Minimum Lot Width – four of more dwellings (B3.8.1: C1d)	28.18m	21m	Yes

### Part B3.8.1: Minimum Lot Width

The proposal is acceptable with regard to the minimum lot width control and objective in Part B3.8.1 of the Woollahra DCP 2015.

### Part B3.8.6: Residential Flat Buildings and Multi Dwelling Housing

The proposal meets the requirements of SEPP 65 and the relevant Design Criteria in the applicable Apartment Design Guide. The proposal is acceptable with regard to the controls and objectives in Part B3.8.6 of the Woollahra DCP 2015.

### Conclusion

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

## **18.3. Chapter E1: Parking and Access**

### **18.3.1. Part E1.4: Residential parking**

<b>Units: 17 (2 x Studio; 2 x 1Bed; 10 x 2Bed &amp; 3 x 3Bed)</b>	<b>Proposed (as amended)</b>	<b>Control</b>	<b>Complies</b>
Residential Flat Building –			
Studio	0	Max Spaces = 1	Yes
1 Bedroom	1	Max Spaces = 2	Yes
2 Bedroom	10	Max spaces = 15	Yes
3/3+ Bedroom	6 (in tandem)	Max spaces = 6	Yes
Visitor	0	Max Spaces = 5 (4.25)	Yes
<u>Total</u>	<u>17</u>	<u>Total Max spaces: 29</u>	<u>Yes</u>

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

The proposed development comprises a new residential flat building of 17 units (2 x Studio; 2 x 1Bed; 10 x 2Bed & 3 x 3Bed). This results in a maximum car parking generation rate of 29 spaces, calculated using the generation rates specified in E1.4.2.

The proposal makes provision of 17 resident car parking spaces with no visitor parking, representing compliance with the maximum residential parking visitor parking generation rates for the development. Council's Traffic Engineer provides:

*“The reduced on-site parking provision is considered not to generate unacceptable adverse impact on the surrounding road network as the on-street parking in close vicinity is generally protected by time or paid parking restrictions. Future occupiers who are not allocated with off-street parking would not be able to rely on the nearby on-street parking to meet their long-term parking demand and hence likely reduce the car ownership. A reduced car ownership would also benefit the surrounding road network with reduced car trip generation being expected.”*

Furthermore, whilst apartment allocation for each car space has been provided on the Basement Floor Plan, **Condition I.2: Provision of Off-Street Parking** is recommended to ensure that the off-street parking is appropriate to, and maintained, consistent with the parking generation rates for differing unit sizes i.e. more parking for larger units and lesser for smaller units. The proposed 17 resident car parking spaces are therefore to be allocated as follows:

- Studios – 0 spaces
- 1-Bed – 1 or 0 each (total of 1);
- 2-Bed – 1 each (total of 10); and
- 3-Bed – 2 each, in-tandem (total of 6)

With regards to the above, and subject to recommended **Condition I.3: Parking Permits** which restricts any future tenants and residents of the proposed development from obtaining resident or visitor parking permits. The proposal is acceptable with regard to the objectives and controls in Part E1.4 of the Woollahra DCP 2015.

### 18.3.2. Part E1.6: Bicycle parking and Part E1.7: Motorcycle parking rates

Use	Existing	Spaces Provided	Spaces required	Complies
Residential Accommodation (Part E1.6)	N/A	18 bike spaces	18 bicycles spaces (1 per dwelling + 1 visitor space)	Yes
Residential Accommodation (Part E1.7)	N/A	2 spaces within basement (1.2m x 2.4m)	2 spaces (Min 1 motorbike space per 10 car spaces)	Yes

The proposal is acceptable with regard to the objectives and controls in Part E1.7 and Part E.1.8 of the Woollahra DCP 2015.

### 18.3.3. Part E1.10: Parking and Access Design Standards

	Existing	Proposal (as amended)	Control	Complies
Dimension of Car Parking Space	N/A	17 x B85 standard car spaces	2.4-3m x 5.4m	Yes
Maximum Length of Parking Removed from the Street	1-2 (2 driveways)	max 1 (1 driveway)	5.4m, max 1 space	Yes
Access To and From the Site	Forward direction ingress, reverse direction egress	Forward direction, ingress and egress	Forward Movement	Yes
Vehicle Entrance Splay	N/A	Not provided	2m x 2m at 45 degrees	Yes (Refer to <b>C.12</b> )
Driveway Width	Approx. 3m each	5.5m	3.0m-6.0m (or greater if required)	Yes (Refer to <b>C.4</b> )
Location of Driveway	Frontage (no rear access)	Frontage (no rear access)	From the Rear whereby possible	Yes
Distance of Driveway from Adjoining Driveway	>5.4m	>5.4m	0m or 5.4m only (maximise on-street parking)	Yes

The proposal is acceptable with regard to the objectives and controls in Part E1.10: Parking and Access Design Standards of the Woollahra DCP 2015 for the following reasons:

- Council's Development and Traffic Engineers have reviewed the proposal as amended and deemed it is satisfactory with regard to car parking space and bay size dimensions, layouts, ramps and aisles, turning paths and driveway access requirements, subject to recommended **Conditions** which ensures compliance with AS/NZS 2890.1:2004: *Parking Facilities - Off-Street Car Parking*, in that:



- The internal width of the car spaces within the basement as shown on the architectural plans comply with AS/NZS 2890.1 i.e. the internal width is a minimum 2.4m and length of 5.4m free from obstruction;
- No issues are raised with regards to the design of vehicle access ramps and/or gradients required for a B85 standard vehicle;
- There is no loss of on-street parking as a result of the proposed development. The proposal will consolidate two existing driveways into a single driveway;
- No issues are raised with regards to vehicle ingress and egress manoeuvres in terms of turning space required for a B85 standard vehicle;

#### **18.3.4. Part E1.11: Electric Vehicle Charging Points**

Control C1 requires evidence of electric circuitry to accommodate ‘Level 2’ electric vehicle charging points to be integrated into all off-street car parking of new residential development to ensure that 100% of car spaces can install electric vehicle charging points in the future.

No details have been provided of electric circuitry. Notwithstanding this, the proposal is considered to be acceptable with regard to the objectives and controls in *Part E1.11: Electric Vehicle Charging Points* of the Woollahra DCP 2015, subject to recommended **Condition C.15** and **F.10** which requires provision for electric vehicle circuitry within the development.

#### **18.3.5. Conclusion**

The proposal is considered to achieve consistency with regards to the objectives and controls in Chapter E1: Parking and Access of the Woollahra DCP 2015.

### **18.4. Chapter E2: Stormwater and Flood Risk Management**

Council’s Development Technical Services Division have reviewed the proposal and is satisfied that adequate provision for the disposal of stormwater from the site and flood risk management has been made subject to the recommended standard **Conditions** ensuring achieving consistency with the relevant controls and objectives in Part E2: Stormwater and Flood Risk Management of the Woollahra DCP 2015.

### **18.5. Chapter E3: Tree Management**

#### **18.5.1. Trees and Landscaping – Referral Response**

Council’s Tree and Landscape Officer, provides in original referral response dated 09 October 2019 the following:

*“SUMMARY*

- *One significant tree proposed for removal*
- *Overshadowing of adjacent gardens*
- *Retention of Tree 15, 16 , 17, 18*
- *Location of Tree 13 not correctly indicated*

## COMMENTS

### ***Removal of significant tree***

*This proposal call for the removal of a significant specimen of Weeping Lillypilly (Tree 5) from the rear centre of the site. This tree has self-sown from the larger specimen standing on the neighbouring property to the south at 5 Manning Road. Tree 5 is very poorly located against the eastern wall of the existing garage at 351 New South Head Road. Demolition of the garage would possibly result in destabilisation of the tree. The tree is within the footprint of the proposed basement. I do not believe it is practical to develop this site whilst retaining Tree 5.*

*The supplied Melissa Wilson Landscape Plans are of a good standard with 41 Trees and Palms proposed for replanting. This represents a satisfactory landscape outcome.*

*The supplied Arborists Assessment is superficial and not commensurate with the scale of this proposal. It is of little assistance in considering this proposal. I have read the report but primarily referred to materials supplied in the Landscape Plan.*

### ***Overshadowing of adjacent gardens***

*Some concerns have been expressed regarding the potential for the proposed building to impact the adjacent heritage listed gardens at 337 New South Head and 5 Manning Road through overshadowing. Both these adjacent gardens are based on rainforest and forest understory species.*

*I believe that neither of these adjoining gardens would be negatively impacted by the moderate levels of additional shading. Given the current and projected climate conditions, some additional shading may be of benefit to these gardens. Water stress to the heritage listed Weeping Lillypilly at 5 Manning Road has recently been raised as a separate issue with Council through a Tree Works Application.*

*The reverse would be of concern if a proposed development resulted in increased levels of sunlight to these adjoining gardens. That would certainly represent a negative impact through water stress and sunburn of light sensitive plants.*

### ***Retention of trees on eastern boundary***

*The supplied arborists report states that Tree 15, 16, 17, and 18, will be directly impacted by the proposed building footprint and will require removal. Consequently, the arborist has not provided any information on the retention of these trees.*

*All the other documentation supplied with this application indicates the retention of these trees. The supplied Landscape Plan is designed around the retention of these trees. I believe that it is achievable to retain the trees. They provide valuable screening amenity with the neighbouring RFB at 355 New South Head Road.*

*The major potential impact is the proposed basement excavations. There will be encroachments into the larger theoretical Tree Protection Zones but not the more important and smaller Structural Root Zones. Much of the existing Tree Protection Zones is already developed with structures and impervious surfaces. I have recommended conditions for the retention and protection of these trees.*

### ***Location of Tree 13***

*Tree 13 is identified on the supplied Landscape Plan as a Magnolia grandiflora (Bull Bay Magnolia). The tree is shown as standing on 351 New South Head Road, on the western side boundary. The tree is not indicated on the supplied Survey Plan.*

*From my site inspection I have concluded that Tree 13 stands on 349 New South Head Road, on the eastern side of the entry driveway. Consequently, I have not recommended a condition requiring the retention of this tree as a neighbours tree. I have recommended conditions to protect the root system of the tree. The tree is sufficiently spaced from the proposed works as to be retained."*

### **18.5.2. Trees and Landscaping – Re-Referral Response**

During the notification and advertising period concerns were raised from several neighboring properties with regards to the impacts the proposed development would have on the surrounding heritage listed gardens. Then objections/submissions included the commissioning of two independent Arborist Reports prepared by Dr Treegood dated August 2019 and February 2020.

Council's Tree and Landscape Officer, provides in re-referral response dated 05 June 2020. The following:

#### ***"SUMMARY***

- Tree and landscape issues primarily unchanged*
- Arborist reports (Objections) – addressing trees on neighbouring properties*

#### ***COMMENTS***

##### ***Tree and Landscape issues***

*This revised proposal appears to be unchanged in terms of tree and landscape issues within the site. I note that no revised Landscape Plan has been submitted. Proposed alterations in building footprints does not appear to have required modifications to proposed landscaping.*

*The supplied Melissa Wilson Landscape plans are of a very good standard with a generous proportion of new plantings of native trees proposed. I have recommended that these plans form part of any approval as well as acting as a reference for existing trees to be retained.*

*The originally supplied Arboricultural Impact Assessment Report prepared by Botanics is of such a poor standard that I am not able to recommend it as an approved document.*

##### ***Arborists Reports (Objection)***

*Two Arborists Reports in the form of objections, prepared by Dr Treegood, have been submitted addressing the potential for this proposal to impact on large trees standing on adjoining properties at 337 New South Head Road, 349 New South Head Road and 5 Manning Road. These trees are a Fig tree standing on 337 New South Head Road, an incorrectly identified Pine tree standing on 349 New South Head Road and a Weeping Lilly Pilly tree standing on 5 Manning Road. All three trees have Heritage status within the WLEP 2014.*

***Fig Tree at 337 New South Head Road***

*No further action is required here. Standard Tree Root Protection measures will apply to this tree.*

*This tree stands to the west of the side boundary of 351 New South Head Road. The driveway to 349 New South Head Road separates the boundaries of 337 and 351 New South Head Road. During my site inspection I estimated the Fig tree to stand approximately 15 metres from the boundary with 351 New South Head Road. This places all the proposed works outside the Tree Protection Zone of the Fig tree. The Arborist has incorrectly calculated the Tree Protection Zone as being 43.2 metres radius. AS 4970 limits this root protection zone to a maximum of 15 metres radius. There are no works proposed within the TPZ.*

***Norfolk Island Pine at 349 New South Head Road (Tree 30)***

*Additional Tree Protection conditions have been recommended for this tree.*

*I believe that Dr Treegood has incorrectly identified this tree as being a Hoop Pine when it is in fact a Norfolk Island Pine. This error is understandable given the inaccessibility of the tree crown and not of great consequence as the tree would have equal status in either case. This Norfolk Island Pine is listed as a Heritage Item in the WLEP 2014. Dr Treegood correctly comments that this tree has not been assessed in the Botanics Arborists report supplied with the development application, along with many other short comings of that report. The tree was not indicated on the supplied Survey Plan or the Landscape Plans. Dr Treegood is correct in calling attention to this tree and has nominated the identification number Tree 29. I have previously used 29 to identify an unlisted Frangipani tree located at the front of the site, I have nominated this Norfolk Island Pine tree to be identified as Tree 30.*

*Of the three tree cited by Dr Treegood in his objections, this tree is the only one with any potential to be impacted by the proposed works. The tree stands approximately 5 metres from the south west corner of 351 New South Head Road. With a trunk diameter of 900mm and a root buttress diameter of 1.05m I have calculated the Structural Root Zone of this tree to be 3.3 metres radius. So none of the proposed works will be undertaken in this critical inner root zone. The larger Tree Protection Zone is 10.8 metres radius and does extend into the development site. The supplied Architects Ground Floor Plan Drawing DA 2.102 indicates basement excavations at a point approximately 9 metres from the Tree 29. This represents a minor and acceptable incursion into the TPZ of Tree 30.*

***Weeping Lilly Pilly at 5 Manning Road***

*No further action is required here. Standard Tree Root Protection measures will apply to this tree.*

*This tree stands approximately 8 metres from the boundary with the development site at 353 New South Head Road. The proposed works are outside the Structural Root Zone of the tree and represent a minor and acceptable incursion into the Tree Protection Zone.*

**18.5.3. Conclusion**

Council's Tree and Landscape Officer has determined that the development proposal is satisfactory in terms of tree preservation and landscaping, and that the proposal can be achieved in landscaping terms without compromising the health and viability of the significant mature trees and heritage listed gardens of the surrounding sites. Council's Tree and Landscape Officer states that the

proposed “*landscape plans are of a very good standard with a generous proportion of new plantings of native trees proposed.*”

It is also acknowledged that the subject site and surrounding sites are characterised by mature trees which provide landscape amenity to the locality. Notwithstanding this, the removal of trees are limited to those essential to facilitate development of the site for the proposed new residential flat building, a use that is permissible and is envisaged on land zoned R3 Medium Density Residential. The proposal therefore promotes, “...*the orderly and economic use and development of the land*”, in accordance with object 1.3(c) of the EPA Act.

Furthermore, Council’s Tree and Landscape Officer requires the several replacement/supplementary tree plantings (**Condition E.20**) throughout the subject site in order to off-set the loss of the several mature trees from the subject site. Council’s Tree and landscape Officer has also recommended several standard **Conditions** to ensure appropriate tree protection, preservation mitigating measures are undertaken prior to and during any development work ensuring the health and viability of significant trees that are being retained.

The proposal is acceptable with regard to the objectives and controls in Chapter E3 of the Woollahra DCP 2015.

#### **18.6. Chapter E4: Contaminated Land**

Subject to recommended **Condition C.16**, the proposal is acceptable with regard to the objectives and controls in Chapter E4 of the Woollahra DCP 2015.

#### **18.7. Chapter E5: Waste Management**

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

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

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

##### **18.7.1. Part E5.2: Demolition and Construction Phase**

Subject to the recommended standard **Condition E.24** and **E.25** requiring compliance with the submitted Site Waste Minimisation and Management Plan (SWMMP) during the demolition, excavation and construction phases of the development. The proposal is acceptable with regard to the relevant controls and objectives in Part E5.2 of the Woollahra DCP 2015.

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

	Proposed (as amended)	Control	Complies
Garbage and Recycling Areas	Waste room within rear communal area	Required	Yes
Compost Area	Suitable areas within communal area	Required	Yes
Location of Waste Storage Area	Dedicated waste storage room in rear communal area adjacent to bike storage	Basement Level or within Building envelope	Yes
Maximum Distance from Waste Storage Area to Collection Point	<75m (approx. 35m) from collection point on New South Head	75m	Yes

Control C4 specifies a weekly rate of 120L/unit for waste, 55L/unit for recycling and 240L for a shared use food and organics. With the proposed 17 units, this equates to a total of 3,215L (2,040L + 935L + 240L) or approximately 9 x 240L mobile waste bins, 4 x 240L mobile recycling bins and 1 x 240L mobile waste bin for food and organics. The required footprint for these bins is approximately 4.5m<sup>2</sup> inclusive of bin movement allowance. The proposed waste storage room is approximately 13m<sup>2</sup>. This is adequate for the number of required bins as above, and allows for additional bins should they be required.

The proposal is acceptable with regard to the relevant controls and objectives in Part E5.5 of the Woollahra DCP 2015.

### 18.8. Chapter E6: Sustainability

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

### 18.9. Chapter E8.2: Adaptable Housing

	Proposed	Control	Complies
Class A Certification Dwellings	Two (2) (Apt. 7 and 11)	10% of Dwellings (Min 2)	Yes

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

An accessible dwelling is a dwelling designed and built to accommodate the needs of people with a disability, and which complies with the AS1428 - Design for Access and Mobility.

Control C1 states that for a residential flat building containing 10 or more dwellings, at least 10% of the dwellings are to be Class A certification under AS 4299 – Adaptable housing. The proposal provides two adaptable dwellings achieving compliance with Control C2

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

## 19. DRAFT AMENDMENTS TO POLICIES AND PLANS

None relevant to the scope of works.

## 20. FEES AND CONTRIBUTIONS

## **20.1. Section 94A Contributions Plan 2011**

In accordance with Schedule 1, a 01% levy applies with the monies being used for a variety of works as outlined in Schedule 2 of the Section 94A Contributions Plan 2011. Refer to **Condition C.2** for applicable fees and contributions.

## **21. APPLICABLE ACTS/REGULATIONS**

### **21.1. Environmental Planning and Assessment Regulation 2000**

#### **21.1.1. Demolition of Structures (Clause 92)**

Clause 92 of the EPA Regulation sets out the prescribed matters for consideration in determining a development application. As demolition works are proposed, Council must consider *Australian Standard AS 2601-2004: The demolition of structures*. In this regard, the proposal is considered to be acceptable, subject to the imposition of **Condition E.2**.

#### **21.1.2. Fire Safety Provisions (Clause 94)**

Clause 94 of the Environmental Planning and Assessment Regulation 2000 requires an assessment of the development application against the Building Code of Australia (BCA), with particular respect to the fire provisions within the development.

Council's Fire Safety Officer has undertaken an assessment of the application, as detailed in **Annexure 11**. The proposed development is for a complete knock-down of existing buildings and construction of a new residential flat building. Therefore, the development is required to fully comply with the BCA at time of lodgement of a construction certificate.

A final fire safety certificate is required prior to issuing a final occupation certificate for the building as is a requirement for annual fire safety certificates to be submitted, as recommended in **Conditions F.4** and **I.4**.

## **22. 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.

## **23. THE SUITABILITY OF THE SITE**

The site is suitable for the proposed development.

## **24. THE PUBLIC INTEREST**

The proposal is considered to be in the public interest.

## **25. CONCLUSION**

The proposal is acceptable against the relevant considerations under Section 4.15 of the EP&A Act 1979.



## 26. 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

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

AND

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, grant development consent to Development Application No. 226/2019/1 for demolition of existing buildings, construction of a new residential flat building including provision of affordable rental housing (SEPP ARH 2009) with basement parking on land at 351 & 353 New South Head Road Double Bay, subject to the following conditions:

### A. General Conditions

#### A.1 Conditions

Consent is granted subject to the following conditions imposed pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* (“the *Act*”) and the provisions of the *Environmental Planning and Assessment Regulation 2000* (“the *Regulation*”) such conditions being reasonable and relevant to the development as assessed pursuant to section 4.15 of the *Act*.

Standard Condition: A1 (Autotext AA1)

#### A.2 Definitions

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

**Applicant** means the applicant for this consent.

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

**AS** or **AS/NZS** means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.

**BCA** means the Building Code of Australia as published by the Australian Building Codes Board as in force at the date of issue of any Construction Certificate.

**Council** means Woollahra Municipal Council

**Court** means the Land and Environment Court

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

**Stormwater drainage system** means all works, facilities and documentation relating to:

- the collection of stormwater,
- the retention of stormwater,
- the reuse of stormwater,
- the detention of stormwater,
- the controlled release of stormwater; and
- connections to easements and public stormwater systems.

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

**Owner-builder** has the same meaning as in the *Home Building Act 1989*.

**PC** means the Principal Certifier under the *Act*.

**Principal Contractor** has the same meaning as in the *Act*, or where a Principal Contractor has not been appointed by the Owner of the land being developed Principal Contractor means the Owner of the land being developed.

**Professional engineer** has the same meaning as in the BCA.

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

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

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

**Site** means the land being developed subject to this consent.

**Woollahra LEP** means *Woollahra Local Environmental Plan 2014*

**Woollahra DCP** means *Woollahra Development Control Plan 2015*

**Work** for the purposes of this consent means:

- the use of land in connection with development,
- the subdivision of land,
- the erection of a building,
- the carrying out of any work,
- the use of any site crane, machine, article, material, or thing,
- the storage of waste, materials, site crane, machine, article, material, or thing,
- the demolition of a building,
- the piling, piercing, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- the delivery to or removal from the *site* of any machine, article, material, or thing, or

- the occupation of the *site* by any person unless authorised by an occupation certificate.

**Note: Interpretation of conditions** - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.  
Standard Condition: A2 (Autotext AA2)

### A.3 Approved Plans and Supporting Documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with both the architectural plans to which is affixed a Council stamp “Approved” and supporting documents listed below as submitted by the Applicant unless modified by any following condition.

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

Reference	Description	Author/Drawn	Date(s)
<b>Dwg No.</b>	<b>Architectural Plans</b>	All prepared by Hill Thalys Architecture + Urban Projects Pty Ltd	<b>Plot Date(s)</b>
DA 2.009 A	Demolition Plan		18.12.2019;
DA 2.100 C	Site Plan		04.06.2020;
DA 2.101 B	Basement Level Plan		18.12.2019;
DA 2.102 C	Ground Floor Plan		04.06.2020;
DA 2.103 B	Level 1 Floor Plan		04.06.2020;
DA 2.104 B	Level 2 Floor Plan		04.06.2020;
DA 2.105 C	Level 3 Floor Plan		04.06.2020;
DA 2.106 C	Level 4 Floor Plan		04.06.2020;
DA 2.107 C	Roof Plan		04.06.2020;
DA 2.201 D	North and South Elevations		04.06.2020;
DA 2.202 C	East and West Elevations		04.06.2020;
DA 2.203 D	Detailed Elevation		04.06.2020;
DA 2.301 C	Sections		04.06.2020;
DA 2.302 A	Sections – Ramp detail		18.12.2019;
No reference	SEPP 65 Design Verification Statement	Hill Thalys Architecture + Urban Projects Pty Ltd	18.12.2019
992642M	BASIX Certificate	NSW Department of Planning and Environment	26.03.2019
LS 00 – LS 02 C	Landscape Plans	Melissa Wilson	26 March 2019
P1806950JR02V 01	Geotechnical Report	Martens	June 2019
P1806950 PS01-E100-A PS01-E110-A PS01-E200-A PS01-E600-A PS01-E700-A	Stormwater Management Plan	Martens	21/05/2019 21/05/2019 21/05/2019 21/05/2019 21/05/2019
P1806950JC01V 02	Flood Assessment	Martens	04 June 2019
18.671r02v02	Traffic Report	Traffix	09 July 2019
18.671r01v04	Traffic Impact Statement	Traffix	29 April 2019
18.671r02v02	Traffic Impact Statement Additional information	Traffix	9 July 2019
REP-18-7160-A2	Acoustic Report	Envirotech	29 April 2019
P1806950JR01V0 1	Contaminated Land - Initial Site Investigation Report (Stage 1)	Martens Consulting Engineers	June 2019
No reference	Site Waste Minimisation and Management Plan	Micheal Petrovic	22/05/2019

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

**Note:** These plans and supporting documentation may be subject to conditions imposed under section 4.17(1)(g) of the *Act* modifying or amending the development (refer to conditions which must be satisfied prior to the issue of any *Construction Certificate*.)

Standard Condition: A5 (Autotext AA5)

#### **A.4 Ancillary Aspects of Development (section 4.17(2) of the Act)**

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

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

Standard Condition: A8 (Autotext AA8)

#### **A.5 Development Consent is Not Granted in Relation to Strata Subdivision**

This approval does not give consent to **Strata Subdivision**. A separate Development Consent or Complying Development Certificate, and certificates under section 6.4 of the *Act*, as appropriate, will need to be obtained prior to such development work commencing.

Standard Condition: A9 (Autotext AA9)

#### **A.6 General Terms of Approval – Roads Act 1993 (TfNSW - Classified Roads)**

The following general terms of approval have been imposed by Transport for NSW (TfNSW) in relation to classified roads.

- a) All buildings and structures, together with any improvements integral to the future use of the site are to be wholly within the freehold property (unlimited in height or depth), along the New South Head Road boundary.
- b) The redundant driveway on the New South Head Road boundary shall be removed and replaced with kerb and gutter to match existing. The design and construction of the kerb and gutter on New South Head Road shall be in accordance with Roads and Maritime requirements. The design and construction of the gutter crossing on New South Head Road shall be in accordance with Roads and Maritime requirements. Details of these requirements should be obtained by email to [DeveloperWorks.Sydney@rms.nsw.gov.au](mailto:DeveloperWorks.Sydney@rms.nsw.gov.au).
- c) Detailed design plans of the proposed kerb and gutter are to be submitted to Roads and Maritime for approval prior to the issue of a Construction Certificate and commencement of any road works. Please send all documentation to [development.sydney@rms.nsw.gov.au](mailto:development.sydney@rms.nsw.gov.au)
- d) A plan checking fee and lodgement of a performance bond is required from the applicant prior to the release of the approved road design plans by Roads and Maritime.

- e) The design, modification, and construction of the gutter crossing on New South Head Road shall be in accordance with Roads and Maritime requirements. Details of these requirements should be obtained by email to [DeveloperWorks.Sydney@rms.nsw.gov.au](mailto:DeveloperWorks.Sydney@rms.nsw.gov.au).
- f) Detailed design plans of the proposed gutter crossing are to be submitted to Roads and Maritime for approval prior to the issue of a Construction Certificate and commencement of any road works. Please send all documentation to [development.sydney@rms.nsw.gov.au](mailto:development.sydney@rms.nsw.gov.au)
- g) A plan checking fee and lodgement of a performance bond is required from the applicant prior to the release of the approved road design plans by Roads and Maritime.
- h) Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to Roads and Maritime for approval, prior to the commencement of any works. Please send all documentation to [development.sydney@rms.nsw.gov.au](mailto:development.sydney@rms.nsw.gov.au)
- i) A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued.
- j) The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001. These shall include shoring design drawings (plan, typical cross sections, longitudinal sections), design calculations of the shoring system, drawings showing the minimum distance from the road kerb to the face of excavation and any geotechnical monitoring plan.
- k) The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime. Please send all documentation to [development.sydney@rms.nsw.gov.au](mailto:development.sydney@rms.nsw.gov.au)
- l) If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.
- m) The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1-2004, AS2890.6-2009 and AS 2890.2-2018 for heavy vehicle usage. Parking Restrictions may be required to maintain the required sight distances at the driveway.
- n) Sight distances from the proposed vehicular crossings to vehicles on New South Head Road are to be in accordance with the Austroads Guide to Road Design: Part 4A: Unsignalised and Signalised Intersections (Section 3 – Sight Distance) and AS 2890. Vegetation and proposed landscaping/fencing must not hinder sight lines to and from the vehicular crossings to motorists, pedestrians and cyclists.
- o) The proposed development should be designed such that road traffic noise from New South Head Road is mitigated by durable materials in order to satisfy the requirements for habitable rooms under Clause 102 (3) of State Environmental Planning Policy (Infrastructure) 2007.
- p) Roads and Maritime is currently undertaking a program to implement “Clearways” on State roads within Sydney. If not already in place, “Clearway” restrictions will be implemented along the full New South Head Road frontage of the development site.
- q) All works and signposting associated with the subject development shall be at no cost to Roads and Maritime.

- r) All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on New South Head Road.
- s) A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Construction Certificate.
- t) A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on New South Head Road during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>

**Note:** These conditions have not been imposed by Council but are required to be incorporated as conditions of development consent. Where there is any inconsistency between these general terms of approval and other conditions of this consent the more onerous requirement prevails.

**Note:** In relation to local roads (not classified roads) development is not integrated development in respect of consent required under section 138 of the *Roads Act 1993* if, in order for the development to be carried out, it requires the development consent of Council and Roads Act Approval of Council. Separate Council approval is required for all works within the road as defined by the *Roads Act 1993* including works:

- 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

Standard Condition: A14 (Autotext AA14)

## A.7 Tree Preservation & Approved Landscaping Works

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

- a) The following Trees on Private Land shall be retained:

Council Ref No.	Species	Location	Dimension (metres)
1	<i>Ficus rubiginosa</i> (Port Jackson Fig)	Front boundary	12 x 8
15	<i>Archontophoenix cunninghamiana</i> (Bangalow palm)	Front – East boundary	9 x 3
16	<i>Plumeria acutifolia</i> (Frangipani)	Front – East boundary	6 x 4
17	<i>Persea americana</i> (Avocado)	Side – East boundary	12 x 8
18	<i>Persea americana</i> (Avocado)	Rear – East boundary	10 x 8
20	<i>Plumeria acutifolia</i> (Frangipani)	Rear – South boundary	6 x 4

- b) The following trees may be removed:

Council Ref No.	Species	Location	Dimension (metres)
2*	<i>Olea europea var. africana</i> (African Olive)	Front boundary	6 x 6
3*	<i>Ligustrum lucidum</i> (Large-leaved Privet)	Front – Centre	6 x 6
4	<i>Howea forsteriana</i> (Kentia palm)	Front – Centre	6 x 2
5	<i>Waterhousia floribunda</i> (Weeping Lillypilly)	Rear – Centre	20 x 10
6	<i>Persea americana</i> (Avocado)	Rear – Centre	10 x 4
14*	<i>Ligustrum lucidum</i> (Large-leaved Privet)	Side – West boundary	10 x 4
21 - 28	8 x <i>Syzygium australe</i> (Brush Cherry Lillypilly)	Rear – South boundary	5 x 2
29	<i>Plumeria acutifolia</i> (Frangipani)	Front – North east corner	5 x 5

**Note:** Tree/s to be removed shall appear coloured red on the construction certificate plans.

\*This species is exempt from the WMC DCP Chapter E.3 - Tree Management and can be removed without consent.

- c) The following trees shall be pruned in accordance with *Australian Standard Pruning of Amenity Trees* (AS 4373) and *Workcover NSW Code of Practice Amenity Tree Industry*, to the minimum extent necessary to provide clearance to the new development:

Council Ref No.	Species	Location	Approved pruning (extent of pruning)
17	<i>Persea americana</i> (Avocado)	Side – East boundary	Prune to provide up to 2 metres crown clearance from new building profile
18	<i>Persea americana</i> (Avocado)	Rear – East boundary	

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

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

### **B.1 Recording of Buildings with Little or No Heritage Significance that are to be Demolished**

A photographic archival record of the building and landscape elements to be demolished is to be submitted prior to the commencement of demolition work and prior to the issue of a Construction Certificate.

The photographic archival recording is to be submitted in a digital format and is to include the following:

- a) Site plan at a scale of 1:200 (or 1:500 if appropriate) of all structures and major landscape elements including their relationship to the street and adjoining properties and directional details of photographs taken.
- b) Coloured photographs of:
  - each elevation,
  - each structure and landscape feature, and
  - views to the subject property from each street and laneway or public space.

Photographic archival records must be taken of the building, landscape or item in accordance with 'The Heritage Information Series: Photographic Recording of Heritage Items Using Film or Digital Capture 2006' published by the former NSW Department of Planning Heritage Branch.

One digital set is to be submitted to the satisfaction of Council prior to the commencement of demolition work and prior to the issue of a Construction Certificate.

**Note:** Refer to the NSW Office of Environment and Heritage website for the free publication 'Photographic Recording of Heritage Items using Film or Digital Capture' available at

[www.environment.nsw.gov.au/resources/heritagebranch/heritage/infophotographicrecording2006.pdf](http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/infophotographicrecording2006.pdf)

Standard Condition: B3 (Autotext BB3)



## B.2 Identification of Hazardous Material

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

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

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

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

Standard Condition: B6

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

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

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

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

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

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

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

Standard Condition: B7

#### B.4 Establishment of Tree Protection Zone (TPZ) Fence

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

a) Tree Protection Zone areas

Council Ref No.	Species	Tree Location	Fence Radius from Centre of Trunk (Metres)
1	<i>Ficus rubiginosa</i> (Port Jackson Fig)	Front boundary	3m
13	<i>Magnolia grandiflora</i> (Bull Bay Magnolia)	Standing on 349 New South Head – Front – East boundary	3m
15	<i>Archontophoenix cunninghamiana</i> (Bangalow palm)	Front – East boundary	1.5m
16	<i>Plumeria acutifolia</i> (Frangipani)	Front – East boundary	2m
17	<i>Persea americana</i> (Avocado)	Side – East boundary	2m
18	<i>Persea americana</i> (Avocado)	Rear – East boundary	3m
20	<i>Plumeria acutifolia</i> (Frangipani)	Rear – South boundary	2m
30	<i>Araucaria heterophylla</i> (Norfolk Island pine)	Standing on 349 New South Head Rd – N boundary - Adj to SW corner of 351 New South Head Rd	7m

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

- b) Tree Protection Zones shall be fenced with a 1.8 metre high chainmesh or weldmesh fence and secured to restrict access. The fence shall be established prior to any materials being bought onto the site and before the commencement of works including demolition. The area within the fence shall be mulched and maintained to a depth of 75mm. The soil within the TPZ shall be kept in a moist condition for the duration of the construction works. Unless approved by the site arborist there shall be no access within the TPZ.
- c) A sign identifying the Tree Protection Zone shall be erected on each side of the protection fence indicating the existence of a TPZ. Signage must be visible from within the development site.
- d) No excavation, construction activity, grade changes, storage of materials, stockpiling, siting of works sheds, preparation of mixes or cleaning of tools is permitted within Tree Protection Zones, unless specified in Condition B.2 of this consent.
- e) Temporary access within the TPZ for pedestrian and machinery movements shall only be permitted with the approval of the site arborist or unless specified in this consent.
- f) The site foreman must be made aware of all tree protection requirements associated with these conditions of consent by the project arborist. Any subsequent site personnel and contractors to the site must be made aware of all tree protection requirements by the site foreman.

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

## B.5 Permissible work within Tree Protection Zones

The following works are permissible within the Tree Protection Zone:

Council Ref No.	Species	Radius from Trunk (metres)	Approved works
1	<i>Ficus rubiginosa</i> (Port Jackson Fig)	3m	Final Landscape Construction
15	<i>Archontophoenix cunninghamiana</i> (Bangalow palm)	2m	
16	<i>Plumeria acutifolia</i> (Frangipani)	2m	
17	<i>Persea americana</i> (Avocado)	3m	
18	<i>Persea americana</i> (Avocado)	3m	
20	<i>Plumeria acutifolia</i> (Frangipani)	2m	
30	<i>Araucaria heterophylla</i> (Norfolk Island pine)	9m	

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

## B.6 Arborists Documentation and Compliance Checklist

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

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

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

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

Stage of arboricultural inspection	Compliance documentation and photos shall be included
Installation of tree protection fencing	Compliance with tree protection measures
Demolition of Existing buildings at 351 & 353 New South Head Rd	Tree protection remains in place. Condition of any exposed roots
Basement excavation adjacent to Tree 15, 16, 17, 18, 20 & 30	Condition of any exposed roots
Landscape Construction in TPZ of retained trees	Condition of roots and soil

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

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

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

### C.1 Modification of Details of the Development (section 4.17(1)(g) of the Act)

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

- a) The two pedestrian entry doors at the ground floor level must be relocated towards the north so that they are in line with the glazed doors between the living room and balcony of Apt 1 and Apt 9 on Level 1.  
**Reason:** In order to establish a clearly identifiable building entry and to achieve consistency with Part 3G-2: *Pedestrian Access and Entries* of the Apartment Design Guide.
- b) A lockable mailbox must be provided close to the street front and integrated with the front fence and/or building entry.  
**Reason:** In order to ensure compliance with Control C1 and achieve consistency with Objective O1 in Part 3.7.3 of the Woollahra Development Control Plan 2015.
- c) An external clothes drying area must be provided in the rear and/or side communal open space area.  
**Reason:** In order to ensure compliance with Control C4 and achieve consistency with Objectives O3 and O4 in Part B3.7.3 of the Woollahra Development Control Plan 2015.

**Note:** The effect of this condition is that it requires design changes and/or further information to be provided with the Construction Certificate drawings and specifications to address specific issues identified during assessment under section 4.15 of the *Act*.

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

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

Standard Condition: C4 (Autotext CC4)

### C.2 Amended Stormwater Drainage Plan

An amended Stormwater Drainage Plan shall be prepared in accordance with Council's DA Guide and submitted to Council's tree and landscape Officer for assessment. The amended plan must include the following:

Underground services shall not be positioned within the following radial distances:

Council Ref No.	Species	Tree Location	Radius from centre of trunk (metres)
1	<i>Ficus rubiginosa</i> (Port Jackson Fig)	Front boundary	3m
15	<i>Archontophoenix cunninghamiana</i> (Bangalow palm)	Front – East boundary	1.5m
16	<i>Plumeria acutifolia</i> (Frangipani)	Front – East boundary	2m
17	<i>Persea americana</i> (Avocado)	Side – East boundary	2.5m
18	<i>Persea americana</i> (Avocado)	Rear – East boundary	3m

### C.3 Payment of Long Service Levy, Security, Contributions and Fees

The Certifying Authority must not issue any certificates under section 6.4 of the *Act* until provided with the original receipt(s) for the payment of all of the following levy, security, contributions, and fees prior to the issue of a Construction Certificate, Subdivision Certificate or Occupation Certificate, as will apply.

Description	Amount	Indexed	Council Fee Code
<b>LONG SERVICE LEVY</b> under <i>Building and Construction Industry Long Service Payments Act 1986</i>			
<b>Long Service Levy</b> <a href="http://www.longservice.nsw.gov.au/bci/levy/other-information/levy-calculator">www.longservice.nsw.gov.au/bci/levy/other-information/levy-calculator</a>	Contact LSL Corporation or use online calculator	No	
<b>SECURITY</b> under section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i>			
<b>Property Damage Security Deposit (S138)</b> - making good any damage caused to any property of the Council	\$155,058	No	T115
<b>Infrastructure Works Bond (S138)</b> - completing any public work required in connection with the consent.	\$53,400	No	T113
<b>DEVELOPMENT LEVY</b> under Woollahra Section 94A Development Contributions Plan 2011 This plan may be inspected at Woollahra Council or downloaded at <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a>			
<b>Development Levy</b> (section 7.12)	\$65,211.83 + Index Amount	Yes, quarterly	T96
<b>INSPECTION FEES</b> under section 608 of the <i>Local Government Act 1993</i>			
Public Road/Footpath Infrastructure Inspection Fee (S138 Fee)	\$471	No	
Security Administration Fee	\$198	No	T16
<b>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</b>	<b>\$274,338.83</b> plus any relevant indexed amounts and long service levy		

#### Building and Construction Industry Long Service Payment

The long service levy under section 34 of the *Building and Construction Industry Long Service Payment Act 1986*, must be paid and proof of payment provided to the Certifying Authority prior to the issue of any Construction Certificate. The levy can be paid directly to the Long Service Corporation or to Council. Further information can be obtained from the Long Service Corporation website [www.longservice.nsw.gov.au](http://www.longservice.nsw.gov.au) or the Long Service Corporation on 131 441.

#### How must the payments be made?

Payments must be made by:

- cash deposit with Council,
- credit card payment with Council, or
- bank cheque made payable to Woollahra Municipal Council.

The payment of a security may be made by a bank guarantee where:

- the guarantee is by an Australian bank for the amount of the total outstanding contribution,

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

**How will the section 7.12 levy (formerly known as 94A levy) be indexed?**

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

**Do you need HELP indexing the levy?**

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

**Deferred or periodic payment of section 7.12 levy (formerly known as 94A levy) under the Woollahra Section 94A Development Contributions Plan 2011**

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

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

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

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

Any deferred or periodic payment of the section 7.12 levy will be adjusted in accordance with clause 3.13 of the Plan. The Applicant will be required to pay any charges associated with establishing or operating the bank guarantee. Council will not cancel the bank guarantee until the outstanding contribution as indexed and any accrued charges are paid.

Standard Condition: C5

## **C.4 BASIX Commitments**

The Applicant must submit to the Certifying Authority BASIX Certificate No **992642M** with any application for a Construction Certificate.

**Note:** Where there is any proposed change in the BASIX commitments the Applicant must submit of a new BASIX Certificate to the Certifying Authority and Council. If any proposed change in the BASIX commitments are inconsistent with development consent (see: clauses 145 and 146 of the *Regulation*) the Applicant will be required to submit an amended development application to Council pursuant to section 4.55 of the *Act*.

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

**Note:** Clause 145(1)(a1) of the *Environmental Planning and Assessment Regulation 2000* provides: "A certifying authority must not issue a Construction Certificate for building work unless it is satisfied of the following matters: (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires".  
Standard Condition: C7

## C.5 Road and Public Domain Works

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

### 1. Road & Footpath Works

- a) The removal of all existing vehicular crossing including layback and gutter and reinstated into RMS' Standard kerb and gutter and nature strip in accordance with RMS' Specification.
- b) The construction of a new 5.5 metres wide vehicular in accordance with Council's standard driveway drawing RF2\_D. The new crossing shall be constructed at right angle to the street kerb in plain concrete and the centreline of the new crossing shall be aligned with the centreline of the proposed driveway at the property boundary. Design longitudinal surface profiles along each side/edge for the proposed driveway must be submitted for assessment.
- c) Approval for the design of the proposed layback and gutter shall be obtained from the RMS with a copy submitted to Council with this S138 application.
- d) The reconstruction of the existing full width concrete footpath for the full frontage of the site to Council's Specification. Detailed long section and cross section at every 5m interval shall be prepared by a suitably qualified and experienced civil engineer.

### 2. Drainage Works

- a) The construction of a new kerb inlet pit with 2.4m lintel for the proposed stormwater connection in New South Head Road in accordance with the Road and Maritime Services (RMS) Specification.
- b) Approval for the design of the new kerb inlet pit shall be obtained from the RMS with a copy submitted to Council with this S138 application. Detailed longitudinal sections for the new stormwater pipes across the nature strip in New South Head Road shall be provided in the drawings. All stormwater works shall be designed and carried out in accordance with Council's Specifications and standard drawing DR1 and RMS' specification.



- c) The existing RMS' in-ground system shall be extended from by using minimum Class 4, 375mm RRJ reinforced concrete pipes (RCP) with a minimum longitudinal fall of 1% in accordance with RMS' Specification and AS3725. Detailed design including longitudinal section of the proposed 375mm RCP shall be prepared by a suitably qualified civil engineer. Trench details shall be included in the design drawings to comply with Council's Specification and AS3725.
- d) The developer shall be responsible for carrying out all service investigations to allow a gravity connection.

### 3. Bonds

- a) A bond of \$53,400 will be used as security to ensure the satisfactory completion of the infrastructure works. The security or bank guarantee must be the original unconditional bank guarantee with no expiry date.
- b) Council may use all or part of the Infrastructure Bond as well as the Property Damage Security Deposit to meet the cost of removing or completing the works if they do not meet Council's requirements.
- c) The Deposit/Bond will not be released until Council has inspected the site and is satisfied that the Works have been completed in accordance with Council approved drawings and to Council requirements

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

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

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

**Note:** See condition K24 in *Section K. Advising* of this Consent titled *Roads Act Application*.  
Standard Condition: C13 (Autotext CC13)

## C.6 Provision for Energy Supplies

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

Any required substation must be located within the boundaries of the site.

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

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

Where the substation is required, the Construction Certificate plans and specifications must provide:

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

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

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

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

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

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

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

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

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

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

- Note:** This condition has been imposed to eliminate potential water pollution and dust nuisance.
- Note:** The International Erosion Control Association – Australasia [www.austieca.com.au](http://www.austieca.com.au) lists consultant experts who can assist in ensuring compliance with this condition. Where erosion and sedimentation plans are required for larger projects it is recommended that expert consultants produce these plans.
- Note:** The “*Do it Right On Site, Soil and Water Management for the Construction Industry*” publication can be downloaded from [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au), and *The Blue Book* is available at [www.environment.nsw.gov.au/stormwater/publications.htm](http://www.environment.nsw.gov.au/stormwater/publications.htm).
- Note:** Pursuant to clause 161(1)(a)(5) of the *Regulation* an Accredited Certifier may be satisfied as to this matter.  
Standard Condition: C25

## C.8 Professional Engineering Details

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

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

- Note:** This does not affect the right of the developer to seek staged Construction Certificates.  
Standard Condition: C36

## C.9 Engineer Certification (Special Condition)

A certificate from a *professional engineer* (Civil/Traffic Engineer), certifying that the proposed driveway for the first 6m from the property boundary is at a maximum grade of 5% as required by Clause 3.3 of AS2890.1, must be submitted with the *Construction Certificate* application.

In addition, the engineer must certify that a headroom of 2.2m has been provided between the underside of the ground floor slab and the finished level of the driveway to comply with Clause 5.3 of AS2890.1

## C.10 Geotechnical and Hydrogeological Design, Certification and Monitoring

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

These details must be certified by the professional engineer to:

- a) Provide appropriate support and retention to ensure there will be no ground settlement or movement, during excavation or after construction, sufficient to cause an adverse impact on adjoining property or public infrastructure.
- b) Provide appropriate support and retention to ensure there will be no adverse impact on surrounding property or infrastructure as a result of changes in local hydrogeology (behaviour of groundwater).

- c) Provide foundation tanking prior to excavation such that any temporary changes to the groundwater level, during construction, will be kept within the historical range of natural groundwater fluctuations. Where the historical range of natural groundwater fluctuations is unknown, the design must demonstrate that changes in the level of the natural water table, due to construction, will not exceed 0.3m at any time.
- d) Provide tanking of all below ground structures to prevent the entry of all ground water such that they are fully tanked and no on-going dewatering of the site is required.
- e) Provide a Geotechnical and Hydrogeological Monitoring Program that:
  - will detect any settlement associated with temporary and permanent works and structures,
  - will detect deflection or movement of temporary and permanent retaining structures (foundation walls, shoring bracing or the like),
  - will detect vibration in accordance with AS 2187.2-1993 Appendix J including acceptable velocity of vibration (peak particle velocity),
  - will detect groundwater changes calibrated against natural groundwater variations,
  - details the location and type of monitoring systems to be utilised,
  - details the pre-set acceptable limits for peak particle velocity and ground water fluctuations,
  - details recommended hold points to allow for the inspection and certification of geotechnical and hydrogeological measures by the professional engineer, and
  - details a contingency plan.

Standard Condition: C40 (Autotext: CC40)

## C.11 Ground Anchors

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

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

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

If temporary ground anchors under Council land are proposed, a separate application, including payment of fees, must be made to Council under section 138 of the *Roads Act 1993*. Application forms and Council's "Rock Anchor Policy" are available from Council's website. Approval may be granted subject to conditions of consent. Four weeks should be allowed for assessment.

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

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

**Note:** Clause 20 of the *Roads (General) Regulation 2000* prohibits excavation in the vicinity of roads as follows: "**Excavations adjacent to road** - A person must not excavate land in the vicinity of a road if the excavation is capable of causing damage to the road (such as by way of subsidence) or to any work or structure on the road." Separate approval is required under the *Roads Act 1993* for any underpinning, shoring, soil anchoring (temporary) or the like within or under any road. Council will not give approval to permanent underpinning, shoring, soil anchoring within or under any road.

Standard Condition: C41 (Autotext: CC41)

## C.12 Car and Commercial Parking Details

The *Construction Certificate* plans and specifications required by clause 139 of the Regulation, must include detailed plans and specifications for all bicycle, car and commercial vehicle parking in compliance with AS2890.3:1993 *Parking Facilities - Bicycle Parking Facilities*, AS/NZS 2890.1:2004 : *Parking Facilities - Off-Street Car Parking* and AS 2890.2:2002 – *Off-Street Parking: Commercial Vehicle Facilities* respectively.

The plans must satisfy the following requirements:

- a) A 2m x 2.5m driveway sightline splay is to be provided along the western edge of the driveway, as per AS/NZS 2890.1:2004 *Clause 3.2.4 and Figure 3.3*.
- b) Sight distances from the proposed vehicular crossing to vehicles on New South Head Road are to be provided in accordance with the *Austrroads Guide to Road Design: Part 4A: Unsignalised and Signalised Intersections (Section 3 – Sight Distance)* and AS 2890. Vegetations and proposed landscaping/fencing must not hinder sight lines to and from the vehicular crossing to motorists, pedestrians and cyclists.

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

The *Certifying Authority* has no discretion to reduce or increase the number and/or area of car parking and/or the model of the car stacker system required to be provided and maintained by this consent.

Standard Condition: C45 (Autotext: CC45)

## C.13 Stormwater Management Plan

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

- a) General design in accordance with stormwater plans prepared by Martens, dated 21/05/2019, shall be amended to address the following:
  - Details of pumpout system including supporting calculation shall be provided. The pumpout system must be designed to comply with Section 8 of AS3500.3:2018.
  - The minimum storage capacity of the proposed on-site detention (OSD) system must be increased to 11.2m<sup>3</sup> to comply with Chapter E2.2.4 of Council's DCP.
  - A new kerb inlet pit shall be constructed for the proposed stormwater connection to the RMS' underground drainage system.
- b) Compliance the objectives and performance requirements of the BCA;
- c) The installation of Stormwater360 filters and gross pollutant traps to achieve the water quality targets stipulated in Chapter E2.2.3 of Council's DCP;
- d) General compliance with the Council's Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management.; and
- e) The installation of On-site stormwater detention ("OSD") system.

### **OSD Requirements**

The minimum (OSD) Site Storage Requirements (“SSR”) and the Peak Site Discharge (“PSD”) from the site must be 11.2m<sup>3</sup> and 41.4 l/s respectively to comply with Chapter E2.2.4 of Council’s DCP.

The *Stormwater Management Plan* must also include the following specific requirements:

#### **Layout plan**

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

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

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

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

### **C.14 Flood protection**

The *Construction Certificate* plans and specifications, required by Clause 139 of the *Regulation*, must include a Flood Risk Management Plan on the basis of the Flood Planning Level (FPL). The flood planning level shall be based 1 in 100 year AEP flood level detailing:

- a) A permanent flood risk management plan is to be installed in a frequented area of the basement carpark.
- b) All fences and walls are to be designed to be structurally stable during all flood events including the PMF.
- c) The proposed below ground car park is to be protected by a physical threshold set at or above the flood planning level of RL8.7m AHD
- d) All habitable floors have to be at or above or protected from flooding to the flood planning level RL9.5 m AHD
- e) Flood compatible materials shall be used for all flood exposed construction below the flood planning level of RL9.5m AHD
- f) All electrical wiring and fixed electrical equipment shall be located above or waterproofed to the flood planning level of RL9.5m AHD.
- g) Emergency self-powered lighting, indicating the safe exits is to be installed in the car parking area.
- h) All flood protection measures are to be inspected and certified as fit for purpose after the construction is complete by an engineer experienced in flood mitigation.

Flood protection is to comply with Woollahra DCP 2015, Part E “General Controls for All Development” Chapter E2 “Stormwater and Flood Risk Management” DCP

**Note:** The revised driveway profile, gradients and transitions must be in accordance with Australian Standard 2890.1 – 2004, Part 1 (Off-street car parking). The driveway profile submitted to Council must contain all relevant details: reduced levels, proposed grades and distances. Council will not allow alteration to existing reduced levels within the road or any other public place to achieve flood protection.  
Standard Condition C.54 (autotext CC54)

### C.15 Electric vehicle circuitry and electric vehicle charging point requirements

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

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

**Note:** The minimum electric circuitry requirements for 'Level 2' electric vehicle charging points are:  
a) Privately available spaces including visitor spaces: 'Level 2' slow – single phase 7kW power; and  
b) Publicly available spaces: 'Level 2' fast – three-phase 11-22kW power  
Standard Condition: C57 (Autotext CC57)

### C.16 Land Contamination

- Given the limited nature of the Preliminary Investigation due to site constraints, confirmation of the contamination status of the site in the form of a Detailed Investigation will need to be undertaken *post –demolition of the existing buildings*. The Detailed Investigation shall be undertaken in accordance with the *NSW EPA Sampling Guidelines (1995)*, the *DECCW's Guidelines for the NSW Site Auditor Scheme, 2<sup>nd</sup> Edition, 2006*.
- If the land is contaminated then a remedial action plan sufficient for compatibility with the proposed use, supported by a Site Audit Statement must be provided to the Council's satisfaction, and
- After completion of any remedial works required by the *remedial action plan*, that the applicant provide a copy of a validation report, supported by a Site Audit Statement to Council's satisfaction before the issuing of any occupation certificate.



### C.17 Light & Ventilation

The *Construction Certificate* plans and specifications, required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation*, must detail all a lighting, mechanical ventilation or air-conditioning systems complying with Part F.4 of the *BCA* or clause 3.8.4 and 3.8.5 of the *BCA* Housing Provisions, inclusive of [AS 1668.1](#), [AS 1668.2](#) and [AS/NZS 3666.1](#). If an alternate solution is proposed then the *Construction Certificate* application must include a statement as to how the performance requirements of the *BCA* are to be complied with and support the performance based solution by expert *evidence of suitability*. This condition does not set aside the mandatory requirements of the *Public Health (Microbial Control) Regulation 2000* in relation to *regulated systems*. This condition does not set aside the effect of the *Protection of the Environment Operations Act 1997* in relation to offensive noise or odour.

**Note:** Clause 98 of the *Regulation* requires compliance with the *BCA*. Clause 145 of the *Regulation* prevents the issue of a *Construction Certificate* unless the *Accredited Certifier/Council* is satisfied that compliance has been achieved. Schedule 1, Part 3 of the *Regulation* details what information must be submitted with any *Construction Certificate*. It is the Applicant's responsibility to demonstrate compliance through the *Construction Certificate* application process. Applicants must also consider possible noise and odour nuisances that may arise. The provisions of the *Protection of the Environment Operations Act 1997* have overriding effect if offensive noise or odour arises from the use. Applicant's must pay attention to the location of air intakes and air exhausts relative to sources of potentially contaminated air and neighbouring windows and air intakes respectively, see section 2 and 3 of [AS 1668.2](#).

Standard Condition C59

### C.18 Acoustic Certification of Mechanical Plant & Equipment

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

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

Where sound attenuation is required this must be detailed.

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

1. **Australian Acoustical Society**—professional society of noise-related professionals ([www.acoustics.asn.au/index.php](http://www.acoustics.asn.au/index.php)).
2. **Association of Australian Acoustical Consultants**—professional society of noise related professionals ([www.aaac.org.au](http://www.aaac.org.au)).

Standard Condition: C62

### C.19 Design sound levels for building interiors

The *Construction Certificate* plans and specifications required by clause 139 of the *Regulation*, must provide details showing how the recommendations of the Environmental Noise Impact Assessment, prepared by ENVIROTECH will be implemented.

Design sound levels for building interiors should not exceed those recommended maximum design sound levels, LAeq, dB(A) specified by AS 2107-2000, *Acoustics - Recommended design sound levels and reverberation times for building interiors*.

**Note:** The design sound levels given in AS 2107-2000 are not necessarily appropriate in all circumstances. In particular, lower noise levels may be appropriate in quiet environments or where expectations of quality are high. For example, lower design sound levels than those given as satisfactory in AS 2107-2000 may be preferred for luxury hotels and apartments. However, additional costs will be incurred in achieving sufficient sound attenuation between spaces for acoustic privacy requirements. For each 5 dB reduction in the ambient sound level, 5 dB must be added to the overall sound isolation performance of the dividing elements to maintain the same level of acoustic privacy. There could also be additional costs associated with the provision of quieter building services. As a minimum compliance with the *BCA* is mandatory. Standard Condition: C63

## **C.20 Acoustic Certification of Interior Noise Levels (*Infrastructure SEPP 2007*)**

Prior to the issue of a Construction Certificate, an Acoustic Assessment must be provided to the Principal Certifying Authority confirming necessary acoustic control measures which must be incorporated into the design of the building. The acoustic measures must set out recommendations to ensure compliance with the internal noise limits set out in Clause 102 of the *Infrastructure SEPP (2007)* when applied inside any habitable room of the development with doors and windows closed and mechanical ventilation/air-conditioning operating.

## **C.21 Ventilation - Enclosures used by Vehicles (Car parks, automotive service, enclosed driveways, loading docks and the like)**

The (*UNDERGROUND CARPARK*) in which vehicles powered by internal combustion engines are parked, serviced or operated are required to comply with Section 4 'Ventilation of Enclosures used by Vehicles with Internal Combustion Engines' of Australian Standard 1668.2-1991. In general air distribution must achieve uniform dilution of contaminants in the garage and maintain contaminant concentrations below recommended exposure standards.

The (*UNDERGROUND CARPARK*) must be naturally ventilated or provided with a combination of both supply and exhaust mechanical ventilation. The applicant is to determine the method of ventilation of the (*UNDERGROUND CARPARK*) and provide details to the Certifying Authority accordingly. Except as varied in accordance with Clause 4.4.1 (a), (b) or (c), the (*UNDERGROUND CARPARK*) shall be mechanically ventilated by a combination of general exhaust and supply flow rates in accordance with Australian Standard 1668.2-1991.

## **C.22 Ventilation - Internal Sanitary Rooms**

All internal sanitary rooms and laundry facilities not provided with natural ventilation must be provided with a system of mechanical exhaust ventilation in accordance with *Table B1 Minimum Exhaust Ventilation Flow Rates of AS 1668.2-1991*. Details of any proposed mechanical ventilation system(s) being submitted with the Construction Certificate plans and specifications, required to be submitted to the Certifying Authority demonstrating compliance with AS 1668 Parts 1 & 2.

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

**D.1 Compliance with Building Code of Australia and insurance requirements under the [Home Building Act 1989](#)**

For the purposes of section 4.17(11) of the *Act*, the following conditions are prescribed in relation to a development consent for development that involves any building work:

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

This condition does not apply:

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

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

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

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

**D.2 Dilapidation Reports for existing buildings**

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

These properties to be assessed by the Structural Engineer must include (but is not limited to):

- **No. 337 New South Head Road**
- **No. 349 New South Head Road**
- **No. 355 New South Head Road**
- **No. 3A Manning Road**
- **No. 5 Manning Road**

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

Where excavation of the site will extend below the level of any immediately adjoining building the *principal contractor* or *owner builder* must give the adjoining building owner(s) a copy of the dilapidation report for their building(s) and a copy of the *notice of commencement* required by S81A(2) of the *Act* not less than two (2) days prior to the commencement of any work.

**Note:** The reasons for this condition are:

- To provide a record of the condition of buildings prior to development being carried out
  - To encourage developers and its contractors to use construction techniques that will minimise the risk of damage to buildings on neighbouring land
- Also refer to the Dilapidation Report Advising for more information regarding this condition  
Standard Condition: D4 (Autotext DD4)

### **D.3 Adjoining Buildings Founded on Loose Foundation Materials**

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

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

### **D.4 Piezometers for the monitoring of Ground Water Levels (GWL)**

The *principal contractor* must provide 2 piezometers within the excavation area and a further 2 piezometers around the perimeter of the wall. The piezometers are to be installed to monitor groundwater levels before and during all dewatering works for the construction phase.

The Ground Water Levels monitoring wells and monitoring program must be maintained until the issue of the *Final Occupation Certificate*.

Ground Water Levels are to be regularly monitored during the course of the works as required by the Work Method Statement for the control of Ground Water Levels. Any damaged piezometers are to be replaced to allow uninterrupted monitoring.

Where there are any movements in the Ground Water Levels outside a safe range set by the Work Method Statement for the control of Ground Water Levels corrective action must be undertaken under the direction of the *professional engineer* (hydrological/geotechnical engineer).

Standard Condition: D7 (Autotext DD7)

### **D.5 Construction Management Plan**

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

The Principal Contractor or Owner must submit an application for approval of the CMP by Council's Traffic Engineer and pay all fees associated with the application.

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

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

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

**Note:** A minimum of eight weeks will be required for assessment. Work must not commence until the Construction Management Plan is approved. Failure to comply with this condition may result in fines and proceedings to stop work.  
Standard Condition: D9 (Autotext: DD9)

## D.6 Works (Construction) Zone – Approval and Implementation

A Works Zone may be required for this development. The Principal Contractor or Owner can apply for a works zone. If the works zone is approved the Principal Contractor or Owner must pay all fees for this Works Zone before it can be installed.

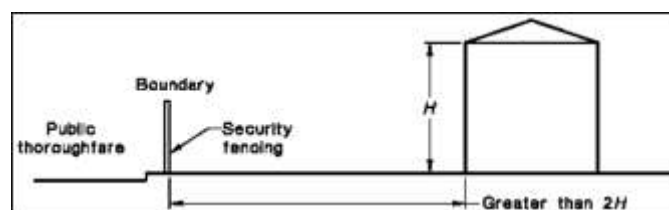
The Principal Contractor must pay all fees associated with the application and occupation and use of the road as a Works Zone. All Works Zone signs must have been erected by Council to permit enforcement of the Works Zone by Council's Rangers and NSW Police before commencement of any work. Signs are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

**Note:** The Principal Contractor or Owner must allow not less than four to six weeks (for routine applications) from the date of making an application to the Traffic Committee (Woollahra Local Traffic Committee) constituted under the clause 22 of the *Transport Administration (General) Regulation 2000* to exercise those functions delegated by the Roads and Maritime Services under section 50 of the *Transport Administration Act 1988*.

**Note:** The enforcement of the works zone is at the discretion of Council's Rangers and the NSW Police Service. The Principal Contractor must report any breach of the works zone to either Council or the NSW Police Service.  
Standard Condition: D10 (Autotext DD10)

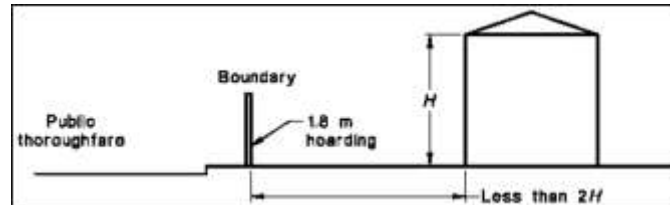
## D.7 Security Fencing, Hoarding and Overhead Protection

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



### Type A Hoarding

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



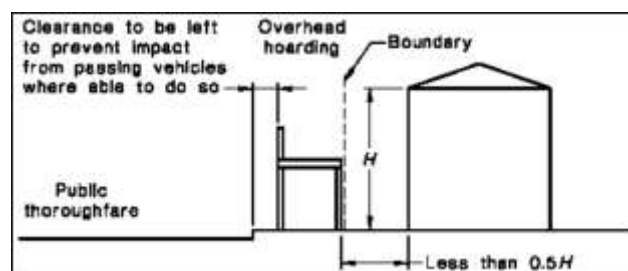
### Type B Hoarding

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

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

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

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



The Principal Contractor or Owner-builder must ensure that overhead protective structures are installed and maintained in accordance with the NSW *"Code of Practice - Overhead Protective Structures 1995"*. This is code available at



[www.safework.nsw.gov.au/data/assets/pdf\\_file/0008/52883/Overhead-protective-structures-Code-of-practice.pdf](http://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

The Principal Contractor or Owner-builder must pay all fees associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

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

**Note:** The Principal Contractor or Owner must allow not less than two (2) weeks from the date of making a hoarding application for determination. Any approval for a hoarding or overhead protection under the *Roads Act 1993* will be subject to its own conditions and fees.

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

- A. Hoardings proposed on land zoned B2 Local Centre, or B4 Mixed Use, or SP2 Infrastructure under Woollahra Local Environmental Plan 2014 AND erected for 8 weeks or more  
OR
- B. Hoardings proposed on land located along a State classified road (regardless of the zone) AND erected for 8 weeks or more  
OR
- C. Hoardings proposed in any other location than that referred to in A. and B. above AND erected for 12 weeks or more, except where:
  - i. the capital investment value of the work to which the hoarding relates is less than \$1 million  
OR
  - ii. the land is zoned R2 Low Density Residential  
OR
  - iii. the land is zoned R3 Medium Density Residential and the hoarding located in a lane or street that does not have through traffic (eg a cul-de-sac or no through road).

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

The Creative Hoardings Policy can be downloaded from [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or for more information contact Council's Cultural Development Team.

Standard Condition: D11 (Autotext DD11)

## D.8 Site Signs

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

Clause 98A of the *Regulation* provides:

***Erection of signs***

- For the purposes of section 4.17(11) of the *Act*, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - a. showing the name, address and telephone number of the Principal Certifier for the work, and
  - b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - c. stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- This clause does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the *Act*, to comply with the Building Code of Australia.

Clause 227A of the *Regulation* provides:

***Signs on development sites***

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

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

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

**Note:** If Council is appointed as the Principal Certifier it will provide the sign to the Principal Contractor or Owner-builder who must ensure that the sign is erected and maintained as required by clause 98A and clause 227A of the *Regulation*.

Standard Condition: D12 (Autotext DD12)

## **D.9 Toilet Facilities**

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

Each toilet provided:

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

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

In this condition:

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

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

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

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

**Note:** This condition does not set aside the requirement to comply with SafeWork NSW requirements.  
Standard Condition: D13 (Autotext DD13)

#### **D.10 Erosion and Sediment Controls – Installation**

The Principal Contractor or Owner-builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:

- a) The Soil and Water Management Plan if required under this consent;
- b) “*Do it Right On Site, Soil and Water Management for the Construction Industry*” published by the Southern Sydney Regional Organisation of Councils, 2001; and
- c) “*Managing Urban Stormwater - Soils and Construction*” 2004 published by the NSW Government (*The Blue Book*).

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

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

**Note:** The “Do it Right On Site, Soil and Water Management for the Construction Industry” publication can be downloaded from [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) and *The Blue Book* is available at [www.environment.nsw.gov.au/stormwater/publications.htm](http://www.environment.nsw.gov.au/stormwater/publications.htm)

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

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

**Warning:** Irrespective of this condition any person occupying the site may be subject to proceedings under the *Protection of the Environment Operations Act 1997* where pollution is caused, permitted or allowed as the result of their occupation of the land being developed.  
Standard Condition: D14 (Autotext DD14)

**D.11 Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 of the Act)**

The erection of the building in accordance with this development consent must not be commenced until:

- a) A Construction Certificate for the building work has been issued by the consent authority, the Council (if the Council is not the consent authority) or an accredited Certifier, and
- b) The person having the benefit of the development consent has:
  - appointed a Principal Certifier for the building work, and
  - notified the Principal Certifier that the person will carry out the building work as an Owner-builder, if that is the case, and
- c) The Principal Certifier has, no later than 2 days before the building work commences:
  - notified the consent authority and the Council (if the Council is not the consent authority) of his or her appointment, and
  - notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- d) The person having the benefit of the development consent, if not carrying out the work as an Owner-builder, has:
  - appointed a Principal Contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
  - notified the Principal Certifier of any such appointment, and
  - unless that person is the Principal Contractor, notified the Principal Contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
  - given at least 2 days' notice to the Council of the person's intention to commence the erection of the building.

**Note:** *building* has the same meaning as in section 1.4 of the *Act* and includes part of a building and any structure or part of a structure.

**Note:** *new building* has the same meaning as in section 6.1 of the *Act* and includes an altered portion of, or an extension to, an existing building.

**Note:** The commencement of demolition works associated with an altered portion of, or an extension to, an existing building is considered to be the commencement of building work requiring compliance with section 6.6(2) of the *Act* (including the need for a Construction Certificate) prior to any demolition work. See: *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.

**Note:** Construction Certificate Application, PC Service Agreement and Notice of Commencement forms can be downloaded from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)

**Note:** It is an offence for any person to carry out the erection of a *building* in breach of this condition and in breach of section 6.6(2) of the *Act*.

Standard Condition: D15 (Autotext DD15)

**D.12 Establishment of Boundary Location, Building Location and Datum**

Prior to the commencement of any work the Principal Contractor or Owner-builder must ensure that a surveyor registered under the *Surveying and Spatial Information Act 2002* sets out:

- a) the boundaries of the site by permanent marks (including permanent recovery points),
- b) the location and level of foundation excavations, footings, walls and slabs by permanent marks, pegs or profiles relative to the boundaries of the land and relative to Australian Height Datum (AHD) in compliance with the approved plans,

- c) establishes a permanent datum point (bench mark) within the boundaries of the site relative to AHD, and
- d) provides a copy of a survey report by the registered surveyor detailing, the title boundaries, pegs/profiles, recovery points and bench mark locations as established pursuant to this condition to the Principal Certifier.

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

**Note:** On larger developments, or where boundary redefinition is required, the placement of new State Survey Marks as permanent marks should be considered by the registered surveyor.  
Standard Condition: D18 (Autotext DD18)

## **E. Conditions which must be satisfied during any development work**

### **E.1 Compliance with BCA and Insurance Requirements under the Home Building Act 1989**

For the purposes of section 4.17(11) of the *Act*, the following condition is prescribed in relation to a development consent for development that involves any building work:

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

This condition does not apply:

- a) to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4) of the *Regulation*, or
- b) to the erection of a temporary building.

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

**Note:** All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.  
Standard Condition: E1 (Autotext EE1)

### **E.2 Compliance with Australian Standard for Demolition**

Demolition of buildings and structures must comply with Australian Standard AS 2601—2001: *The Demolition of Structures*.

Standard Condition: E2 (Autotext EE2)

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

All development activities and traffic movements must be carried out in accordance with the approved Construction Management Plan (CMP). All controls in the CMP must be maintained at all times. A copy of the CMP must be kept on-site at all times and made available to the Principal Certifier or Council on request.

**Note:** Irrespective of the provisions of the Construction Management Plan the provisions of traffic and parking legislation prevails.  
Standard Condition: E3 (Autotext EE3)

#### E.4 Requirement to Notify about New Evidence

Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination, heritage significance, threatened species or other relevant matters must be immediately notified to Council and the Principal Certifier.  
Standard Condition: E4 (Autotext EE4)

#### E.5 Critical Stage Inspections

Critical stage inspections must be called for by the Principal Contractor or Owner-builder as required by the Principal Certifier, any PC service agreement, the *Act* and the *Regulation*.

Work must not proceed beyond each critical stage until the Principal Certifier is satisfied that work is proceeding in accordance with this consent, the Construction Certificate(s) and the *Act*.

*Critical stage inspections* means the inspections prescribed by the *Regulations* for the purposes of section 6.5 of the *Act* or as required by the Principal Certifier and any PC Service Agreement.

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

**Note:** The PC may, in addition to inspections, require the submission of Compliance Certificates, survey reports or evidence of suitability in accordance with Part A2.2 of the BCA in relation to any matter relevant to the development.  
Standard Condition: E5 (Autotext EE5)

#### E.6 Hours of Work –Amenity of the Neighbourhood

- a) No *work* must take place on any Sunday or public holiday.
- b) No *work* must take place before 7am or after 5pm any weekday.
- c) No *work* must take place before 7am or after 1pm any Saturday.
- d) The following *work* **must not** take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday:
  - (i) piling,
  - (ii) piercing,
  - (iii) rock or concrete cutting, boring or drilling,
  - (iv) rock breaking,
  - (v) rock sawing,
  - (vi) jack hammering, or
  - (vii) machine excavation.
- e) No loading or unloading of material or equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.
- f) No operation of any equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.

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

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

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

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

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

**Note:** Compliance with these hours of work does not affect the rights of any person to seek a remedy to offensive noise as defined by the *Protection of the Environment Operations Act 1997*, the *Protection of the Environment Operations (Noise Control) Regulation 2017*.

**Note:** NSW EPA Noise Guide is available at [www.epa.nsw.gov.au/noise/nglg.htm](http://www.epa.nsw.gov.au/noise/nglg.htm)  
Standard Condition: E6 (Autotext EE6)

## E.7 Public Footpaths – Safety, Access and Maintenance

The Principal Contractor or Owner-builder and any other person acting with the benefit of this consent must:

- a) Not erect or maintain any gate or fence swing out or encroaching upon the road or the footway.
- b) Not use the road or footway for the storage of any article, material, matter, waste or thing.
- c) Not use the road or footway for any *work*.
- d) Keep the road and footway in good repair free of any trip hazard or obstruction.
- e) Not stand any plant and equipment upon the road or footway.
- f) Provide a clear safe pedestrian route a minimum of 1.5m wide.
- g) Protect heritage listed street name inlays in the footpath which are not to be removed or damaged during development.

This condition does not apply to the extent that a permit or approval exists under the section 148B of the *Road Transport Act 2013*, section 138 of the *Roads Act 1993* or section 68 of the *Local Government Act 1993* except that at all time compliance is required with:

- a) Australian Standard AS 1742 (Set): *Manual of uniform traffic control devices* and all relevant parts of this set of standards.
- b) Australian Road Rules.

**Note:** Section 73 of the *Road Transport (Safety and Traffic Management) Act 1999* allows the NSW Police to close any road or road related area to traffic during any temporary obstruction or danger to traffic or for any temporary purpose.

**Note:** Section 138 of the *Roads Act 1993* provides that a person must not:

- erect a structure or carry out a work in, on or over a public road, or
- dig up or disturb the surface of a public road, or
- remove or interfere with a structure, work or tree on a public road, or



- pump water into a public road from any land adjoining the road, or
- connect a road (whether public or private) to a classified road, otherwise than with the consent of the appropriate roads authority.

**Note:** Section 68 of the *Local Government Act 1993* provides that a person may carry out certain activities only with the prior approval of the Council including:

- Part C Management of waste:
    - a. For fee or reward, transport waste over or under a public place
    - b. Place waste in a public place
    - c. Place a waste storage container in a public place.
  - Part E Public roads:
    - a. Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway
    - 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.
- Standard Condition: E7 (Autotext EE7)

## **E.8 Maintenance of Environmental Controls**

The Principal Contractor or Owner-builder must ensure that the following monitoring, measures and controls are maintained:

- a) erosion and sediment controls,
- b) dust controls,
- c) dewatering discharges,
- d) noise controls,
- e) vibration monitoring and controls,
- f) ablutions.

Standard Condition: E11

## **E.9 Compliance with Geotechnical / Hydrogeological Monitoring Program**

Excavation must be undertaken in accordance with the recommendations of the Geotechnical / Hydrogeological Monitoring Program and any oral or written direction of the supervising professional engineer.

The Principal Contractor and any sub-contractor must strictly follow the Geotechnical / Hydrogeological Monitoring Program for the development including, but not limited to:

- a) the location and type of monitoring systems to be utilised,
- b) recommended hold points to allow for inspection and certification of geotechnical and hydrogeological measures by the professional engineer, and
- c) the contingency plan.

**Note:** The consent authority cannot require that the author of the geotechnical/hydrogeological report submitted with the development application to be appointed as the professional engineer supervising the work however, it is the Council's recommendation that the author of the report be retained during the construction stage.

Standard Condition: E12 (Autotext EE12)

## **E.10 Support of Adjoining Land and Buildings**

A person must not do anything on or in relation to the site (the supporting land) that removes the support provided by the supporting land to any other land (the supported land) or building (the supported building).

For the purposes of this condition, supporting land includes the natural surface of the site, the subsoil of the site, any water beneath the site, and any part of the site that has been reclaimed.

**Note:** This condition does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is considered necessary upon any adjoining or supported land by any person the Principal Contractor or Owner-builder must obtain:

- a. the consent of the owners of such adjoining or supported land to trespass or encroach, or
- b. an access order under the *Access to Neighbouring Land Act 2000*, or
- c. an easement under section 88K of the *Conveyancing Act 1919*, or
- d. an easement under section 40 of the *Land and Environment Court Act 1979* as appropriate.

**Note:** Section 177 of the *Conveyancing Act 1919* creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).

**Note:** Clause 20 of the *Roads Regulation 2008* prohibits excavation in the vicinity of roads as follows:  
“**Excavations adjacent to road** - A person must not excavate land in the vicinity of a road if the excavation is capable of causing damage to the road (such as by way of subsidence) or to any work or structure on the road.” Separate approval is required under the *Roads Act 1993* for any underpinning, shoring, soil anchoring (temporary) or the like within or under any road. Council will not give approval to permanent underpinning, shoring, soil anchoring within or under any road.

**Note:** The encroachment of work or the like is a civil matter of trespass or encroachment and Council does not adjudicate or regulate such trespasses or encroachments except in relation to encroachments upon any road, public place, Crown land under Council’s care control or management, or any community or operational land as defined by the *Local Government Act 1993*.

Standard Condition: E13 (Autotext EE13)

## E.11 Vibration Monitoring

Vibration monitoring equipment must be installed and maintained, under the supervision of a professional engineer with expertise and experience in geotechnical engineering, between any potential source of vibration and any *building* identified by the professional engineer as being potentially at risk of movement or damage from settlement and/or vibration during the excavation and during the removal of any excavated material from the land being developed.

If vibration monitoring equipment detects any vibration at the level of the footings of any adjacent building exceeding the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity an audible alarm must activate such that the Principal Contractor and any sub-contractor are easily alerted to the event.

Where any such alarm triggers all excavation works must cease immediately.

Prior to the vibration monitoring equipment being reset by the professional engineer and any further work recommencing the event must be recorded and the cause of the event identified and documented by the professional engineer.

Where the event requires, in the opinion of the professional engineer, any change in work practices to ensure that vibration at the level of the footings of any adjacent building does not exceed the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity these changes in work practices must be documented and a written direction given by the professional engineer to the Principal Contractor and any sub-contractor clearly setting out required work practice.

The Principal Contractor and any sub-contractor must comply with all work directions, verbal or written, given by the professional engineer.

A copy of any written direction required by this condition must be provided to the Principal Certifier within 24 hours of any event.

Where there is any movement in foundations such that damaged is occasioned to any adjoining *building* or such that there is any removal of support to *supported land* the professional engineer, Principal Contractor and any sub-contractor responsible for such work must immediately cease all work, inform the owner of that *supported land* and take immediate action under the direction of the professional engineer to prevent any further damage and restore support to the *supported land*.

**Note:** *professional engineer* has the same mean as in clause A1.1 of the BCA.

**Note:** *building* has the same meaning as in section 1.4 of the *Act* i.e. “*building* includes part of a building and any structure or part of a structure....”

**Note:** *supported land* has the same meaning as in the *Conveyancing Act 1919*.  
Standard Condition: E14 (Autotext EE14)

## E.12 Erosion and Sediment Controls – Maintenance

The Principal Contractor or Owner-builder must maintain water pollution, erosion and sedimentation controls in accordance with:

- a) the Soil and Water Management Plan required under this consent,
- b) “*Do it Right On Site, Soil and Water Management for the Construction Industry*” published by the Southern Sydney Regional Organisation of Councils, 2001, and
- c) “*Managing Urban Stormwater - Soils and Construction*” 2004 published by the NSW Government (*The Blue Book*).

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



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

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

**Warning:** Irrespective of this condition any person occupying the site may be subject to proceedings under the *Protection of the Environment Operations Act 1997* where pollution is caused, permitted or allowed as the result of the occupation of the land being developed whether or not they actually cause the pollution.

Standard Condition: E15 (Autotext EE15)

## E.13 Disposal of Site Water During Construction

The Principal Contractor or Owner-builder must ensure:

- a) Prior to pumping any water into the road or public stormwater system that approval is obtained from Council under section 138(1)(d) of the *Roads Act 1993*.
- b) That *water pollution*, as defined by the *Protection of the Environment Operations Act 1997*, does not occur as the result of the discharge to the road, public stormwater system or other place or any site water.
- c) That stormwater from any roof or other impervious areas is linked, via temporary downpipes and stormwater pipes, to a Council approved stormwater disposal system immediately upon completion of the roof installation or work creating other impervious areas.

**Note:** This condition has been imposed to ensure that adjoining and neighbouring land is not adversely affected by unreasonable overland flows of stormwater and that site water does not concentrate water such that they cause erosion and water pollution.

Standard Condition: E17 (Autotext EE17)

#### **E.14 Site Cranes**

Site crane(s) and hoist(s) may be erected within the boundary of the land being developed subject to compliance with Australian Standards AS 1418, AS 2549 and AS 2550 and all relevant parts to these standards.

Cranes must not swing or hoist over any public place unless the Principal Contractor or Owner-builder have the relevant approval under the *Local Government Act 1993*, *Crown Lands Act 1989* or *Roads Act 1993*.

The crane must not be illuminated outside approved working hours other than in relation to safety beacons required by the Civil Aviation Safety Authority under the *Civil Aviation Act 1988* (*Cth*).

No illuminated sign(s) must be erected upon or displayed upon any site crane.

**Note:** Where it is proposed to swing a crane over a public place the Principal Contractor or Owner-builder must make a separate application to Council under section 68 of the *Local Government Act 1993* and obtain activity approval from Council prior to swinging or hoisting over the public place.

**Note:** Where it is proposed to swing a crane over private land the consent of the owner of that private land is required. Alternatively, the Principal Contractor or Owner-builder must obtain an access order under the *Access to Neighbouring Land Act 2000* or easement under section 88K of the *Conveyancing Act 1919* or section 40 of the *Land and Environment Court Act 1979* as appropriate. The encroachment of cranes or the like is a civil matter of trespass and encroachment. Council does not adjudicate or regulate such trespasses or encroachments.

Standard Condition: E19 (Autotext EE19)

#### **E.15 Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum**

The Principal Contractor or Owner-builder must ensure that a registered surveyor carries out check surveys and provides survey certificates confirming the location of the building(s), ancillary works, flood protection works and the stormwater drainage system relative to the boundaries of the site and that the height of buildings, ancillary works, flood protection works and the stormwater drainage system relative to Australian Height Datum complies with this consent at the following critical stages.

The Principal Contractor or Owner-builder must ensure that work must not proceed beyond each of the following critical stages until compliance has been demonstrated to the Principal Certifier's satisfaction:

- a) Upon the completion of foundation walls prior to the laying of any floor or the pouring of any floor slab and generally at damp proof course level.
- b) Upon the completion of formwork for floor slabs prior to the laying of any floor or the pouring of any concrete and generally at each storey.
- c) Upon the completion of formwork or framework for the roof(s) prior to the laying of any roofing or the pouring of any concrete roof.
- d) Upon the completion of formwork and steel fixing prior to pouring of any concrete for any ancillary structure, flood protection work, swimming pool or spa pool or the like.
- e) Upon the completion of formwork and steel fixing prior to pouring of any concrete for driveways showing transitions and crest thresholds confirming that driveway levels match Council approved driveway crossing levels and minimum flood levels.
- f) Stormwater drainage Systems prior to back filling over pipes confirming location, height and capacity of works.
- g) Flood protection measures are in place confirming location, height and capacity.

**Note:** This condition has been imposed to ensure that development occurs in the location and at the height approved under this consent. This is critical to ensure that building are constructed to minimum heights for flood protection and maximum heights to protect views and the amenity of neighbours.  
Standard Condition: E20 (Autotext EE20)

#### **E.16 Placement and Use of Skip Bins**

The Principal Contractor or Owner-builder must ensure that all waste storage containers, including but not limited to skip bins, must be stored within the site unless:

- a) Activity Approval has been issued by Council under section 68 of the *Local Government Act 1993* to place the waste storage container in a public place; and
- b) where located on the road it is located only in a positions where a vehicle may lawfully park in accordance with the Australian Road Rules.

**Note:** Waste storage containers must not be located on the footpath without a site specific activity approval. Where such site specific activity approval is granted a 1.5m wide clear path of travel is maintained free of any trip hazards.  
Standard Condition: E21 (Autotext EE21)

#### **E.17 Dust Mitigation**

Dust mitigation must be implemented in accordance with "*Dust Control - Do it right on site*" published by the Southern Sydney Regional Organisation of Councils.

This generally requires:

- a) Dust screens to all hoardings and site fences.
- b) All stockpiles or loose materials to be covered when not being used.
- c) All equipment, where capable, being fitted with dust catchers.
- d) All loose materials being placed bags before placing into waste or skip bins.
- e) All waste and skip bins being kept covered when not being filled or emptied.
- f) The surface of excavation work being kept wet to minimise dust.
- g) Landscaping incorporating trees, dense shrubs and grass being implemented as soon as practically possible to minimise dust.

**Note:** “Dust Control - Do it right on site” can be downloaded from Council’s website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or obtained from Council’s office.

**Note:** Special precautions must be taken when removing asbestos or lead materials from development sites. Additional information can be obtained from [www.safework.nsw.gov.au](http://www.safework.nsw.gov.au) and [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au). Other specific conditions and advice may apply.

**Note:** Demolition and construction activities may affect local air quality and contribute to urban air pollution. The causes are dust, smoke and fumes coming from equipment or activities, and airborne chemicals when spraying for pest management. Precautions must be taken to prevent air pollution.  
Standard Condition: E23 (Autotext EE23)

### **E.18 Compliance with Council’s Specification for Roadworks, Drainage and Miscellaneous Works, Road Works and, Work within the Road and Footway**

All work carried out on assets which are under Council ownership or will revert to the ownership, care, control or management of Council in connection with the *development* to which this consent relates must comply with Council’s *Specification for Roadworks, Drainage and Miscellaneous Works* (2012).

The Owner, Principal Contractor or Owner-builder must meet all costs associated with such works.

This condition does not set aside the need to obtain relevant approvals under the *Roads Act 1993* or *Local Government Act 1993* for works within roads and other public places.

**Note:** A copy of Council’s *Specification for Roadworks, Drainage and Miscellaneous Works* can be downloaded from Council’s website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)  
Standard Condition: E24 (Autotext EE24)

### **E.19 Tree Preservation**

All persons must comply with Council’s Development Control Plan (DCP) 2015, Chapter E.3 Tree Management other than where varied by this consent. The DCP applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.

#### General Protection Requirements

- a) The TPZ must be maintained during all development work unless otherwise specified within these conditions of consent.
- b) Excavation must cease where tree roots with a diameter exceeding 50mm are exposed. The *principal contractor* must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.
- c) Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.

**Note:** Trees must be pruned in accordance with *Australian Standard AS 4373 “Pruning of Amenity Trees”* and *WorkCover NSW Code of Practice Amenity Tree Industry*.

## E.20 Replacement/Supplementary trees which must be planted

Any replacement or supplementary tree shall be grown in accordance with Tree stock for landscape use (AS 2303:2015). The replacement tree shall be planted in a *deep soil landscaped area* and maintained in a healthy and vigorous condition. If the replacement tree is found to be faulty, damaged, dying or dead before it attains a size whereby it is protected by Council's Tree Preservation Order, it must be replaced with another of the same species which complies with the criteria outlined below.

Species/Type	Planting/Location	Container Size/Size of Tree (at planting)	Minimum Dimensions at Maturity (metres)
5 x <i>Brachychiton discolor</i> (Lacebark Kurrajong)	As indicated in supplied Melissa Wilson Landscape Plan LS 00	75 litre	10 x 6
24 x <i>Howea forsteriana</i> (Kentia palm)		75 litre	10 x 4
2 x <i>Hymenosporum flavum</i> (Native Frangipani)		75 litre	7 x 5
2 x <i>Randia fitzalanii</i> (Native Gardenia)		75 litre	5 x 3
8 x <i>Tristanopsis laurina</i> 'Lucious' (Tristanopsis Luscious)		75 litre	8 x 5

The project arborist shall document compliance with the above condition.

## E.21 Paving in the vicinity of trees

Paving works within the specified radius from the trunks of the following trees shall be constructed in such a way as to ensure that the existing moisture infiltration and gaseous exchange to the tree root system are maintained. When preparing an area for paving within the specified radius the soil surface shall not be skimmed. The new surface shall be established above the former ground level.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
15	<i>Archontophoenix cunninghamiana</i> (Bangalow palm)	Front – East boundary	2m
16	<i>Plumeria acutifolia</i> (Frangipani)	Front – East boundary	3m
17	<i>Persea americana</i> (Avocado)	Side – East boundary	3m

Paving works are to be designed in consultation with a qualified Arborist (minimum qualification of Australian Qualification Framework Level 5 or recognised equivalent) and are to utilise such measures as semiporous material.

The project arborist shall document compliance with the above condition.

## E.22 Level changes in the vicinity of trees

No level changes shall occur within the specified radius from the trunks of the following trees.



Council Ref No.	Species	Location	Radius from centre of trunk (metres)
1	<i>Ficus rubiginosa</i> (Port Jackson Fig)	Front boundary	3m

The project arborist shall document compliance with the above condition.

### E.23 Hand excavation within tree root zones

Excavation undertaken within the specified radius from the trunks of the following trees shall be hand dug.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
15	<i>Archontophoenix cunninghamiana</i> (Bangalow palm)	Front – East boundary	2m
16	<i>Plumeria acutifolia</i> (Frangipani)	Front – East boundary	2m
17	<i>Persea americana</i> (Avocado)	Side – East boundary	3m
18	<i>Persea americana</i> (Avocado)	Rear – East boundary	3m
20	<i>Plumeria acutifolia</i> (Frangipani)	Rear – South boundary	2m

Small hand tools such as mattocks or using compressed air or water jetting only shall be used. Roots with a diameter equal to or in excess of 50mm shall not be severed or damaged unless approved in writing by the project arborist.

Mechanical excavation is permitted beyond this radius when root pruning by hand along the perimeter line is completed. Exposed roots to be retained shall be covered with mulch or a geotextile fabric and kept in a moist condition and prevented from drying out.

All root pruning must be undertaken in accordance with the Australian Standard 4373 “Pruning of Amenity Trees” and carried out by a qualified Arborist (minimum qualification of Australian Qualification Framework Level 5 or recognised equivalent).

The project arborist shall document compliance with the above condition.

### E.24 Site Waste Minimisation and Management – Demolition

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

- the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work,
- an area is to be allocated for the storage of materials for use, recycling and disposal (giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation and access and handling requirements),
- provide separate collection bins and/or areas for the storage of residual waste,
- clearly ‘signpost’ the purpose and content of the bins and/or storage areas,
- implement measures to prevent damage by the elements, odour, health risks and windborne litter, and
- minimise site disturbance, limiting unnecessary excavation.

When implementing the SWMMP the Applicant must ensure:

- a) footpaths, public reserves and street gutters are not used as places to store demolition waste or materials of any kind without Council approval,
- b) any material moved offsite is transported in accordance with the requirements of the *Protection of the Environment Operations Act 1997*,
- c) waste is only transported to a place that can lawfully be used as a waste facility,
- d) generation, storage, treatment and disposal of hazardous waste and special waste (including asbestos) is conducted in accordance with relevant waste legislation administered by the NSW Environment Protection Authority, and relevant occupational health and safety legislation administered by SafeWork NSW, and
- e) evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained.

**Note:** Materials that have an existing reuse or recycling market should not be disposed of in a land fill. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.

Standard Condition: E31 (Autotext EE31)

## **E.25 Site Waste Minimisation and Management – Construction**

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

- a) the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work,
- b) arrange for the delivery of materials so that materials are delivered ‘as needed’ to prevent the degradation of materials through weathering and moisture damage,
- c) consider organising to return excess materials to the supplier or manufacturer,
- d) allocate an area for the storage of materials for use, recycling and disposal (considering slope, drainage, location of waterways, stormwater outlets and vegetation),
- e) clearly ‘signpost’ the purpose and content of the storage areas,
- f) arrange contractors for the transport, processing and disposal of waste and recycling and ensure that all contractors are aware of the legal requirements for disposing of waste,
- g) promote separate collection bins or areas for the storage of residual waste,
- h) implement measures to prevent damage by the elements, odour and health risks, and windborne litter,
- i) minimise site disturbance and limit unnecessary excavation,
- j) ensure that all waste is transported to a place that can lawfully be used as a waste facility, and
- k) retain all records demonstrating lawful disposal of waste and keep them readily accessible for inspection by regulatory authorities such as Council, the NSW EPA or SafeWork NSW.

Standard Condition: E32 (Autotext EE32)

## **E.26 Asbestos Removal**

All asbestos removal work must be carried out safely according to NSW work health and safety legislation.

Where hazardous material, including bonded or friable asbestos has been identified in accordance with condition B.2 above, and such material must be demolished, disturbed and subsequently removed, all such works must comply with the following criteria:

- a) Be undertaken by contractors who hold a current SafeWork NSW “demolition licence” and a current SafeWork NSW “Class A licence” for friable asbestos removal.
- b) Be carried out in accordance with the relevant SafeWork NSW codes of practice.
- c) No asbestos products may be reused on the site.
- d) No asbestos laden skip or bins shall be left in any public place.

**Note:** This condition is imposed to protect the health and safety of persons working on the site and the public  
Standard Condition: E39

### **E.27 Classification of Hazardous Waste**

Prior to the exportation of hazardous waste (including hazardous fill or soil) from the site, the waste materials must be classified in accordance with the provision of the *Protection of the Environment Operations Act 1997* and the NSW EPA *Waste Classification Guidelines, Part1: Classifying Waste, 2014*.

**Note:** This condition is imposed to ensure that where hazardous waste will be removed from a site an asbestos licensed contractor can definitively determine where the waste may be legally taken for disposal.  
Standard Condition: E40

### **E.28 Disposal of Asbestos and Hazardous Waste**

Asbestos and hazardous waste, once classified in accordance with condition E.27 above must only be transported to waste facilities licensed to accept asbestos and appropriate classifications of hazardous waste.

**Note:** This condition is imposed to ensure that asbestos and other hazardous waste is disposed of lawfully under the *Protection of the Environment Operations Act 1997* and relevant NSW EPA requirements.  
Standard Condition: E41

### **E.29 Asbestos Removal Signage**

Standard commercially manufactured signs containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm are to be erected in prominent visible positions on the site when asbestos is being removed.

**Note:** This condition is imposed to ensure awareness of any hazard to the health and safety of persons working on the site and public.  
Standard Condition: E42

### **E.30 Notification of Asbestos Removal**

In addition to the requirements for licensed asbestos removalists to give written notice to SafeWork NSW all adjoining properties and those opposite the development site must be notified in writing of the dates and times when asbestos removal is to be conducted. The notification is to identify the licensed asbestos removal contractor and include a contact person for the site together with telephone and facsimile numbers and email addresses.

**Note:** This condition has been imposed to ensure that local residents are informed and have adequate communication facilitated for incidents of asbestos removal.  
Standard Condition: E43

### **E.31 Aboriginal Heritage – Unexpected archaeological finds (Special Condition)**

If unexpected archaeological deposits or Aboriginal objects are found during the works covered by this approval, work must cease in the affected area(s) and the Office of Environment & Heritage must be notified. Additional assessment and approval pursuant to the National Parks and Wildlife Act 1974 may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

## **F. Conditions which must be satisfied prior to any occupation or use of the building (Part 6 of the Act and Part 8 Division 3 of the Regulation)**

### **F.1 Occupation Certificate (section 6.9 of the Act)**

A person must not commence occupation or use of the whole or any part of a new building (within the meaning of section 6.10 of the *Act*) unless an Occupation Certificate has been issued in relation to the building or part.

**Note:** New building includes an altered portion of, or an extension to, an existing building.  
Standard Condition: F1 (Autotext FF1)

### **F.2 Affordable Housing**

- (a) The following units must be allocated for affordable housing as defined in State Environmental Planning Policy (Affordable Rental Housing) 2009:
  - Level 1: Apartment 7 (81m<sup>2</sup>) and Apartment 8 (85.4m<sup>2</sup>);
  - Level 2: Apartment 11 (81m<sup>2</sup>); and
  - Level 3: Apartment 14 (81m<sup>2</sup>).
- (b) A restriction must be registered, before the date of the issue of the occupation certificate, against the title of the property on which development is to be carried out, in accordance with section 88E of the *Conveyancing Act 1919*, that will ensure that for 10 years from the date of the issue of the occupation certificate:
  - (i) Apartments 7, 8, 11 and 14 must be used for the purposes of affordable housing, and
  - (ii) all the accommodation that is used for affordable housing will be managed by a registered community housing provider.

**Note:** This condition is imposed in accordance with Clause 17 of the State Environmental Planning Policy (Affordable Rental Housing) 2009.

**Note:** The meaning of “affordable housing” is defined in Clause 6 of the State Environmental Planning Policy (Affordable Rental Housing) 2009.

### **F.3 Lot Consolidation**

Prior to issuing of a final occupation certificate for the site known as 351 and 353 New South Head Road, Double Bay, legally known as Lot 2 in Deposited Plan 108202 and Strata Plan 2583, it must have been consolidated into a single allotment of land.

A plan of subdivision cannot be registered under the *Conveyancing Act 1919* unless a Subdivision Certificate has been issued for the subdivision. The person with the benefit of this consent must submit to Council an application for a Subdivision Certificate demonstrating compliance with section 6.15 of the *Act*.

No Subdivision Certificate must be issued until the plan of subdivision detailing the provision of all required easements and right of ways or the like to be registered upon the title of the lot to be so benefited or burdened has been submitted to Council.

#### **F.4 Fire Safety Certificates**

In the case of a final occupation certificate to authorise a person:

- (a) to commence occupation or use of a *new building*, or
- (b) to commence a change of building use for an existing building,

a certifying authority must be satisfied that a *final fire safety* certificate has been issued for the building.

**Note:** This condition does not apply to a class 1a or class 10 building within the meaning of clause 167 of the *Regulation*.

**Note:** In this condition:

*interim fire safety certificate* has the same meaning as it has in Part 9 of the *Regulation*.

*final fire safety certificate* has the same meaning as it has in Part 9 of the *Regulation*.

*new building* has the same meaning as it has in section 6.1 of the *Act*.

Standard Condition: F4 (Autotext FF4)

#### **F.7 Commissioning and Certification of Systems and Works**

The *principal contractor* or *owner builder* must submit to the satisfaction of the *PCA* works-as-executed (“WAE”) plans, *Compliance Certificates* and evidence of suitability in accordance with Part A2.2 of the *BCA* confirming that the *works*, as executed and as detailed, comply with the requirement of this consent, the *Act*, the *Regulations*, any relevant *construction certificate*, the *BCA* and relevant *Australian Standards*.

Works-as-executed (“WAE”) plans, *Compliance Certificates* and evidence of suitability in accordance with Part A2.2 of the *BCA* must include but may not be limited to:

- a) Certification from the supervising professional engineer that the requirement of the Geotechnical/Hydrogeological conditions and report recommendations were implemented and satisfied during development work.
- b) All flood protection measures.
- c) All basement car park, driveways and access ramps comply with Australian Standard AS 2890.1 – “Off-Street car parking.” In particular, the grade of the driveway for first 6m from the property boundary has been constructed with a maximum grade of 5% in accordance with the approved DA drawings.
- d) All stormwater drainage and storage systems.
- e) All mechanical ventilation systems.
- f) All hydraulic systems.
- g) All structural work.
- h) All acoustic attenuation work.
- i) All waterproofing.
- j) Such further matters as the Principal Certifying Authority may require.

**Note:** This condition has been imposed to ensure that systems and works as completed meet *development standards* as defined by the *Act*, comply with the *BCA*, comply with this consent and so that a public record of works as execute is maintained.

**Note:** The *PCA* may require any number of WAE plans, certificates, or other evidence of suitability as necessary to confirm compliance with the *Act*, *Regulation*, Development Standards, *BCA*, and relevant *Australia Standards*. As a minimum WAE plans and certification is required for stormwater drainage and detention, mechanical ventilation work, hydraulic services (including but not limited to fire services).

**Note:** The *PCA* must submit to Council, with any *Occupation Certificate*, copies of works-as-executed (“WAE”) plans, *Compliance Certificates* and evidence of suitability in accordance with Part A2.2 of the *BCA* upon which the *PCA* has relied in issuing any *Occupation Certificate*.  
Standard Condition: F7 (Autotext FF7)

## F.5 Commissioning and Certification of Public Infrastructure Works

The Principal Contractor or Owner-builder must submit, to the satisfaction of Council, certification from a professional engineer that all public infrastructure works have been executed in compliance with this consent and with Council’s *Specification for Roadworks, Drainage and Miscellaneous Works* (2012).

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

Standard Condition F9 (Autotext FF9)

## F.6 Street Numbering

The development must be provided with street and sole occupancy unit numbers determined by Council. This condition has been imposed to ensure that emergency services, utility services, and the general public are able to clearly and readily locate any property. Further, this condition has been imposed to protect the integrity of street numbering and land information.

**Note:** Applications for the allocation of street and sole occupancy unit numbers should be made together with any application for a strata certificate or Torrens or community title subdivision certificate. Council will determine at its discretion in accordance with its policy street numbers and street addresses that best suit the public interest.

Standard Condition: F11 (Autotext FF11)

## F.7 Letter Box(es)

All letter boxes must be constructed and located in accordance with AS/NZS 4253:1994 *Mailboxes* and to Australia Post’s satisfaction.

**Note:** This condition has been imposed to ensure that mail can be delivered to occupiers of the site.

Standard Condition: F12 (Autotext FF12)

## F.8 New Waste Services

No Occupation Certificate must be issued until the Owner/developer has procured the provision of required wastes services including purchase of all waste and recycling storage containers (bins and crates) from Council or otherwise in accordance with the approved Waste Management Plan.

Standard Condition: F19 (Autotext FF19)

## F.9 3D Digital Model

Prior to the issue of an Occupation Certificate an accurate “as built” 3D digital model of the building must be submitted to Council for use in the Woollahra 3D digital model.

A 3D digital model of the building must be generated at a scale of 1:1 with units of measurement in metres and include the following:

- a) a building envelope which includes all elements affecting shadow analysis,
- b) accurate placement of glazing, balconies, roof pitches, terraces, roof services and any other prominent external features, and
- c) a ground level terrain showing accurate RLs extending to site boundaries.

All models must be generated in accordance with Council’s guidelines for submitting 3D digital models outlined in “Attachment 9 - 3D Digital Model Requirements” of the DA guide.

**Note:** This model will update previous version(s) submitted at Development Application stage.  
Any future modifications under section 4.55 of the *Act* that affect the external configuration of the building (from the ground level and up), will require the submitted model to be amended.  
Standard Condition: F21 (Autotext FF21)

## F.10 Certification of Electric Vehicle Charging System

Prior to the issue of any Occupation Certificate or occupation or use of part of the building, the Principal Contractor or Owner-builder must submit to the satisfaction of the Principal Certifier, certification by a suitably qualified person that the electric vehicle charger points and/or electric vehicle circuitry, has been installed in accordance with the construction certificate plans and specifications as required by **Condition C.15**.

Standard Condition: F22 (Autotext FF22)

## F.11 Amenity Landscaping

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

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

## F.12 Acoustic Certification of Interior Noise Levels (*Infrastructure SEPP 2007*)

Prior to the issue of a Final Occupation Certificate, certification from an appropriately qualified Acoustic Engineer must be provided to the Principal Certifying Authority confirming necessary acoustic control measures have been incorporated into the design of the building, as constructed. The acoustic measures must ensure compliance with the internal noise limits set out in Clause 102 of the Infrastructure SEPP (2007) when applied inside any habitable room of the development with doors and windows closed and mechanical ventilation/air-conditioning operating.



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

### **G.1 Electricity Substations – Dedication as Road and/or Easements for Access**

If an electricity substation is required on the site the owner must dedicate to the appropriate energy authority (to its satisfaction), free of cost, an area of land adjoining the street alignment to enable an electricity substation to be established. The size and location of the electricity substation is to be in accordance with the requirements of the appropriate energy authority and Council. The opening of any access doors must not intrude onto the public road (footway or road pavement).

Documentary evidence of compliance, including correspondence from the energy authority is to be provided to the Principal Certifier prior to issue of the Construction Certificate detailing energy authority requirements.

The Accredited Certifier must be satisfied that the requirements of energy authority have been met prior to issue of the Construction Certificate.

Where an electricity substation is provided on the site adjoining the road boundary, the area within which the electricity substation is located must be dedicated as public road. Where access is required across the site to access an electricity substation an easement for access across the site from the public place must be created upon the linen plans burdening the subject site and benefiting the Crown in right of New South Wales and any statutory corporation requiring access to the electricity substation.

Standard Condition: G4 (Autotext GG4)

## **H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (section 6.4 (c))**

### **H.1 Fulfillment of BASIX Commitments – clause 154B of the *Regulation***

All BASIX commitments must be effected in accordance with the BASIX Certificate No. **992642M**.

**Note:** Clause 154B(2) of the *Environmental Planning and Assessment Regulation 2000* provides: "A certifying authority must not issue a final Occupation Certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."

Standard Condition: H7 (Autotext HH7)

### **H.2 Removal of Ancillary Works and Structures**

The Principal Contractor or Owner must remove from the land and any adjoining public place:

- a) the site sign,
- b) ablutions,
- c) hoarding,
- d) scaffolding, and
- e) waste materials, matter, article or thing.

**Note:** This condition has been imposed to ensure that all ancillary matter is removed prior to the issue of the Final Occupation Certificate.

Standard Condition: H12 (Autotext HH12)

### H.3 Road Works (including footpaths)

The following works must be completed to the satisfaction of Council, in compliance with Council's *Specification for Roadworks, Drainage and Miscellaneous Works* (2012) unless expressly provided otherwise by these conditions at the Principal Contractor's or Owner's expense:

- a) stormwater pipes, pits and connections to public stormwater systems within the *road*,
- b) driveways and vehicular crossings within the *road*,
- c) removal of redundant driveways and vehicular crossings,
- d) new footpaths within the *road*,
- e) relocation of existing power/light pole,
- f) relocation/provision of street signs,
- g) new or replacement street trees,
- h) new footway verges, where a grass verge exists, the balance of the area between the footpath and the kerb or site boundary over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of turf predominant within the street,
- i) new or reinstated kerb and guttering within the *road*, and
- j) new or reinstated road surface pavement within the *road*.

**Note:** Security held by Council pursuant to section 4.17(6) of the *Act* will not be release by Council until compliance has been achieved with this condition. An application for refund of security must be submitted with the Final Occupation Certificate to Council. This form can be downloaded from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or obtained from Council's customer service centre.  
Standard Condition: H13 (Autotext HH13)

### H.4 Positive Covenant and Works-As-Executed Certification of Stormwater Systems

On completion of construction work, stormwater drainage works are to be certified by a professional engineer with works-as-executed drawings supplied to the Principal Certifier detailing:

- a) compliance with conditions of development consent relating to stormwater,
- b) the structural adequacy of the stormwater system,
- c) that the works have been constructed in accordance with the approved design,
- d) pipe invert levels and surface levels to Australian Height Datum, and
- e) contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.

A positive covenant pursuant to section 88E of the *Conveyancing Act 1919* must be created on the title of the subject property, providing for the indemnification of Council from any claims or actions and for the on-going maintenance of the stormwater management system, stormwater filtration system, including any pumps and sumps incorporated in the development. The wording of the Instrument must be in accordance with Council's standard format and the Instrument must be registered with the NSW Land Registry Services.

**Note:** The required wording of the Instrument can be downloaded from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au). The PC must supply a copy of the WAE plans to Council together with the Final Occupation Certificate.

**Note:** The Final Occupation Certificate must not be issued until this condition has been satisfied.  
Standard Condition: H20 (Autotext HH20)

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

### **I.1 Affordable Housing**

For 10 years from the date of the issue of the occupation certificate:

- (a) Apartments 7, 8, 11 and 14 must be used for the purposes of affordable housing; and
- (b) All the accommodation that is used for affordable housing must be managed by a registered community housing provider.

**Note:** This condition is imposed in accordance with Clause 17 of the State Environmental Planning Policy (Affordable Rental Housing) 2009.

**Note:** The meaning of “affordable housing” is defined in Clause 6 of the State Environmental Planning Policy (Affordable Rental Housing) 2009.

### **I.2 Provision of Off-Street Parking**

The owner and occupier, in compliance with AS2890.3:1993 Parking Facilities - Bicycle Parking Facilities, and AS/NZS 2890.1.2004: Parking Facilities - Off-Street Car Parking, must maintain access to off-street parking as follows:

Use	Number of spaces
<b>Resident car parking</b>	<b>17 (total)</b>
- Studio (x 2 studios)	0
- 1-bed (x 2 units)	1 or 0
- 2-bed (x 10 units)	1 each
- 3-bed (x 3 units)	2 each (in tandem)
<b>Vehicle parking (visitor)</b>	<b>0</b>
<b>Bicycle parking</b>	<b>18</b>
<b>Motorbike parking</b>	<b>2</b>

This condition has been imposed to ensure adequate on-site parking is maintained.

Standard Condition: I21

### **I.3 Parking Permits (Special Condition)**

Future tenants and residents of the proposed development will not be eligible for resident or visitor parking permits.

### **I.4 Annual Fire Safety Statements (Class 1b to 9c buildings inclusive)**

Each year, the owner of a building to which an *essential fire safety measure* is applicable must provide an *annual fire safety statement* to Council and the Commissioner of the NSW Fire Brigades. The *annual fire safety statement* must be prominently displayed in the building.

**Note:** *Essential fire safety measure* has the same meaning as in clause 165 of the *Regulation*. *Annual fire safety statement* has the same meaning as in clause 175 of the *Regulation*. Part 9 Division 5 of the *Regulation* applies in addition to this condition at the date of this consent. Visit Council’s web site for additional information in relation to fire safety [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au).

Standard Condition: I22

## **I.5 Maintenance of BASIX Commitments**

All BASIX commitments must be maintained in accordance with the BASIX Certificate No. **992642M**.

**Note:** This condition affects successors in title with the intent that environmental sustainability measures must be maintained for the life of development under this consent.

Standard Condition: I24

## **I.6 Clothes Drying etc**

No clothes, linen or the like must be hung from any balcony, terrace or verandah such that they are visible from any public place.

**Note:** This condition has been imposed to ensure that the visual amenity of the neighbourhood is not detrimentally affected by a proliferation of such practices.

Standard Condition: I26

## **I.7 Ongoing Maintenance of the On-Site-Detention System**

The owner(s) must in accordance with this condition and any positive covenant:

- a) Permit stormwater to be temporarily detained by the system.
- b) Keep the system clean and free of silt rubbish and debris.
- c) If the car park is used as a detention basin, a weather resistant sign must be maintained in a prominent position in the car park warning residents that periodic inundation of the car park may occur during heavy rain.
- d) Maintain renew and repair as reasonably required from time to time the whole or part of the system so that it functions in a safe and efficient manner and in doing so complete the same within the time and in the manner reasonably specified in written notice issued by Council.
- e) Carry out the matters referred to in paragraphs (b) and (c) at the owner's expense.
- f) Not make any alterations to the system or elements thereof without prior consent in writing of the Council and not interfere with the system or by its act or omission cause it to be interfered with so that it does not function or operate properly.
- g) Permit Council or its authorised agents from time to time upon giving reasonable notice (but at anytime and without notice in the case of an emergency) to enter and inspect the land with regard to compliance with the requirements of this covenant.
- h) Comply with the terms of any written notice issued by Council in respect to the requirements of this clause within the time reasonably stated in the notice.
- i) Where the owner fails to comply with the owner's obligations under this covenant, permit Council or its agents at all times and on reasonable notice at the owner's cost to enter the land with equipment, machinery or otherwise to carry out the works required by those obligations.
- j) Indemnify the Council against all claims or actions and costs arising from those claims or actions which Council may suffer or incur in respect of the system and caused by an act or omission by the owners in respect of the owner's obligations under this condition.

**Note:** This condition has been imposed to ensure that owners are aware of require maintenance requirements for their stormwater systems.

**Note:** This condition is supplementary to the owner(s) obligations and Council's rights under any positive covenant.

Standard Condition: I29

## I.8 Outdoor Lighting – Roof Terraces

Outdoor lighting must comply with AS/NZS 4282:2019: *Control of the obtrusive effects of outdoor lighting*. The maximum luminous intensity from each luminaire and threshold limits must not exceed the level 1 control relevant under tables in AS/NZS 4282:2019.

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.

**Note:** This condition has been imposed to protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting.

**Note:** 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.

Standard Condition: I51

## I.9 Waste Management - Residential

Waste management must comply with the approved site waste minimisation and management plan (SWMMP) and with Woollahra DCP 2015, Chapter E5–Waste Management.

The occupier of the site must place waste and recycling bins/crates on the footpath for collection but not earlier than 12 hours prior to the designated collection time.

The occupier of the site must remove waste and recycling bins/crates from the footpath within 12 hours of being emptied by Council's waste service and they must be stored within the site in the approved waste storage area.

No commercial waste must be placed within residential waste and recycling bins/crates.

**Note:** This condition has been imposed to ensure that the provisions of the approved SWMMP and Woollahra DCP are complied with during the ongoing operations of the development.

**Note:** For further residential wastes management policy information go to [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)

Standard Condition: I52

## I.10 Noise Control

The use of the premises must not give rise to the transmission of *offensive noise* to any place of different occupancy. *Offensive noise* is defined in the *Protection of the Environment Operations Act 1997*.

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

**Note:** Council will generally enforce this condition in accordance with the *Noise Guide for Local Government* ([www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government](http://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](http://www.epa.nsw.gov.au/your-environment/noise/industrial-noise)) published by the NSW Environment Protection Authority. Other State Government authorities also regulate the *Protection of the Environment Operations Act 1997*.

**Useful links:**

**Community Justice Centres**—free mediation service provided by the NSW Government  
[www.cjc.nsw.gov.au](http://www.cjc.nsw.gov.au).

**NSW Environment Protection Authority**— see “noise” section [www.environment.nsw.gov.au/noise](http://www.environment.nsw.gov.au/noise).

**NSW Government legislation-** access to all NSW legislation, including the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Noise Control Regulation 2000* is available at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

**Australian Acoustical Society**—professional society of noise related professionals [www.acoustics.asn.au](http://www.acoustics.asn.au).

**Association of Australian Acoustical Consultants**—professional society of noise related professionals [www.aaac.org.au](http://www.aaac.org.au).

**Liquor and Gaming NSW**—[www.liquorandgaming.nsw.gov.au](http://www.liquorandgaming.nsw.gov.au).

Standard Condition: I56

### **I.11 Maintenance of Sound Attenuation**

Sound attenuation must be maintained in accordance with the *Acoustic Report*.

### **I.12 Noise from Mechanical Plant and Equipment**

The noise level measured at any boundary of the site at any time while the mechanical plant and equipment is operating must not exceed the *background noise level*. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed *background noise level* at any time.

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

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

**Note:** Words in this condition have the same meaning as in the *Noise Policy for Industry* (2017) [www.epa.nsw.gov.au/your-environment/noise/industrial-noise/noise-policy-for-industry-\(2017\)](http://www.epa.nsw.gov.au/your-environment/noise/industrial-noise/noise-policy-for-industry-(2017))

and *Noise Guide for Local Government* (2013) [www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government](http://www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government)

Standard Condition: I59

## **J. Miscellaneous Conditions**

N/A

## **K. Advisings**

### **K.1 Criminal Offences – Breach of Development Consent and Environmental Laws**

Failure to comply with this development consent and any condition of this consent is a **criminal offence**. Failure to comply with other environmental laws is also a criminal offence.

Where there is any breach Council may without any further warning:

- a) Issue Penalty Infringement Notices (On-the-spot fines);
- b) Issue notices and orders;
- c) Prosecute any person breaching this consent; and/or
- d) Seek injunctions/orders before the courts to restrain and remedy any breach.

### Warnings as to potential maximum penalties

Maximum penalties under NSW environmental laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

### Warning as to enforcement and legal costs

Should Council have to take any action to enforced compliance with this consent or other environmental laws Council's policy is to seek from the Court appropriate orders requiring the payments of its costs beyond any penalty or remedy the Court may order. This consent and this specific advice will be tendered to the Court when seeking costs orders from the Court where Council is successful in any necessary enforcement action.

**Note:** The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of the *Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious.  
Standard Advising: K1 (Autotext KK1)

## **K.2 Dial Before You Dig**



The Principal Contractor, Owner-builder or any person digging may be held financially responsible by the asset owner should they damage underground pipe or cable networks. Minimise your risk and dial 1100 Before You Dig or visit [www.1100.com.au](http://www.1100.com.au)

When you contact Dial Before You Dig you will be sent details of all Dial Before You Dig members who have underground assets in the vicinity of your proposed excavation.

Standard Advising: K2 (Autotext KK2)

## **K.3 Builder's Licences and Owner-builders Permits**

Section 6.6(2)(d) of the *Act* requires among other matters that the person having the benefit of the development consent, if not carrying out the work as an **owner-builder**, must appoint a Principal Contractor for residential building work who must be the holder of a contractor licence.

The Owner(s) must appoint the Principal Certifier. The Principal Certifier must check that the required insurances are in place before the commencement of building work. The Principal Contractor (builder) must provide the Owners with a certificate of insurance evidencing the contract of insurance under the *Home Building Act 1989* for the residential building work.

**Note:** For more information go to the NSW Fair Trading website [www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating](http://www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating)  
Standard Condition: K5 (Autotext KK5)



#### **K.4 Building Standards - Guide to Standards and Tolerances**

The Principal Certifier does not undertake detailed quality control inspections and the role of the Principal Certifier is primarily to ensure that the development proceeds in accordance with this consent, Construction Certificates and that the development is fit for occupation in accordance with its classification under the Building Code of Australia.

Critical Stage Inspections do not provide the level of supervision required to ensure that the minimum standards and tolerances specified by the “NSW Guide to Standards and Tolerances 2017” are achieved.

The quality of any development is a function of the quality of the Principal Contractor’s or Owner-builder’s supervision of individual contractors and trades on a daily basis during the development. The Principal Certifier does not undertake this role.

Council, as the Principal Certifier or otherwise, does not adjudicate building contract disputes between the Principal Contractor, contractors and the Owner.

**Note:** For more information on the *NSW Guide to Standards and Tolerances* go to the NSW Fair Trading website [www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/after-you-build-or-renovate/guide-to-standards-and-tolerances](http://www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/after-you-build-or-renovate/guide-to-standards-and-tolerances) or call 133 220. Standard Condition: K6 (Autotext KK6)

#### **K.5 SafeWork NSW Requirements**

The *Work Health and Safety Act 2011* and subordinate regulations, codes of practice and guidelines control and regulate the development industry.

**Note:** For more information go to the SafeWork NSW website [www.safework.nsw.gov.au](http://www.safework.nsw.gov.au) or call 131 050. Standard Condition: K7 (Autotext KK7)

#### **K.6 Asbestos Removal, Repair or Disturbance**

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

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:

- a) *Work Health and Safety Act 2011*,
- b) *Work Health and Safety Regulation 2017*,
- c) SafeWork NSW “Code of Practice: How to Safely Remove Asbestos” (2016), and
- d) SafeWork NSW “Code of Practice: How to Manage and Control Asbestos in the Workplace” (2016).

**Note:** For more information go to the SafeWork NSW website on asbestos [www.safework.nsw.gov.au/health-and-safety/safety-topics-a-z/asbestos](http://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](http://www.safework.nsw.gov.au/law-and-policy/legislation-and-codes/codes-of-practice) or call 131 050.  
Standard Advising: K8 (Autotext KK8)

## K.7 Lead Paint

It is beyond the scope of this consent to provide detailed information about dealing with lead paint. Painters working in an area containing lead-based paint should refer to Australian Standard AS 4361.1–1995: *Guide to Lead Paint Management—Industrial Applications*, or AS 4361.2–1998: *Guide to Lead Paint Management—Residential and Commercial Buildings*.

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

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

Standard Advising: K9 (Autotext KK9)

## K.8 Dividing Fences

The erection of dividing fences under this consent does not affect the provisions of the *Dividing Fences Act 1991*. Council does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences.

**Note:** Further information can be obtained from the NSW Civil and Administrative Tribunal  
[www.ncat.nsw.gov.au/Pages/cc/Divisions/dividing\\_fences.aspx](http://www.ncat.nsw.gov.au/Pages/cc/Divisions/dividing_fences.aspx)

**Note:** Community Justice Centres provide a free mediation service to the community to help people resolve a wide range of disputes, including dividing fences matters. Their service is free, confidential, voluntary, timely and easy to use. Mediation sessions are conducted by two impartial, trained mediators who help people work together to reach an agreement. Around 75% of mediations result in an agreement being reached. Mediation sessions can be arranged at convenient times during the day, evening or weekends. To contact the Community Justice Centres go to [www.cjc.nsw.gov.au](http://www.cjc.nsw.gov.au) or call 1800 990 777.

Standard Advising: K10 (Autotext KK10)

## K.9 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Mr Wilson Perdigao, Senior Assessment Officer, on (02) 9391 7126.

However, if you wish to pursue your rights of appeal in the Land and Environment Court you are advised that Council generally seeks resolution of such appeals through a section 34 Conference, site hearings and the use of Court Appointed Experts, instead of a full Court hearing.

This approach is less adversarial, it achieves a quicker decision than would be the case through a full Court hearing and it can give rise to considerable cost and time savings for all parties involved. The use of the section 34 Conference approach requires the appellant to agree, in writing, to the Court appointed commissioner having the full authority to completely determine the matter at the conference.

Standard Condition: K14 (Autotext KK14)

### K.10 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 4.17 of the *Act*.

The securities will not be released until a Final Occupation Certificate has been lodged with Council, Council has inspected the site and Council is satisfied that the public works have been carried out to Council's requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council's requirements.

Council will only release the security upon being satisfied that all damage or all works, the purpose for which the security has been held have been remedied or completed to Council's satisfaction as the case may be.

Council may retain a portion of the security to remedy any defects in any such public work that arise within 6 months after the work is completed.

Upon completion of each section of road, drainage and landscape work to Council's satisfaction, 90% of the bond monies held by Council for these works will be released upon application. 10% may be retained by Council for a further 6 month period and may be used by Council to repair or rectify any defects or temporary works during the 6 month period.

**Note:** The Refund of Security Bond Application form can be downloaded from  
[www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) Standard Condition: K15 (Autotext KK15)

### K.11 Owner-builders

Under the *Home Building Act 1989* any property owner who intends undertaking construction work to a dwelling house or dual occupancy to the value of \$12,000 or over must complete an approved education course and obtain an owner-builder permit from NSW Fair Trading.

**Note:** For more information go to the NSW Fair Trading website [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au) or call 133 220. Standard Condition: K18 (Autotext KK18)

### K.12 Dilapidation Report

Please note the following in relation to the condition for a dilapidation report:

- a) The dilapidation report will be made available to affected property owners on request and may be used by them in the event of a dispute relating to damage allegedly due to the carrying out of the development.
- b) This condition cannot prevent neighbouring buildings being damaged by the carrying out of the development.
- c) Council will not be held responsible for any damage which may be caused to adjoining buildings as a consequence of the development being carried out.
- d) Council will not become directly involved in disputes between the developer, its contractors and the owners of neighbouring buildings.
- e) In the event that access for undertaking the dilapidation survey is denied the Applicant is to demonstrate in writing to the satisfaction of the Principal Certifier that all reasonable steps were taken to obtain access to the adjoining property. The dilapidation report will need to be based on a survey of what can be observed externally.

Standard Advising: K23 (Autotext KK23)

### K.13 Roads Act 1993 Application

Works or structures over, on or under public roads or footpaths are subject to sections 138, 139 and 218 of the *Roads Act 1993* and specifically:

- Construction of driveways and/or new or alterations to footpath paving
- Alteration and/or extension to Council drainage infrastructure
- Alteration and/or addition of retaining walls
- Pumping of water to Council's below ground stormwater system
- Installation of soil/rock anchors under the roadway
- Installation of Stormwater outlet pipes across the nature strip

An "Application to Carry Out Works in a Public Road" form must be completed and lodged, with the application fee, at Council's Customer Services. Detailed plans and specifications of all works (including but not limited to structures, road works, driveway crossings, footpaths and stormwater drainage etc) within existing roads, must be attached, submitted to and approved by Council under section 138 of the *Roads Act 1993*, before the issue of any Construction Certificate.

Detailed engineering plans and specifications of the works required by this condition must accompany the application form. The plans must clearly show the following:

- Engineering drawings (plan, sections and elevation views) and specifications of the footpath, driveways, kerb and gutter, new gully pit showing clearly the connection point of site outlet pipe(s). Note, the connection drainage lines must be as direct as possible and generally run perpendicular to the kerb alignment.
- Engineering drawings of the new drainage line to be constructed joining the new and existing drainage pits including services.

All driveways must include a design longitudinal surface profile for the proposed driveway for assessment. The driveway profile is to start from the road centreline and be along the worst case edge of the proposed driveway. Gradients and transitions must be in accordance with clause 2.5.3, 2.6 of AS 2890.1 – 2004, Part 1 – *Off-street car parking*. The driveway profile submitted to Council must be to (1:25) scale (for template checking purposes) and contain all relevant details: reduced levels, proposed grades and distances.

The existing footpath level and grade at the street alignment of the property must be maintained unless otherwise specified by Council. Your driveway levels are to comply with AS2890.1 and Council's Standard Drawings. There may be occasions where these requirements conflict with your development and you are required to carefully check the driveway/garage slab and footpath levels for any variations.

Note: Any adjustments required from the garage slab and the street levels are to be carried out internally on private property

Drainage design works must comply with the Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management.

Temporary ground anchors may be permitted, in accordance with Council's "Rock Anchor Policy".

**Services:** Prior to any excavation works, the location and depth of all public utility services (telephone, cable TV, electricity, gas, water, sewer, drainage, etc.) must be ascertained. The Applicant shall be responsible for all public utility adjustment/relocation works, necessitated by the development work and as required by the various public utility authorities and/or their agents.

All public domain works must comply with the latest version of Council's "*Specification for Roadworks, Drainage and Miscellaneous Works*" unless expressly provided otherwise by these conditions. This specification and the application form can be downloaded from [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au).

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

**Note:** When an application under the *Roads Act* is required, then four (4) weeks is to be allowed for assessment.

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

**Note:** The intent of this condition is that the design of the road, footpaths, driveway crossings and public stormwater drainage works must be detailed and approved prior to the issue of any Construction Certificate. Changes in levels may arise from the detailed design of buildings, road, footpath, driveway crossing grades and stormwater. Changes required under *Road Act 1993* approvals may necessitate design and levels changes under this consent. This may in turn require the Applicant to seek to amend this consent. Standard Advising: K24 (Autotext KK24)









#### K.14 Pruning or Removing a Tree Growing on Private Property

Woollahra Municipal Development Control Plan (DCP) 2015, Chapter E.3 Tree Management may require that an application be made to Council prior to pruning or removing any tree. The aim is to secure the amenity of trees and preserve the existing landscape within our urban environment.

Before you prune or remove a tree, make sure you read all relevant conditions.

You can obtain a copy of the DCP from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or you may contact Council on 9391-7000 for further advice.

#### Annexures

1. Plans, Sections and elevations [↓](#) 
2. Clause 4.6 Written Request (Height of Building) [↓](#) 
3. Design Verification Statements
4. Referral Responses - Urban Design [↓](#) 
5. Referral Response – Technical Services (Development Engineer) [↓](#) 
6. Referral Response – Technical Services (Traffic Engineer) [↓](#) 
7. Referral Response – Technical Services (Drainage Engineer)
8. Referral Responses – Trees and Landscaping
9. Referral Response – Heritage [↓](#) 
10. Referral Response – Environmental Health
11. Referral Response – Fire Safety [↓](#) 
12. Referral Response – Roads and Maritime Services (RMS) [↓](#) 



**Drawing List:**

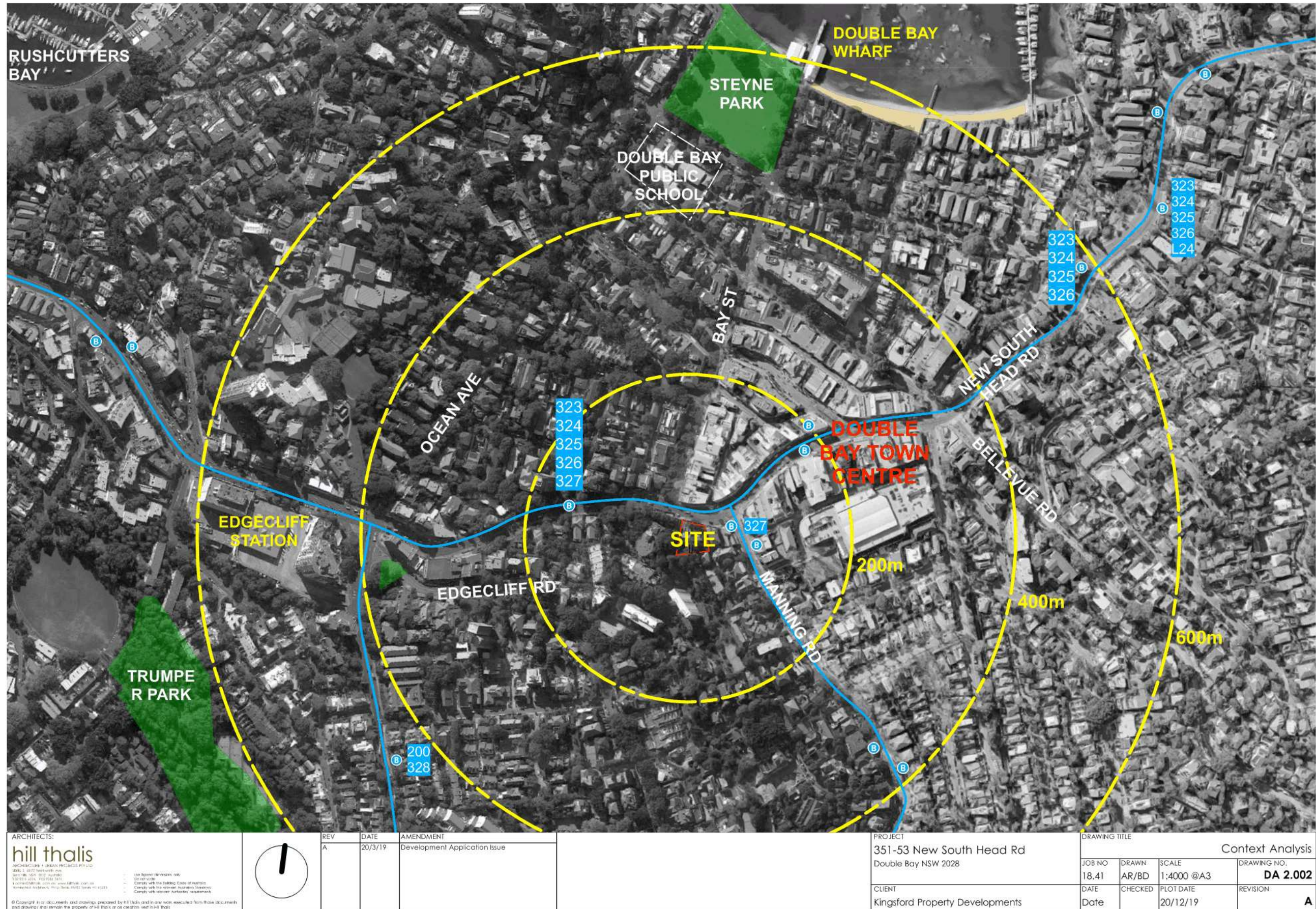
2.001	Title Sheet	Rev D
2.002	Context Analysis	Rev A
2.003	Site Analysis	Rev A
2.004	Built Form Context	Rev A
2.005	View to Site Analysis	Rev A
2.006	Site Controls	Rev B
2.007	Deep Soil Analysis	Rev C
2.008	Demolition Plan	Rev A
2.015	FSR Calculation	Rev D
2.021	Apartment Mix	Rev C
2.022	Apartment Types	Rev C
2.023	Apartment Types	Rev C
2.024	Adaptable Unit Plan	Rev B
2.025	Apartment Types	Rev D
2.026	Communal Open Space	Rev C
2.100	Site Plan	Rev B
2.101	Basement Level Plan	Rev B
2.102	Ground Floor Plan	Rev C
2.103	Level 1 Floor Plan	Rev B
2.104	Level 2 Floor Plan	Rev B
2.105	Level 3 Floor Plan	Rev C
2.106	Level 4 Floor Plan	Rev C
2.107	Roof Plan	Rev C
2.201	Elevations	Rev D
2.202	Elevations	Rev C
2.203	Detailed Elevation	Rev D
2.301	Sections	Rev C
2.302	Sections Ramp Detail	Rev A
2.602	Existing solar Impact	
2.603	Existing solar Impact	
2.604	Solar Impact	Rev B
2.605	Solar Impact	Rev B
2.606	Existing solar Impact	
2.607	Existing solar Impact	
2.608	Solar Impact	Rev B
2.609	Solar Impact	Rev B
2.610	View north across gardens	Rev B
2.611	View north across gardens	Rev B
2.612	Internal Solar Penetration	

**BASIX CERTIFICATE NO:** 9922642M  
**NATHERS CERTIFICATE NO:** 0003718707

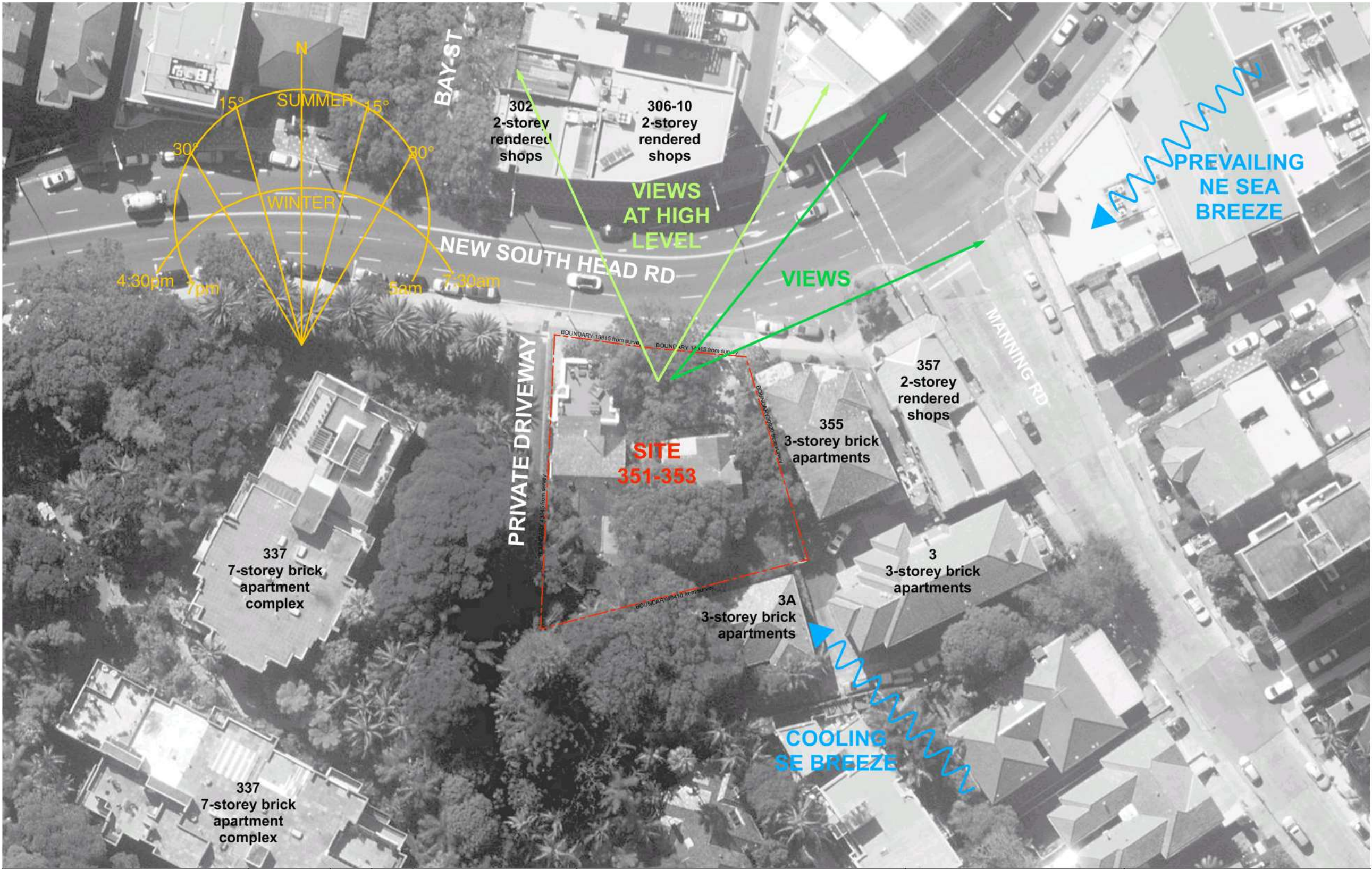


<div>ARCHITECTS:</div> <div>hill thalis</div> <div>ARCHITECTURE + URBAN INFRASTRUCTURE PTY LTD</div> <div>24/45, 1, 2017, New South Head Rd</div> <div>SYDNEY, NSW 2012, AUSTRALIA</div> <div>02 9331 2011, 02 9331 2011</div> <div>h.thalis@hillthalis.com.au</div> <div>www.hillthalis.com.au</div> <div>Not a registered architect. All rights reserved. 2019</div> <div>© Copyright in all documents and drawings prepared by Hill Thalis and in any work executed from those documents and drawings shall remain the property of Hill Thalis or its creation used by Hill Thalis.</div>		REV	DATE	AMENDMENT	<div>PROJECT</div> <div>351-53 New South Head Rd</div> <div>Double Bay NSW 2028</div> <div>CLIENT</div> <div>Kingsford Property Developments</div>	<div>DRAWING TITLE</div> <div>Title Sheet</div>			
		A	20/3/19	Development Application Issue		JOB NO	DRAWN	SCALE	DRAWING NO.
		B	16/10/19	DWG added for Council Clarification		18.41	AR/BD	NTS	DA 2.001
		C	26/11/19	Revised Development Application		DATE	CHECKED	PLOT DATE	REVISION
		D	4/6/20	Revised Development Application		Date		4/6/20	D



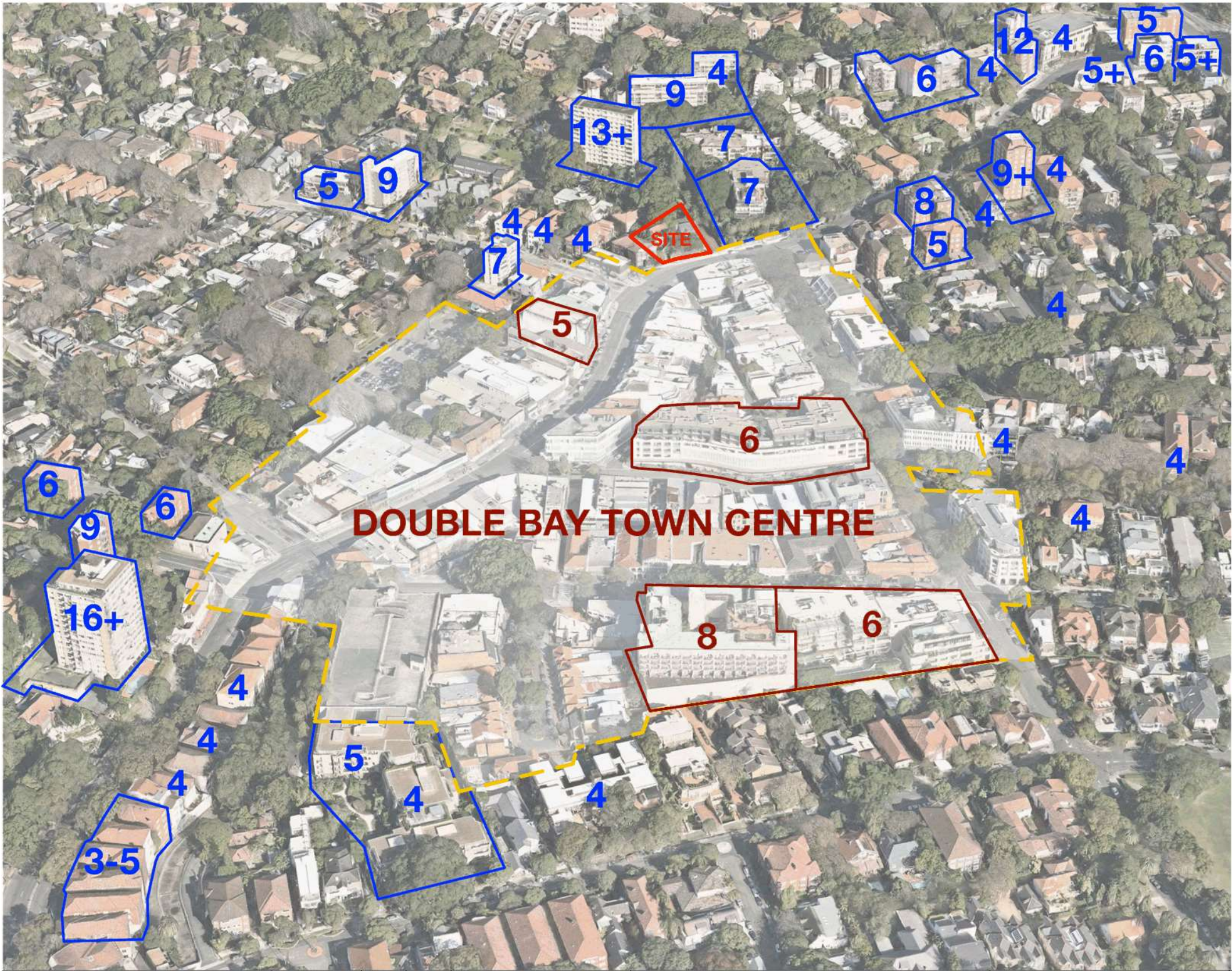






ARCHITECTS: <div>hill thalis</div> <div>ARCHITECTURE &amp; URBAN RESEARCH PTY LTD</div> <div>24/25, 28-29 Westfield Ave Sydney NSW 1560 Australia 02 9221 2211, 02 9221 2212 a@hillthalis.com.au info@hillthalis.com.au hillthalis.com.au, 24/25 Westfield Ave Sydney NSW 1560</div> <div>© Copyright in all documents and drawings prepared by Hill Thalys and in any work executed from those documents and drawings shall remain the property of Hill Thalys or its creation used in Hill Thalys.</div>		REV	DATE	AMENDMENT	PROJECT 351-53 New South Head Rd Double Bay NSW 2028	DRAWING TITLE Site Analysis				
		A	20/3/19	Development Application Issue		JOB NO 18.41	DRAWN AR/BD	SCALE 1:500 @ A3	DRAWING NO. DA 2.003	
						CLIENT	DATE	CHECKED	PLOT DATE	REVISION
						Kingsford Property Developments	Date		20/12/19	A





The site sits adjacent to the Double Bay Town Centre boundary as the hill begins to rise westward, en-route to Edgecliffe.

A number of surrounding buildings built over several decades sit either side of New South Head Road at both a higher elevation and overall building height.

This proposal acknowledges and mediates between the shop-top town centre character to the north and west, and the apartment buildings south and east.

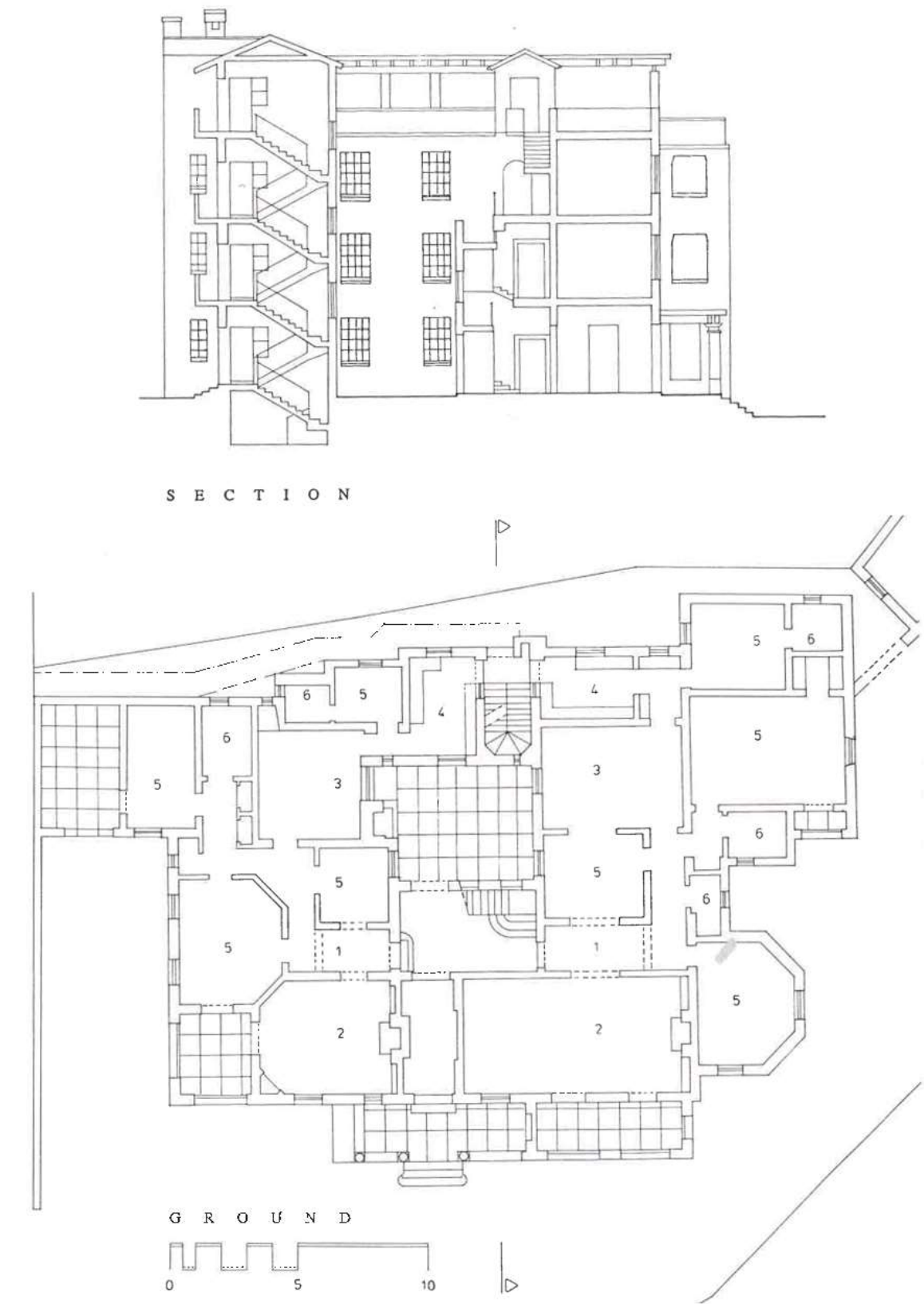
Heights noted on the adjacent perspective are in storeys.

Built form in storeys within the town centre

Built form in storeys outside of the town centre

ARCHITECTS: hill thalis ARCHITECTURE & URBAN RESEARCH PTY LTD 24/45, 1, 20/21 New South Head Rd Sydney NSW 1585 02 9339 1212 h.thalis@hillthalis.com.au www.hillthalis.com.au	REV A	DATE 20/3/19	AMENDMENT Development Application Issue	PROJECT 351-53 New South Head Rd Double Bay NSW 2028	DRAWING TITLE Built Form Context			
					JOB NO 18.41	DRAWN BD	SCALE NTS	DRAWING NO. DA 2.004
					CLIENT Kingsford Property Developments	DATE Date	CHECKED PT	REVISION A
						PLOT DATE 20/12/19		





source: neamap

A number of high quality precedents exist in the vicinity. Particular focus is given to the heritage listed 'Silchester Apartments' in Trahlee Road, Double Bay - designed by Leslie Wilkinson and completed in 1937.

The building is conceived around a central court and features two open-air stairs providing light and ventilation to common circulation, as well as vegetation and a high quality, experiential home-coming.

The presented drawings are sourced from the 1991 thesis of Camilla Block (Director, Durbach Bloch Jagers) and were produced from original plans held by the Mitchell Library.

The attached plan and section are scaled at 1:200 to accurately reference the plans and sections of this proposal.



source: hill thalis

<b>ARCHITECTS:</b> <b>hill thalis</b> ARCHITECTURE + URBAN PROBLEMS PTY LTD 24/45, 1, 28-32 Newcombe Ave Sydney NSW 1580 2022 Australia 02 9331 2015, 422 882 3415 a@hillthalis.com.au, info@hillthalis.com.au www.hillthalis.com.au, www.hillthalis.com.au	<b>REV</b> A	<b>DATE</b> 20/3/19	<b>AMENDMENT</b> Development Application Issue	<b>PROJECT</b> 351-53 New South Head Rd Double Bay NSW 2028	<b>DRAWING TITLE</b> Built Form Precedent			
					<b>JOB NO</b> 18.41	<b>DRAWN</b> BD	<b>SCALE</b> NTS	<b>DRAWING NO.</b> DA 2.005
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The site is situated to the south of a tight bend in New South Head Road's geometry as it curves from Edgecliffe down into Double Bay Town Centre.

The curved geometry of the road limits and closes views to the site from every direction, with the whole frontage of the site visible from a maximum of 180-190m (6) from the pedestrian crossing at Knox St.

Views are highly oblique (1,2,4,5).

A full and true elevation of the north facade is seen at the very south of Gum Tree Lane (3), across New South Head Road.

The base curve of New South Head Road is reinforced by an existing fig tree (8) - which is to be maintained.

The building's form is set back in response to both the street geometry (7) and the retained tree, and decisively supports the arrival of New South Head Road into the Town Centre.

ARCHITECTS:  
**hill thalis**  
ARCHITECTURE + URBAN RESEARCH PTY LTD  
24/45, 1, 2017 Westmore Ave  
Sydney NSW 1560 Australia  
02 9211 2111, 02 9211 3411  
h.thalis@hillthalis.com.au, www.hillthalis.com.au  
National Australia Bank Trade Bank 2020 Trade 90 0000



Use Approx dimensions only  
Comply with the Building Code of Australia  
Comply with the relevant Australian Standards  
Comply with relevant Australian requirements

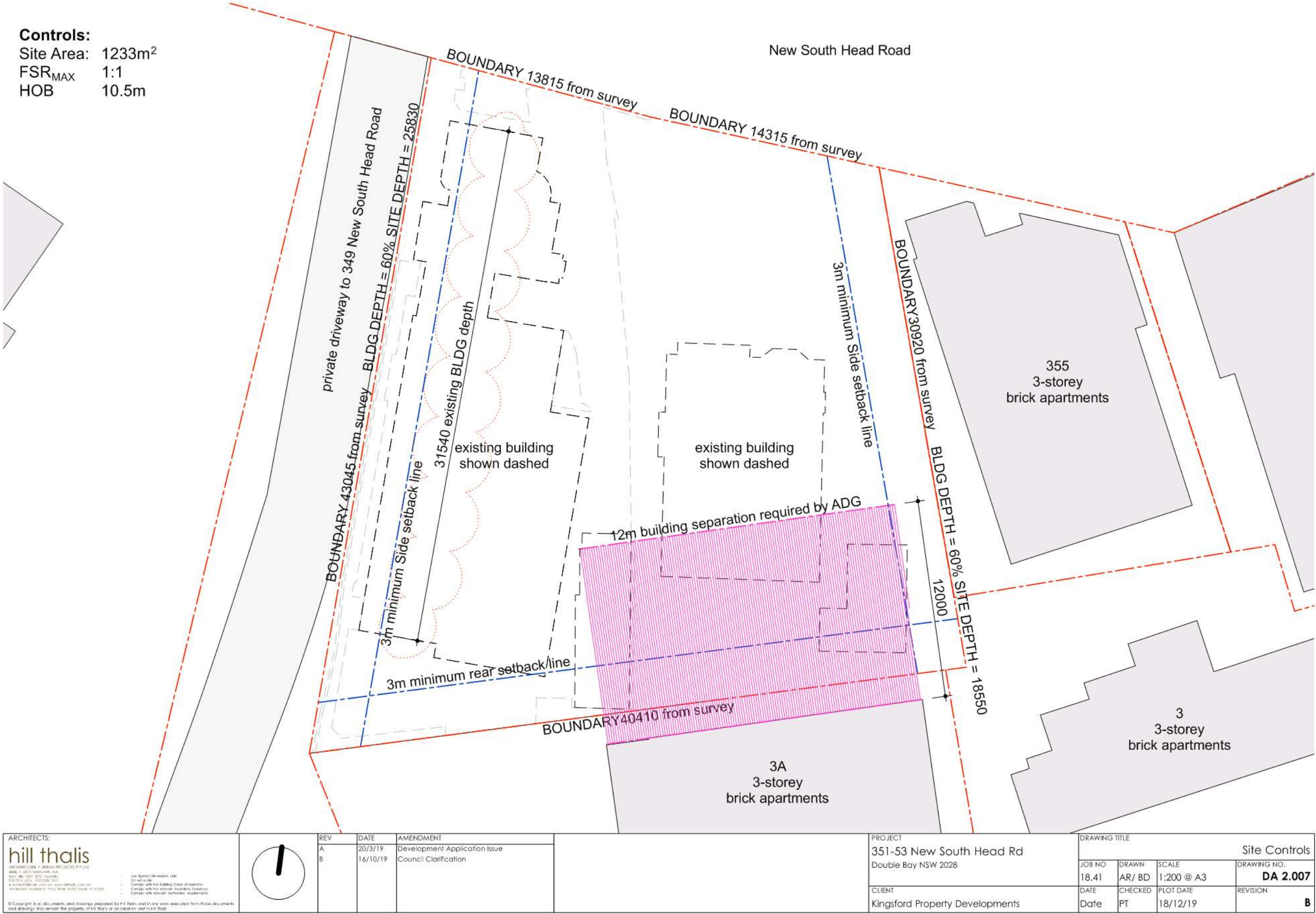
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REV	DATE	AMENDMENT
A	20/3/19	Development Application Issue

PROJECT	351-53 New South Head Rd Double Bay NSW 2028
CLIENT	Kingsford Property Developments

DRAWING TITLE View to Site Analysis			
JOB NO	DRAWN	SCALE	DRAWING NO.
18.41	AR/BD	1:1000 @ A3	DA 2.006
DATE	CHECKED	PLOT DATE	REVISION
Date	PT	20/12/19	A

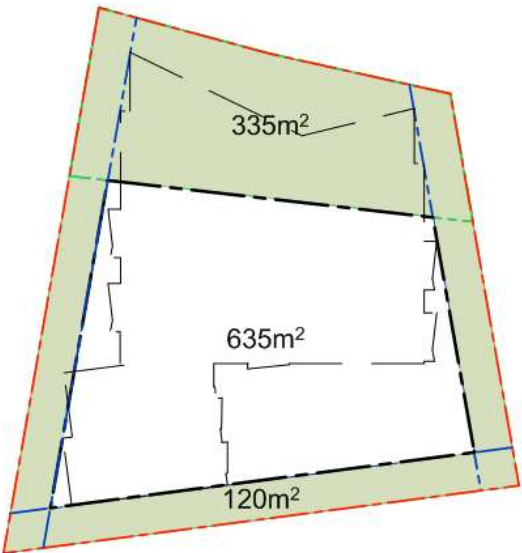




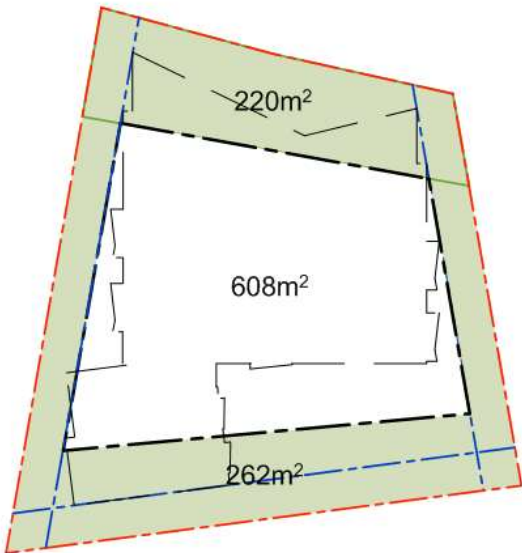


**Controls:**  
Site Area: 1233m<sup>2</sup>  
FSR<sub>MAX</sub> 1:1  
HOB 10.5m  
Buildable Area: 580 - 635m<sup>2</sup>  
Deep Soil Area: 294 - 322m<sup>2</sup>  
  
Proposed Buildable Area: **603m<sup>2</sup>**  
Proposed Deep Soil Area: **410m<sup>2</sup>**

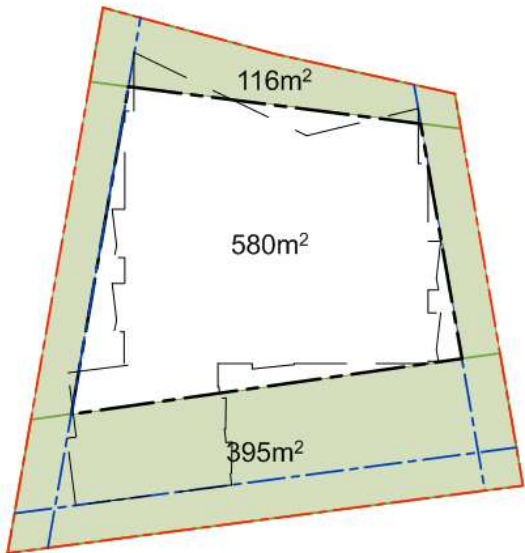
Deep Soil Area  
Deep Soil Area width ≥ 3m



Buildable Area **635m<sup>2</sup>**  
Proposed Buildable Area **603m<sup>2</sup> (-32m<sup>2</sup>)**  
Deep Soil Area 50% of 588m<sup>2</sup> = **294m<sup>2</sup>**  
Front Deep Soil Area 40% of 335m<sup>2</sup> = 134m<sup>2</sup>  
Rear Deep Soil Area 50% of 120m<sup>2</sup> = 60m<sup>2</sup>



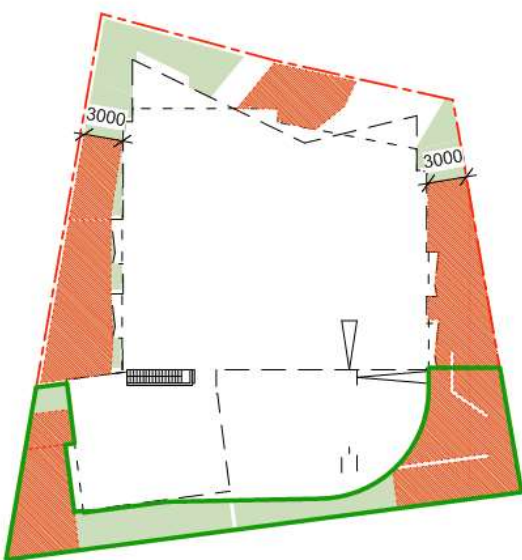
Buildable Area **608m<sup>2</sup>**  
Proposed Buildable Area **603m<sup>2</sup> (-5m<sup>2</sup>)**  
Deep Soil Area 50% of 616m<sup>2</sup> = **308m<sup>2</sup>**  
Front Deep Soil Area 40% of 220m<sup>2</sup> = 88m<sup>2</sup>  
Rear Deep Soil Area 50% of 262m<sup>2</sup> = 131m<sup>2</sup>



Buildable Area **580m<sup>2</sup>**  
Proposed Buildable Area **603m<sup>2</sup> (+23m<sup>2</sup>)**  
Deep Soil Area 50% of 644m<sup>2</sup> = **322m<sup>2</sup>**  
Front Deep Soil Area 40% of 116m<sup>2</sup> = 46m<sup>2</sup>  
Rear Deep Soil Area 50% of 395m<sup>2</sup> = 198m<sup>2</sup>



Existing Deep Soil Area = **247m<sup>2</sup>**



Proposed Deep Soil Area = **410m<sup>2</sup>**  
Proposed Landscaped Area = **410m<sup>2</sup>**  
Front Deep Soil Area = **69m<sup>2</sup>**  
Rear Deep Soil Area = **182m<sup>2</sup>**

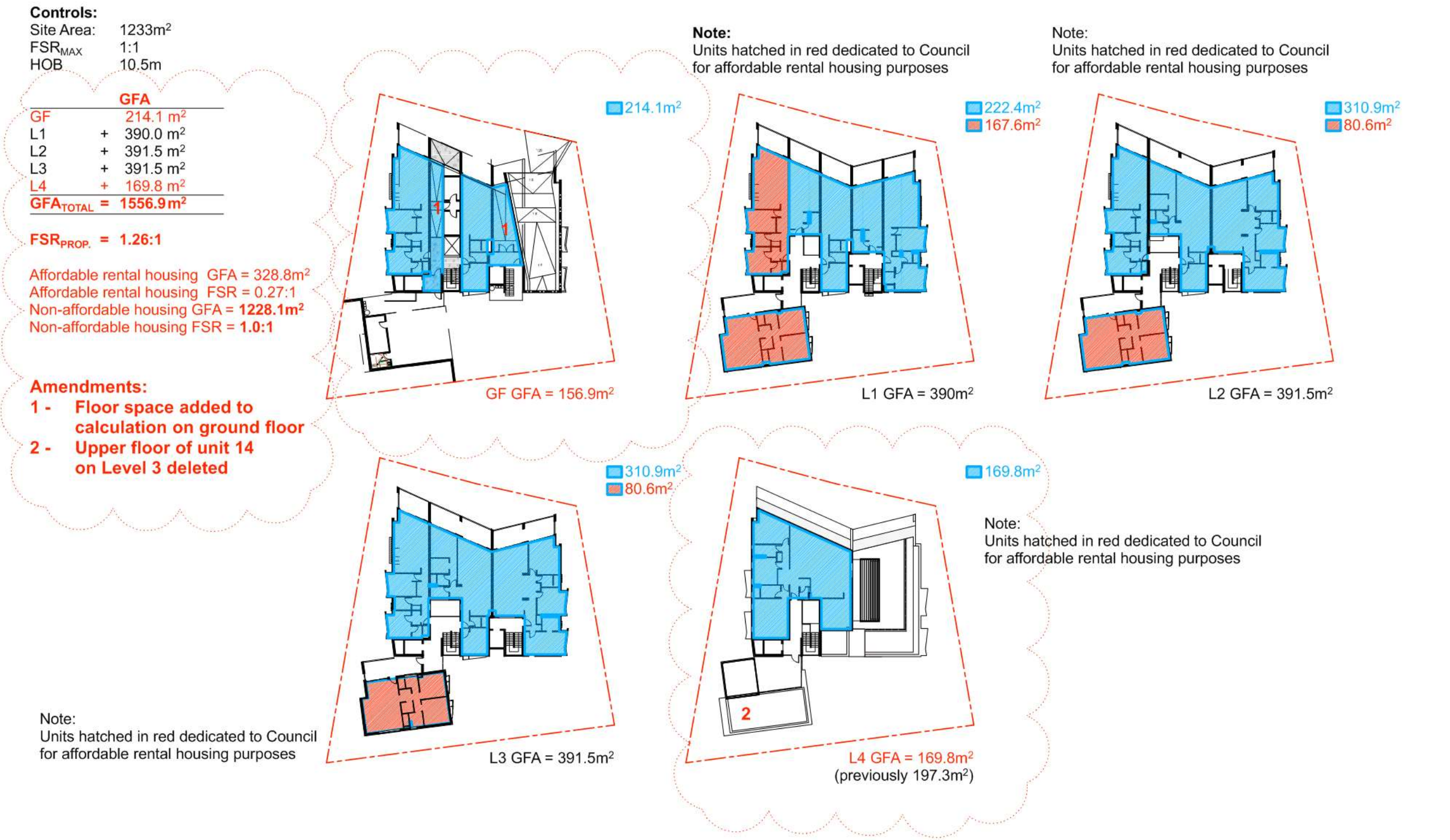
**277m<sup>2</sup>** Deep Soil Area with a min. width ≥ 3m  
= **22.8%** of the site area of 1233m<sup>2</sup>  
ADG requirement 7% of the site area = **84m<sup>2</sup>**  
  
Rear Deep Soil Area = **182m<sup>2</sup>**

ARCHITECTS: <b>hill thalis</b> ARCHITECTS + URBAN RESEARCH PTY LTD 44/45, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 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		A	20/3/19	Development Application Issue	351-53 New South Head Rd Double Bay NSW 2028	Demolition Plan			
					CLIENT	JOB NO	DRAWN	SCALE	DRAWING NO.
			Kingsford Property Developments	18.41	AR/ BD	1:200 @ A3	DA 2.009		
				DATE	CHECKED	PLOT DATE	REVISION		
				Date	PT	18/12/19	A		





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		A	20/3/19	Development Application Issue		JOB NO	DRAWN	SCALE	DRAWING NO.
		B	26/11/19	Revised Development Application		18.41	AR/BD	1:500 @ A3	DA 2.015
		C	20/4/20	Client information		DATE	CHECKED	PLOT DATE	REVISION
		D	24/4/20	Revised Development Application		CLIENT Kingsford Property Developments	Sept. 18	PT	4/6/20

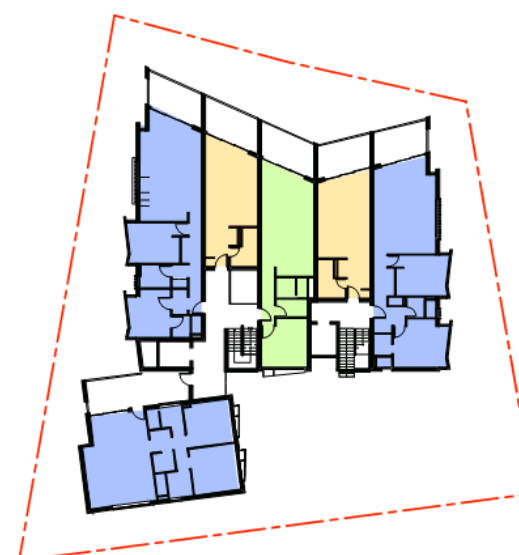
### Apartment Mix:

Studio Apartment	2
1-bedroom Apartment	2
2-bedroom Apartment	10
3-bedroom Apartment	3
<b>TOTAL</b>	<b>17</b>

**Amendments:**  
Unit mix modified;  
2-storey 3-bedroom apartment  
replaced with one 2-bedroom  
apartment



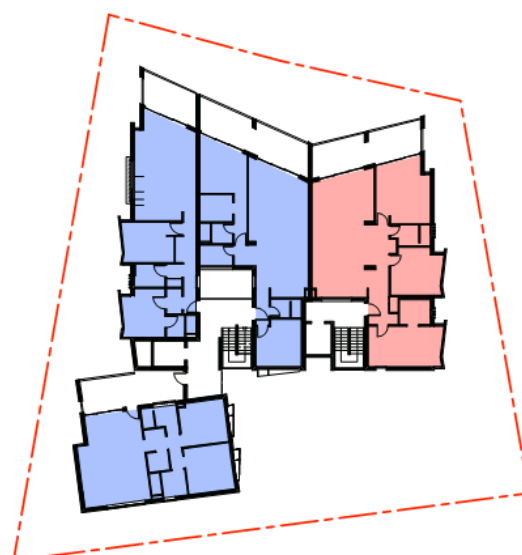
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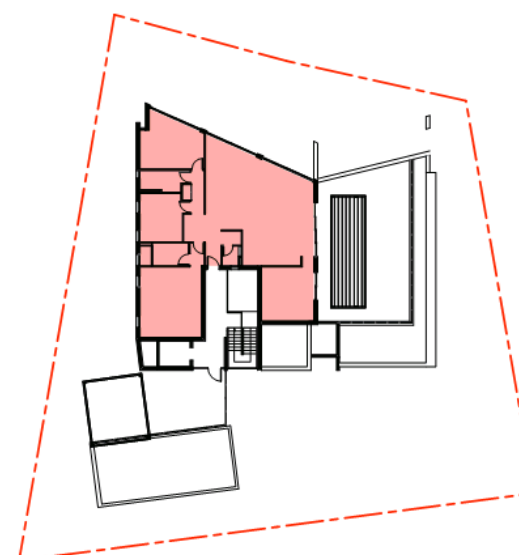
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L2



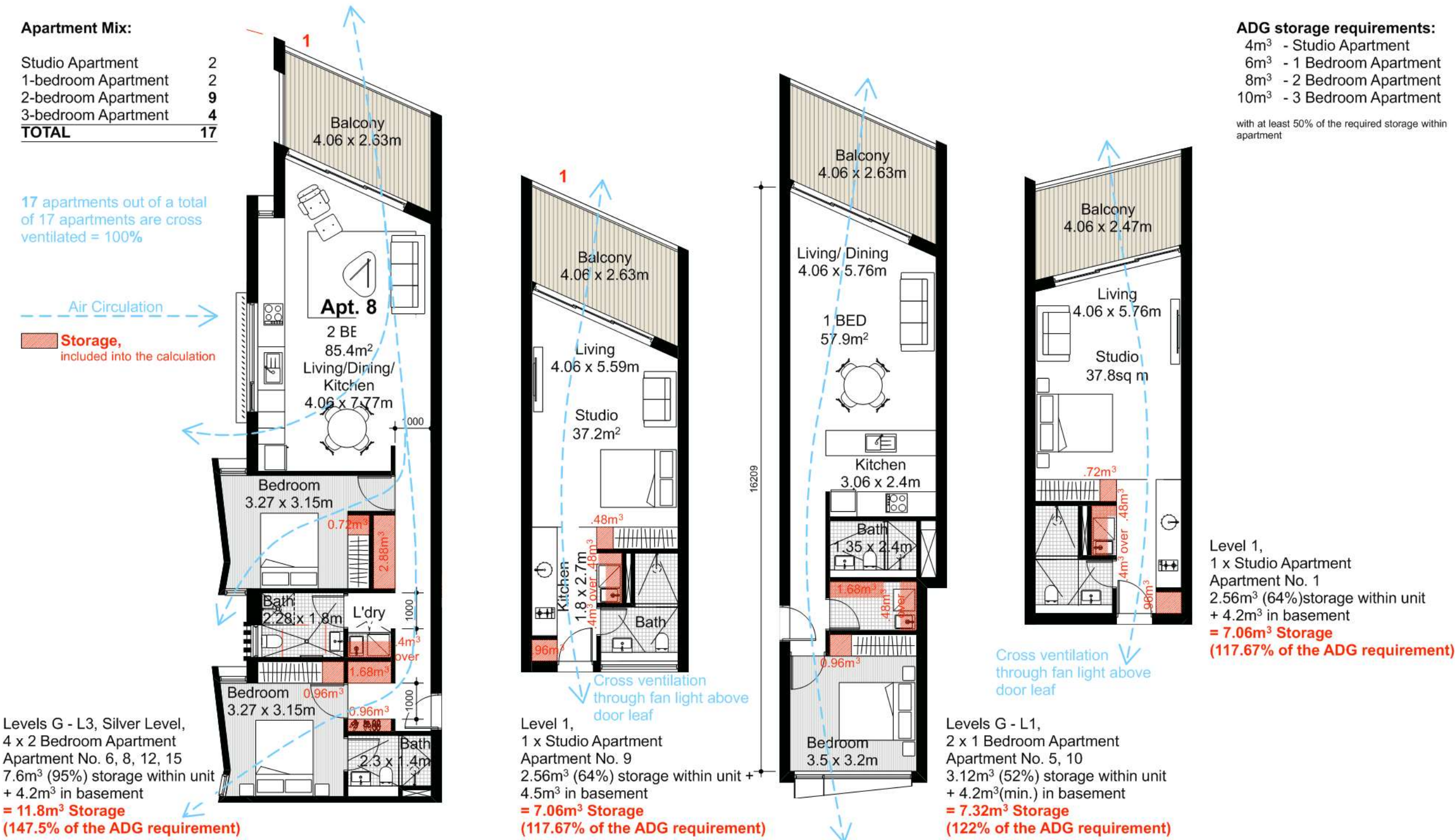
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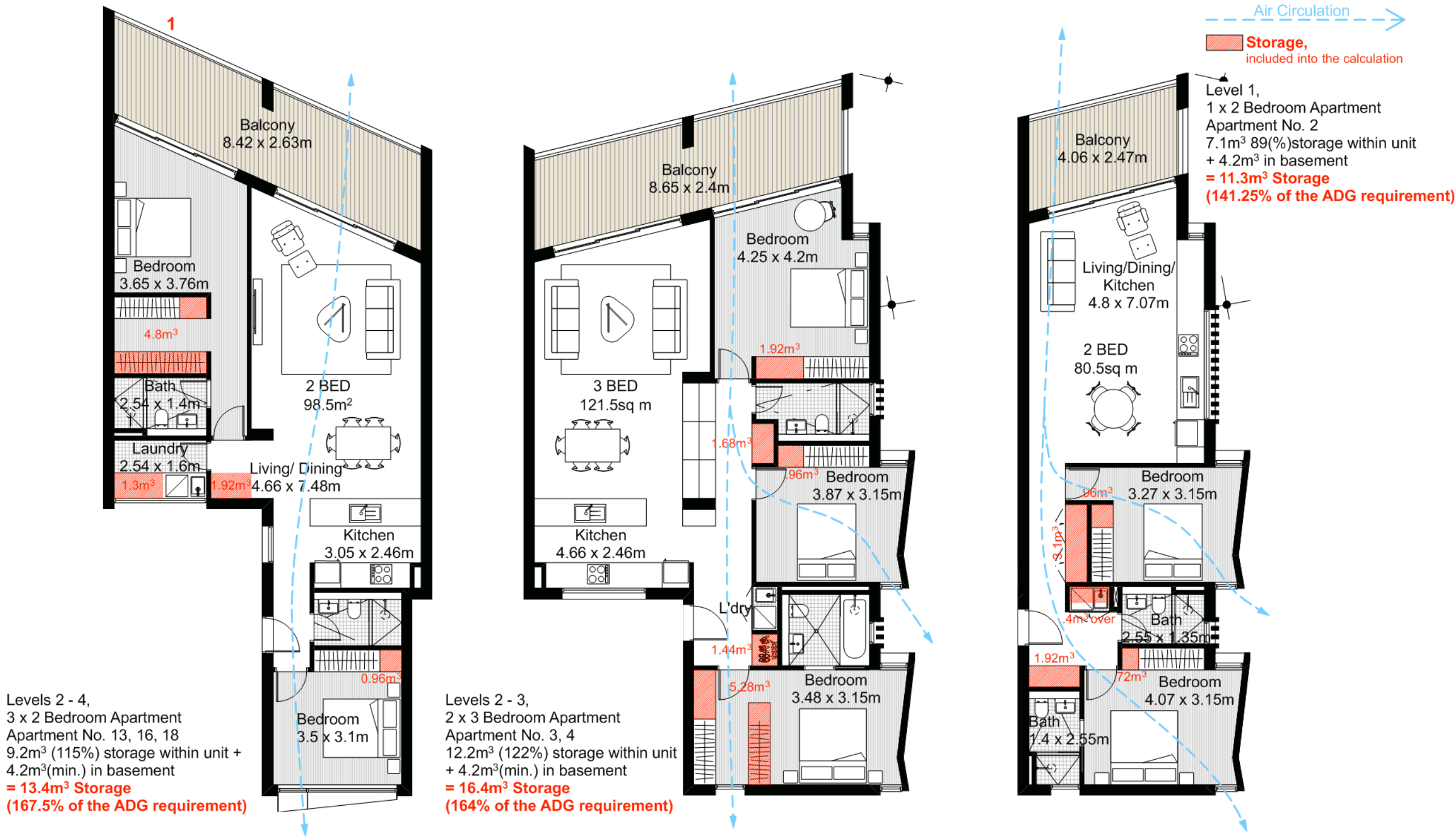
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href="http://www.hillthalis.com.au">www.hillthalis.com.au</a></div><div><div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div><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<div>ARCHITECTS:</div> <div>hill thalis</div> <div>ARCHITECTURE + URBAN REDESIGN PTY LTD</div> <div>44/45, 1-20/21, New South Head Rd</div> <div>Sydney NSW 1585</div> <div>02 9339 1234</div> <div>h.thalis@hillthalis.com.au</div> <div>www.hillthalis.com.au</div> <div>© Copyright in all documents and drawings prepared by Hill Thalis and in any work executed from those documents and drawings shall remain the property of Hill Thalis or its creation used in Hill Thalis</div>		REV	DATE	AMENDMENT	PROJECT 351-53 New South Head Rd Double Bay NSW 2028	DRAWING TITLE Apartment Types			
		A	20/3/19	Development Application Issue		JOB NO	DRAWN	SCALE	DRAWING NO.
		B	16/10/19	Clarification for Council		18.41	AR/BD	1:100 @ A3	DA 2.022
		C	26/11/19	Revised Development Application		DATE	CHECKED	PLOT DATE	REVISION
							CLIENT Kingsford Property Developments	Sept. 18	PT

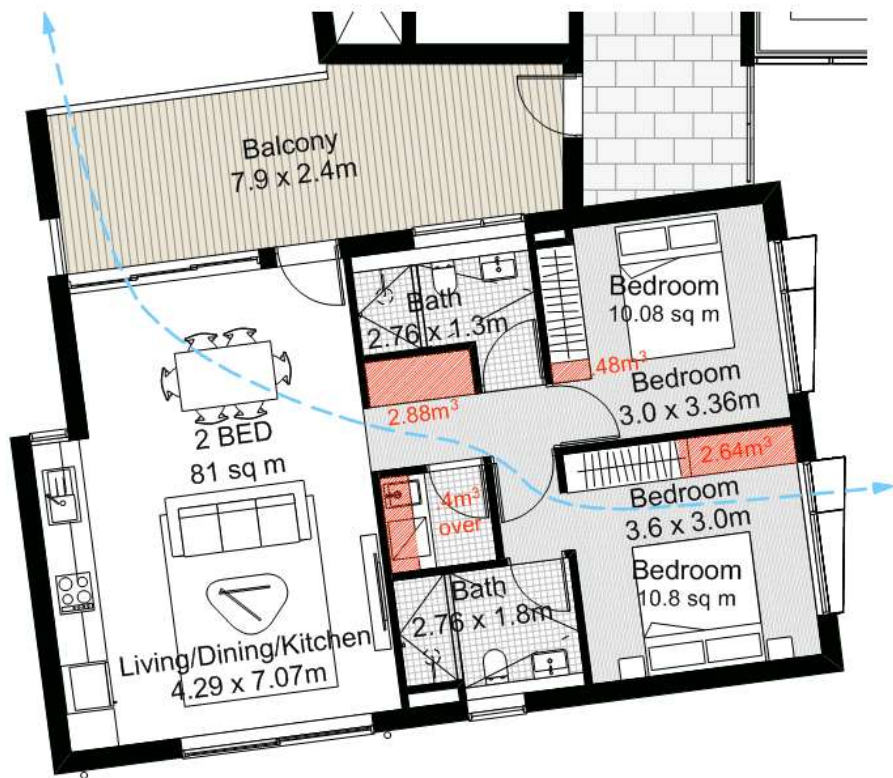


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		CLIENT Kingsford Property Developments					DRAWING NO. <b>DA 2.023</b>			
							<b>C</b>			

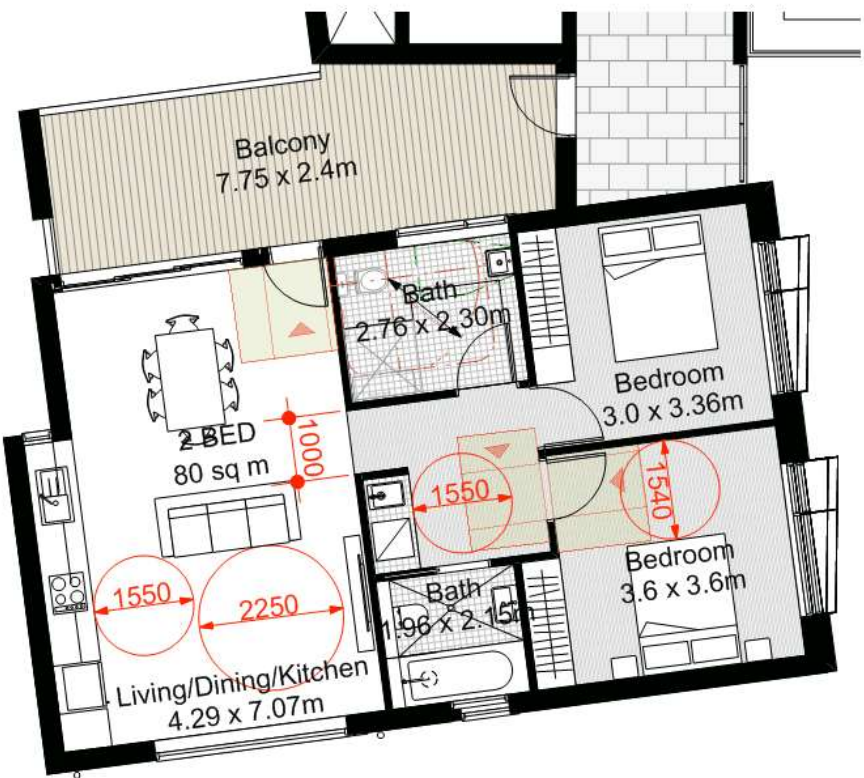


Air Circulation →

Storage, included into the calculation

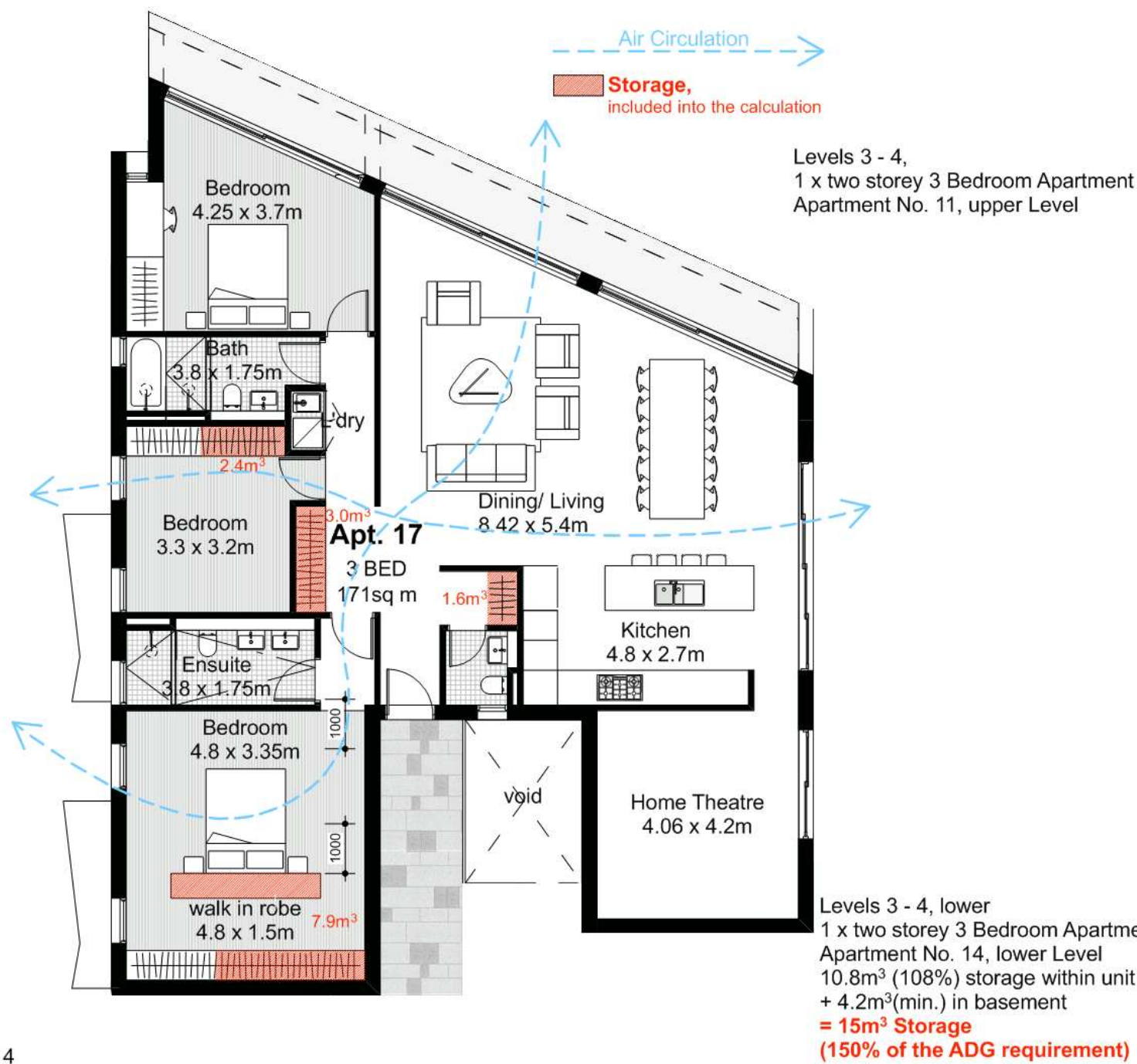


Levels 1 - 3, pre-adaptation layout  
3 x 2 Bedroom Apartment  
Apartment No. 7, 11, 14  
7.1m³ (80%) storage within unit  
+ 4.2m³ in basement



Levels 1 - 2, post-adaptation layout  
2 x 2 Bedroom Apartment  
Apartment No. 7, 11

<div>ARCHITECTS: <b>hill thalis</b> ARCHITECTURE + URBAN REDESIGN PTY LTD 24/46, 1-3/17, New South Head Rd Sydney, NSW 2012, Australia 02 9333 2070, 02 9333 2071 h.thalis@hillthalis.com.au, info@hillthalis.com.au Hill Thalis Architecture Pty Ltd ABN 60 620 100 000</div> <div><div></div><div>© Copyright in all documents and drawings prepared by H.T. Thalis and in any work executed from those documents and drawings shall remain the property of H.T. Thalis or its creation used in H.T. Thalis</div></div>	<div>REV</div> <div>A</div> <div>B</div>	<div>DATE</div> <div>20/3/19</div> <div>16/10/19</div>	<div>AMENDMENT</div> <div>Development Application Issue</div> <div>Clarification for Council</div>	<div>PROJECT</div> <div>351-53 New South Head Rd</div> <div>Double Bay NSW 2028</div>	<div>DRAWING TITLE</div> <div>Adaptable Unit Plan</div>			
					<div>JOB NO</div> <div>18.41</div>	<div>DRAWN</div> <div>AR/BD</div>	<div>SCALE</div> <div>1:100 @ A3</div>	<div>DRAWING NO.</div> <div>DA 2.024</div>
					<div>CLIENT</div> <div>Kingsford Property Developments</div>	<div>DATE</div> <div>Sept. 18</div>	<div>CHECKED</div> <div>PT</div>	<div>REVISION</div> <div>B</div>
					<div>PLOT DATE</div> <div>4/6/20</div>			

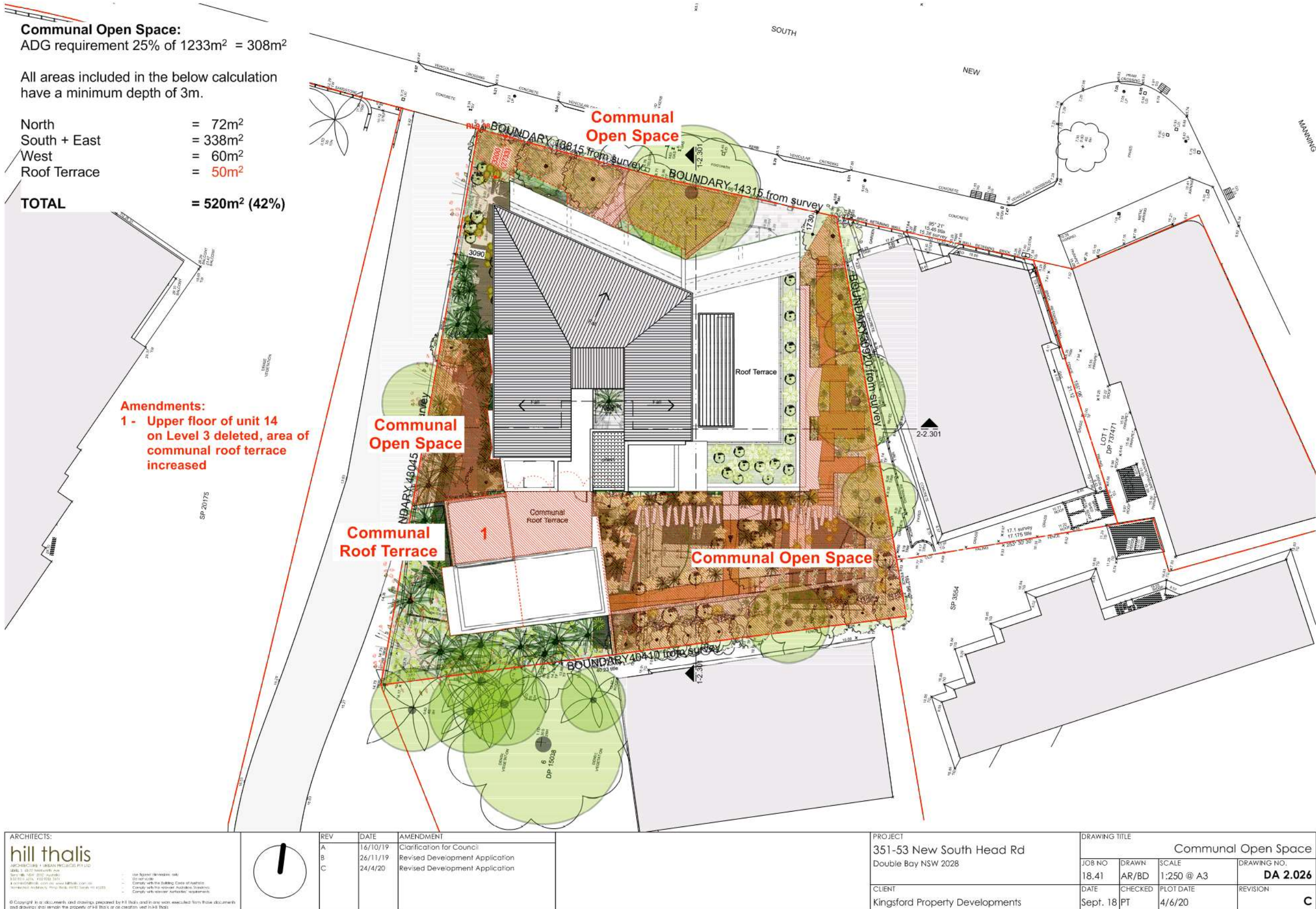


1  
Drawing of upper floor of  
unit 14 on Level 4  
deleted

Level 4  
1 x 3 Bedroom Apartment  
Apartment No. 17  
14.9m³ (149%) storage within unit  
+ 4.2m³ in basement  
**= 19.1m³ Storage**  
**(191% of the ADG requirement)**

<div>ARCHITECTS: <b>hill thalis</b> ARCHITECTURE + URBAN RESEARCH PTY LTD 24/45, 1-28/17, New South Head Rd Sydney NSW 1585 02 9331 2011, 422 902 3415 h.thalis@hillthalis.com.au, www.hillthalis.com.au © Copyright in all documents and drawings prepared by H.T. Hill and in any work executed from those documents and drawings shall remain the property of H.T. Hill or its creation used in H.T. Hill logo.</div>		REV	DATE	AMENDMENT	PROJECT 351-53 New South Head Rd Double Bay NSW 2028	DRAWING TITLE Apartment Types			
		A	19/11/19	Revised Development Application		JOB NO	DRAWN	SCALE	DRAWING NO.
		B	26/11/19	Revised Development Application		18.41	AR/BD	1:100 @ A3	<b>DA 2.025</b>
		C	26/11/19	Revised Development Application		DATE	CHECKED	PLOT DATE	REVISION
		D	24/4/20	Revised Development Application	CLIENT Kingsford Property Developments	Sept. 18	PT	4/6/20	<b>D</b>









Amendments:  
1 Upper floor of unit 14  
on Level 4 deleted, area of  
communal roof terrace  
increased

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		A	20/3/19	Development Application Issue		JOB NO	DRAWN	SCALE	DRAWING NO. DA 2.100		
		B	26/11/19	Revised Development Application		18.41	AR/BD	1:250 @ A3			
		C	4/6/20	Revised Development Application		DATE	CHECKED	PLOT DATE		REVISION	
							CLIENT Kingsford Property Developments	Sept. 18	PT	4/6/20	C

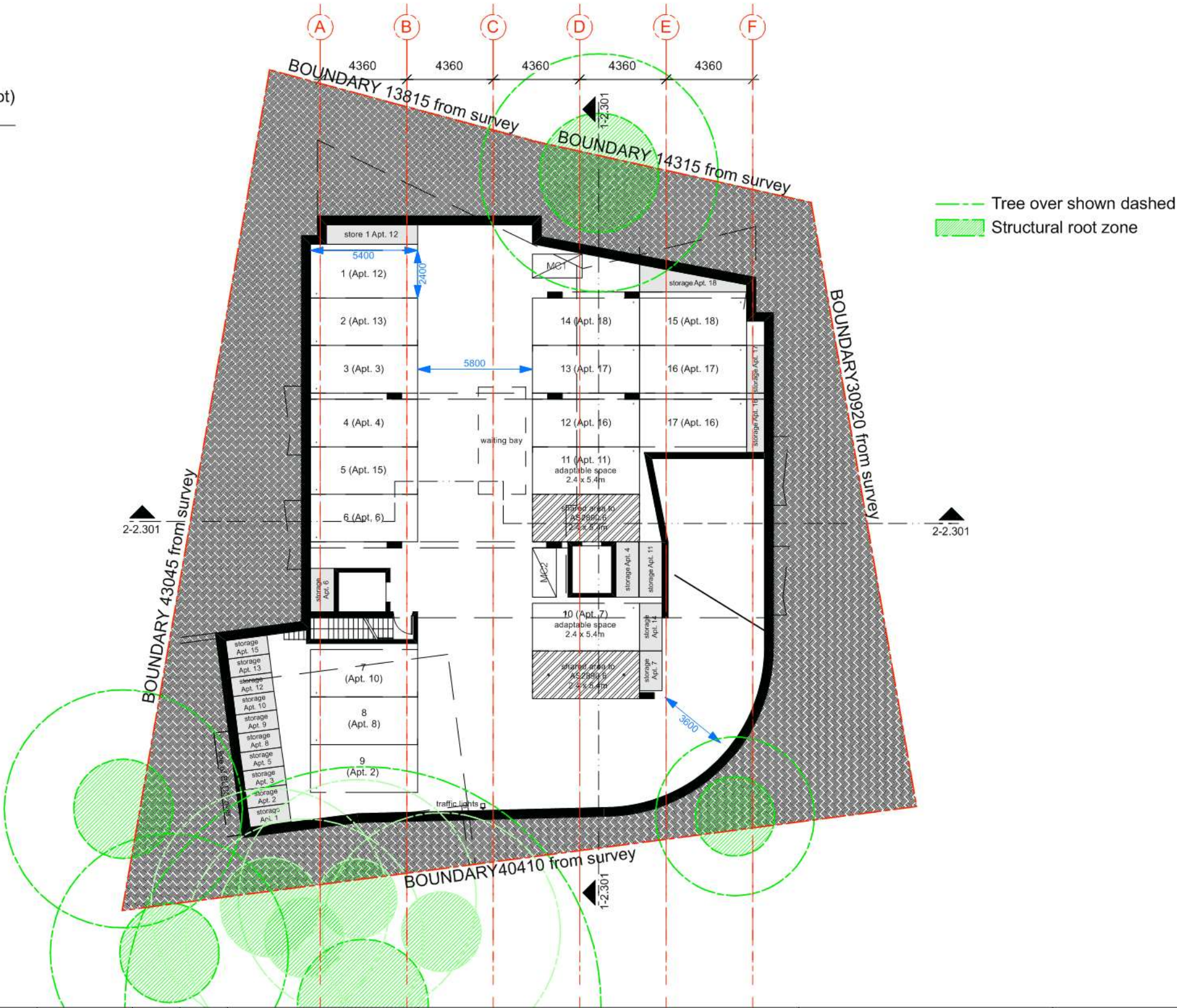


Proposed Car Spaces:

14 spaces (incl. 2 disabled spot)  
+3 stacked spaces (TBC)  
17

Maximum Car Spaces 31

Car Space dimensions noted  
are consistent to all spaces.



<div>ARCHITECTS:</div> <div>hill thalis</div> <div>ARCHITECTURE + URBAN RESEARCH PTY LTD</div> <div>24/46, 1, 28-32 New South Head Rd</div> <div>Sydney NSW 1585 Australia</div> <div>T 61 61 231 2311, F 61 61 231 2311</div> <div>a@hillthalis.com.au, www.hillthalis.com.au</div> <div>© Copyright 2019. All Rights Reserved.</div> <div><div>Use of approved drawings only</div><div>Do not scale</div><div>Comply with the Building Code of Australia</div><div>Comply with the relevant Australian Standards</div><div>Comply with relevant Australian requirements</div></div>		REV	DATE	AMENDMENT	<div>PROJECT</div> <div>351-53 New South Head Rd</div> <div>Double Bay NSW 2028</div>	<div>DRAWING TITLE</div> <div>Basement Level Plan</div>			
		A	20/3/19	Development Application Issue		<div>JOB NO</div> <div>18.41</div> <div>DRAWN</div> <div>AR/BD</div> <div>SCALE</div> <div>1:200 @ A3</div> <div>DATE</div> <div>Sept. 18</div> <div>CHECKED</div> <div>PT</div> <div>PLOT DATE</div> <div>18/12/19</div>	<div>DRAWING NO.</div> <div>DA 2.101</div>		
		B	4/7/19	Clarification for Council					
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	STUDIO	1BED	2BED	3BED
GF	-	1	1	-
L1	2	1	3	-
L2	-	-	3	1
L3	-	-	3	1
L4	-	-	2	-
	<b>2</b>	<b>2</b>	<b>12</b>	<b>2</b>

- Floor slabs: - Concrete.
- R0.5 floor insulation to units 1, 2, 6, 7 & 9
- R1.0 floor insulation to unit 5.
- Exterior walls:
- Cavity brick – aircell insulation (R1.24). Or, wall system of R1.60 rating.
- Lightweight clad wall with foil + R1.2 batts in cavity to plasterboard lining, or wall system reaching a total R-value (R1.89). As per stamped plans.
- All external wall materials modelled with default medium colour finishes.
- "Exterior walls" = All unit walls that are not party walls to other units.
- Glazing:

**High solar gain Low-E glass:**

- To unit 18 kitchen, living & dining.
- Type A (U-Value: 5.4, SHGC: 0.49).
- Type B (U-Value: 5.4, SHGC: 0.58).

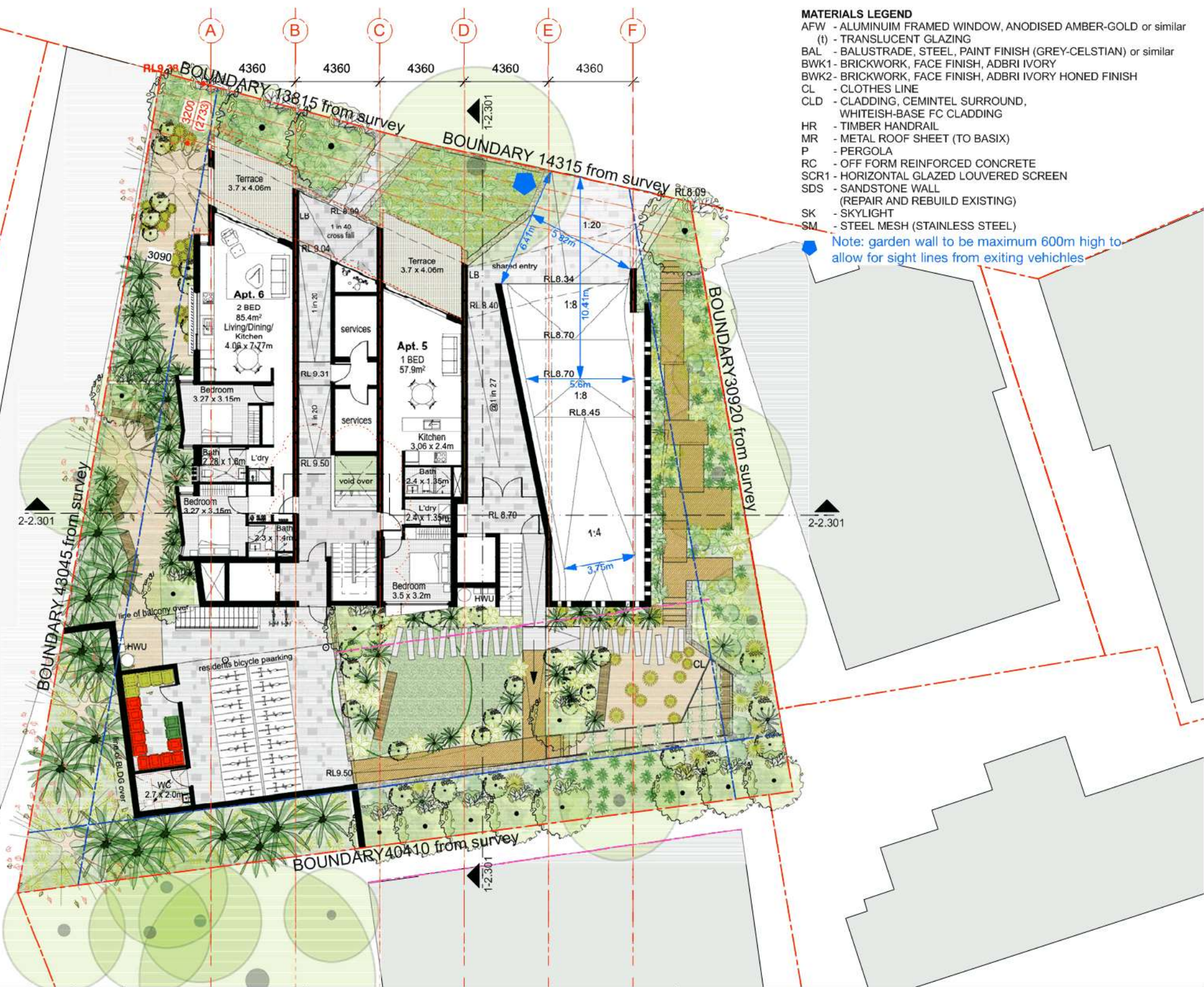
**Single clear glass, with aluminium framing modelled:**

- To remainder of unit glazing.
- Type A (U-Value: 6.7, SHGC: 0.57).
- Type B (U-Value: 6.7, SHGC: 0.70).

**U-Value & SHGC are combined glass and frame figures.**

- Ceiling:
- R2.5 ceiling insulation to all ceilings to metal & concrete roofs.
- Modelled with sealed: LED downlights & wet area exhaust fans.
- Roof:- Metal roof (with foil under) modelled with default medium colour finishes.

**Please refer to NatHERS individual certificates  
no. 003718707 for further details.**

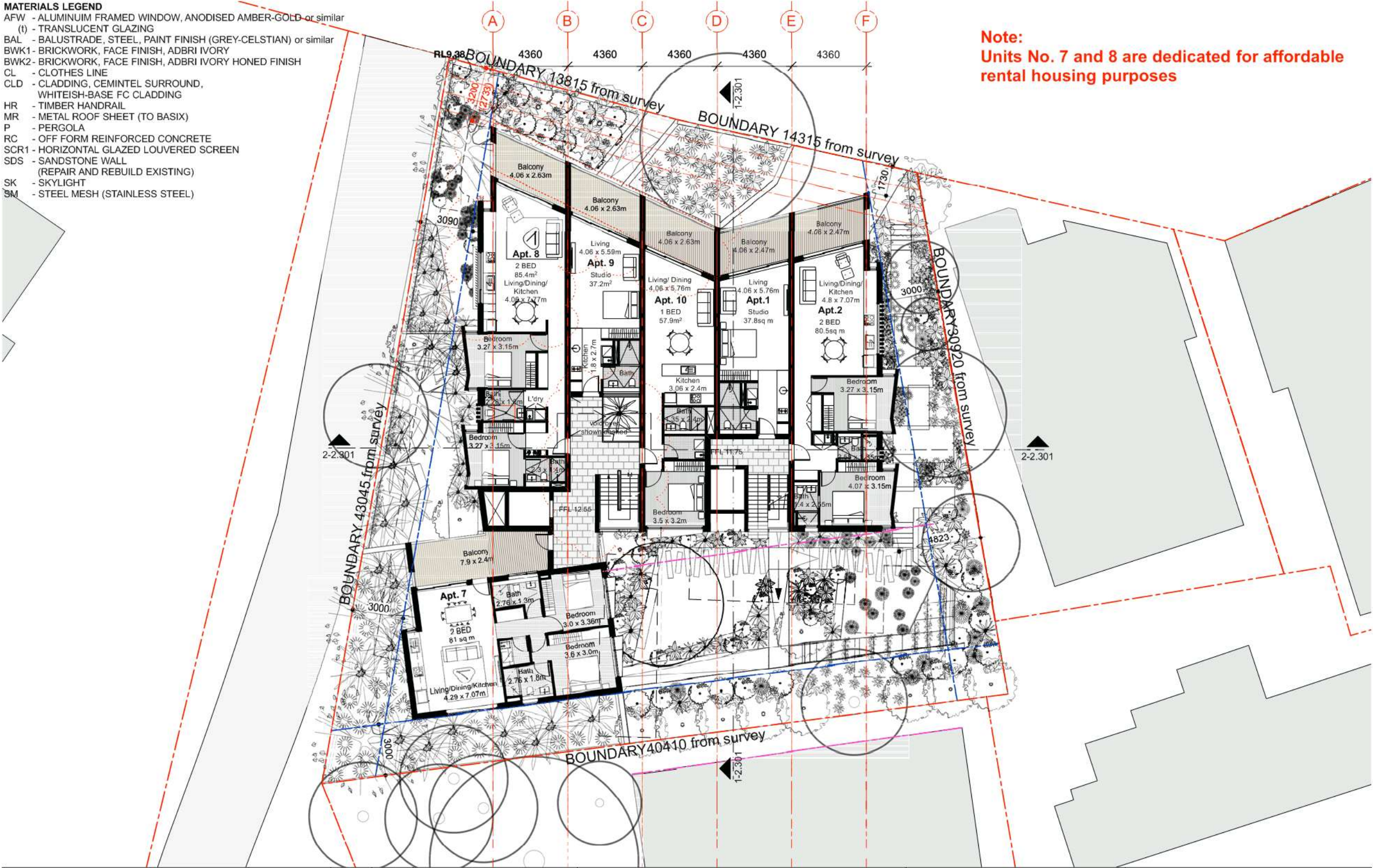
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MATERIALS LEGEND

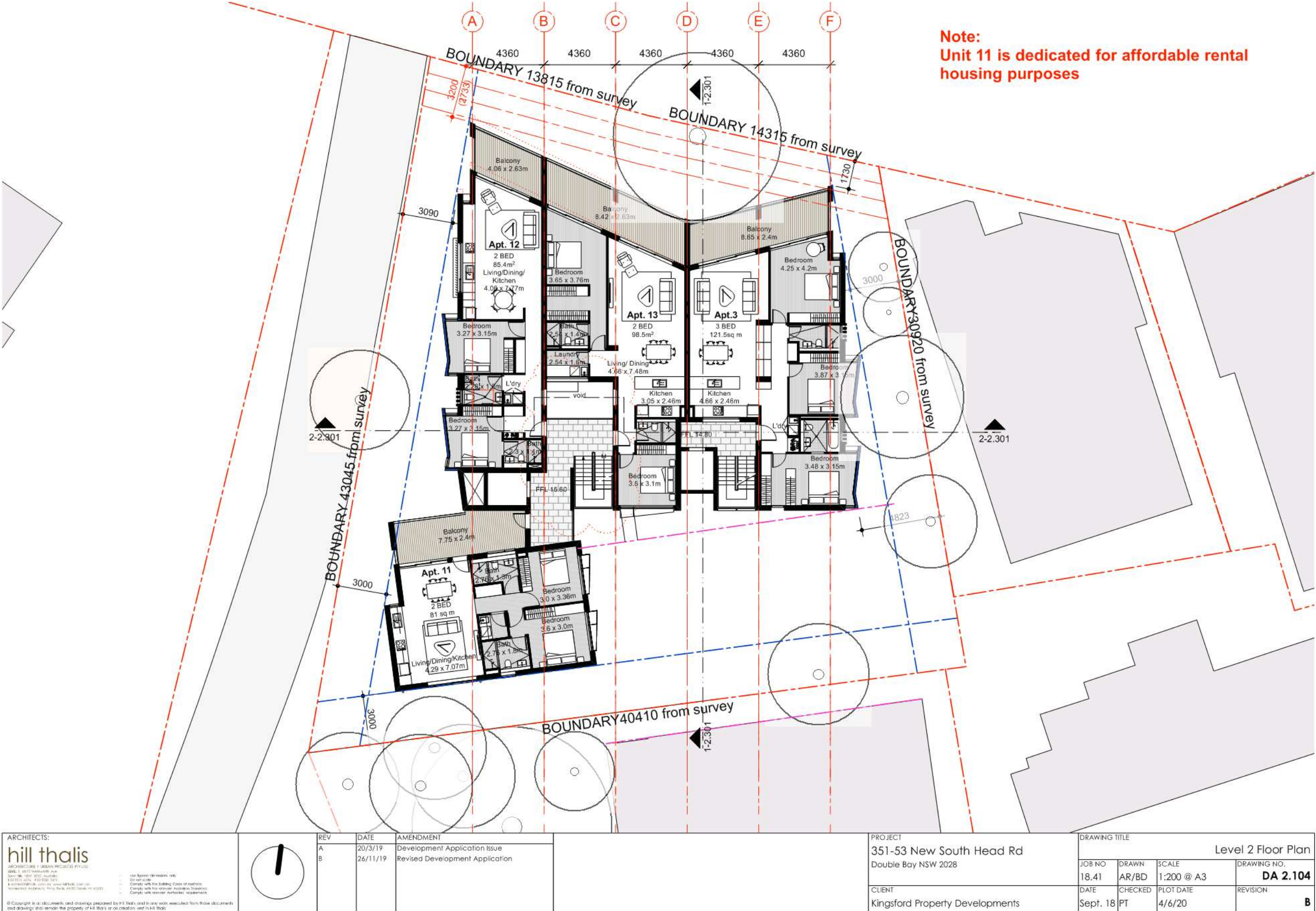
- AFW - ALUMINIUM FRAMED WINDOW, ANODISED AMBER-GOLD or similar  
(t) - TRANSLUCENT GLAZING  
BAL - BALUSTRADE, STEEL, PAINT FINISH (GREY-CELTIAN) or similar  
BWK1 - BRICKWORK, FACE FINISH, ADBRI IVORY  
BWK2 - BRICKWORK, FACE FINISH, ADBRI IVORY HONED FINISH  
CL - CLOTHES LINE  
CLD - CLADDING, CEMINTEL SURROUND, WHITEISH-BASE FC CLADDING  
HR - TIMBER HANDRAIL  
MR - METAL ROOF SHEET (TO BASIX)  
P - PERGOLA  
RC - OFF FORM REINFORCED CONCRETE  
SCR1 - HORIZONTAL GLAZED LOUVERED SCREEN  
SDS - SANDSTONE WALL (REPAIR AND REBUILD EXISTING)  
SK - SKYLIGHT  
SM - STEEL MESH (STAINLESS STEEL)

Note:  
Units No. 7 and 8 are dedicated for affordable rental housing purposes

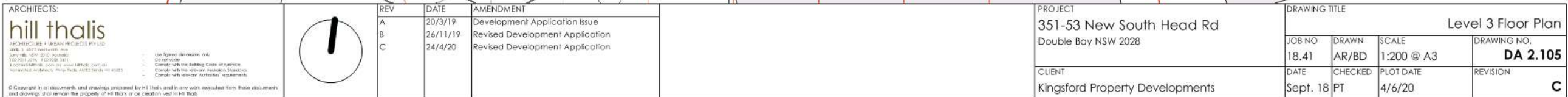


<div>ARCHITECTS: <b>hill thalis</b> <small>ARCHITECTURE + URBAN RESEARCH PTY LTD 24/46, 1, 28/37 New South Head Rd Sydney NSW 1585 Australia 02 9331 2470, 02 9331 3471 h.thalis@hillthalis.com.au, info@hillthalis.com.au Sydney Office: 10/10 York St, 2000 Sydney NSW 2000</small></div> <div><div></div><div>Use Approved dimensions only 20 mm scale Comply with the Building Code of Australia Comply with the relevant Australian Standards Comply with relevant Australian requirements</div></div> <div><small>© Copyright in all documents and drawings prepared by H.T. Hill and in any work executed from those documents and drawings shall remain the property of H.T. Hill or its creation used in H.T. Hill</small></div>	REV A B	DATE 20/3/19 26/11/19	AMENDMENT Development Application Issue Revised Development Application	PROJECT 351-53 New South Head Rd Double Bay NSW 2028	DRAWING TITLE Level 1 Floor Plan			
				CLIENT Kingsford Property Developments	JOB NO 18.41	DRAWN AR/BD	SCALE 1:200 @ A3	DRAWING NO. DA 2.103
					DATE Sept. 18	CHECKED PT	PLOT DATE 4/6/20	REVISION
								B

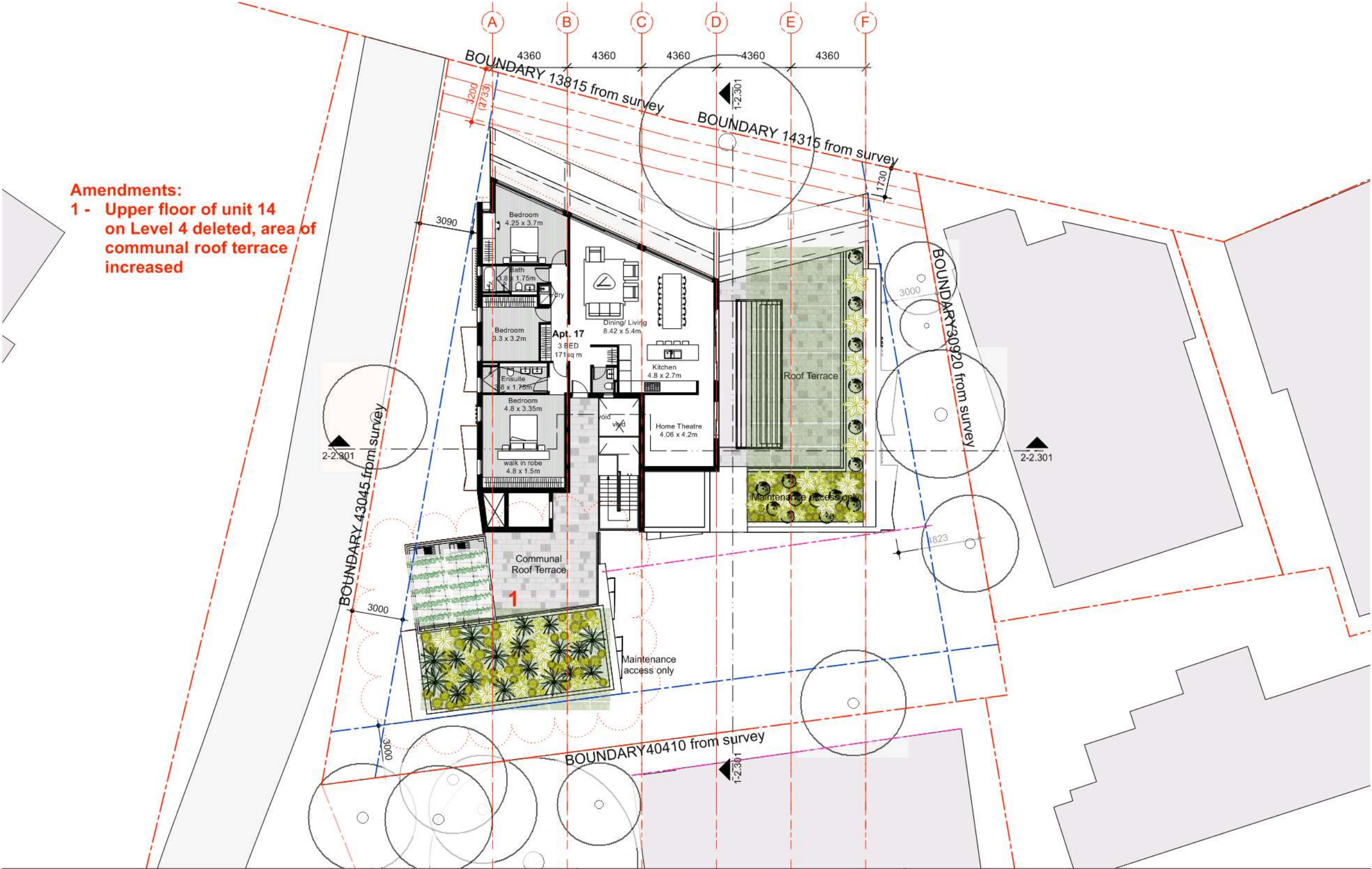








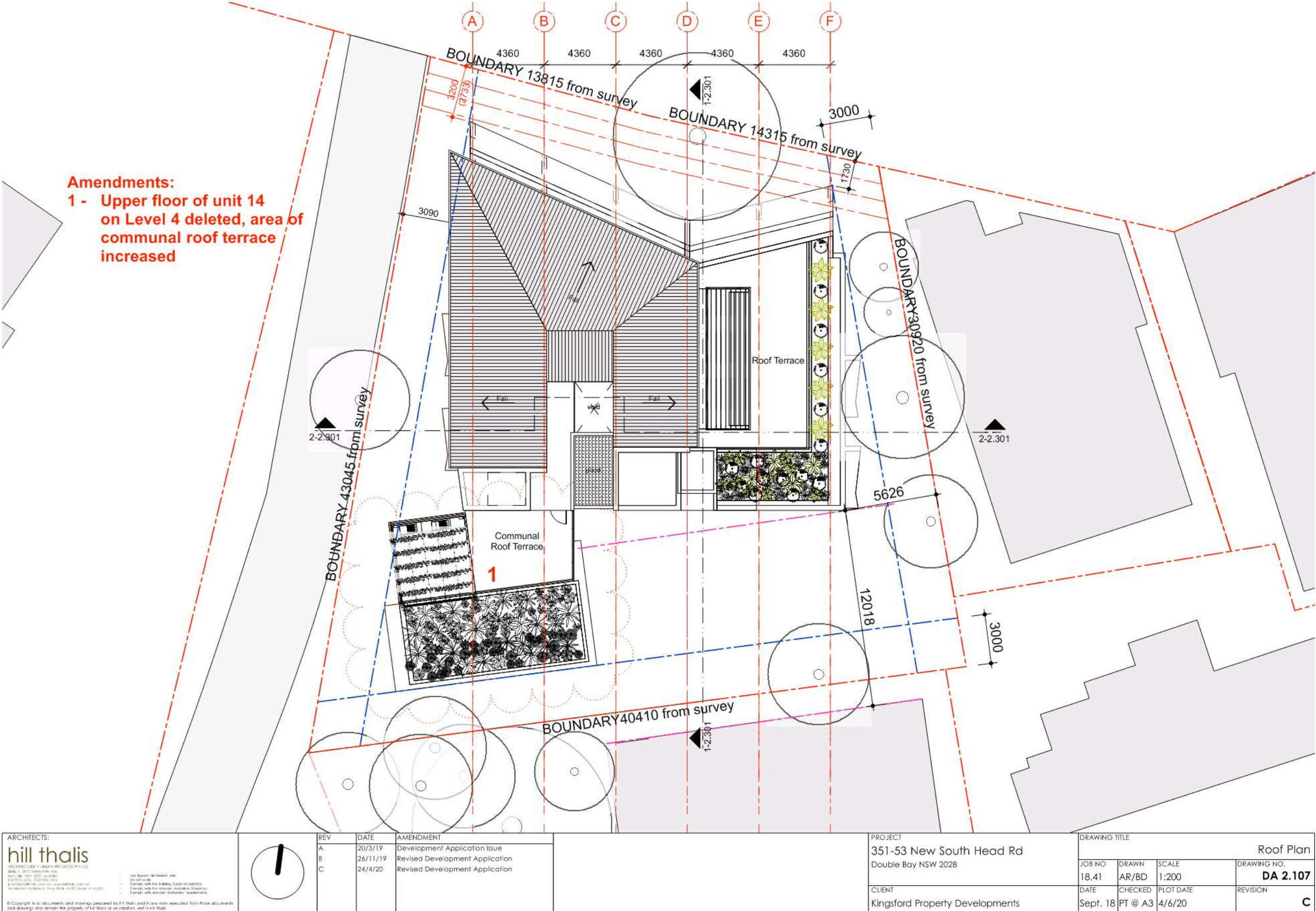




**Amendments:**  
**1 - Upper floor of unit 14 on Level 4 deleted, area of communal roof terrace increased**

ARCHITECTS: <b>hill thalis</b> ARCHITECTS + URBAN RESEARCH PTY LTD 24/46, 1-28/27 Newcombe Ave Sydney NSW 2022 Australia 02 9211 2011, 02 9211 2010 h@hillthalis.com.au, www.hillthalis.com.au National Architects: 1901 1901 1901 1901 1901		REV A B C		DATE 20/3/19 26/11/19 24/4/20		AMENDMENT Development Application Issue Revised Development Application Revised Development Application		PROJECT 351-53 New South Head Rd Double Bay NSW 2028		DRAWING TITLE Level 4 Floor Plan			
JOB NO 18.41		DRAWN AR/BD		SCALE 1:200 @ A3		DRAWING NO. DA 2.106		CLIENT Kingsford Property Developments		DATE Sept. 18		CHECKED PT	
				PLOT DATE 4/6/20		REVISION C							







MATERIALS LEGEND

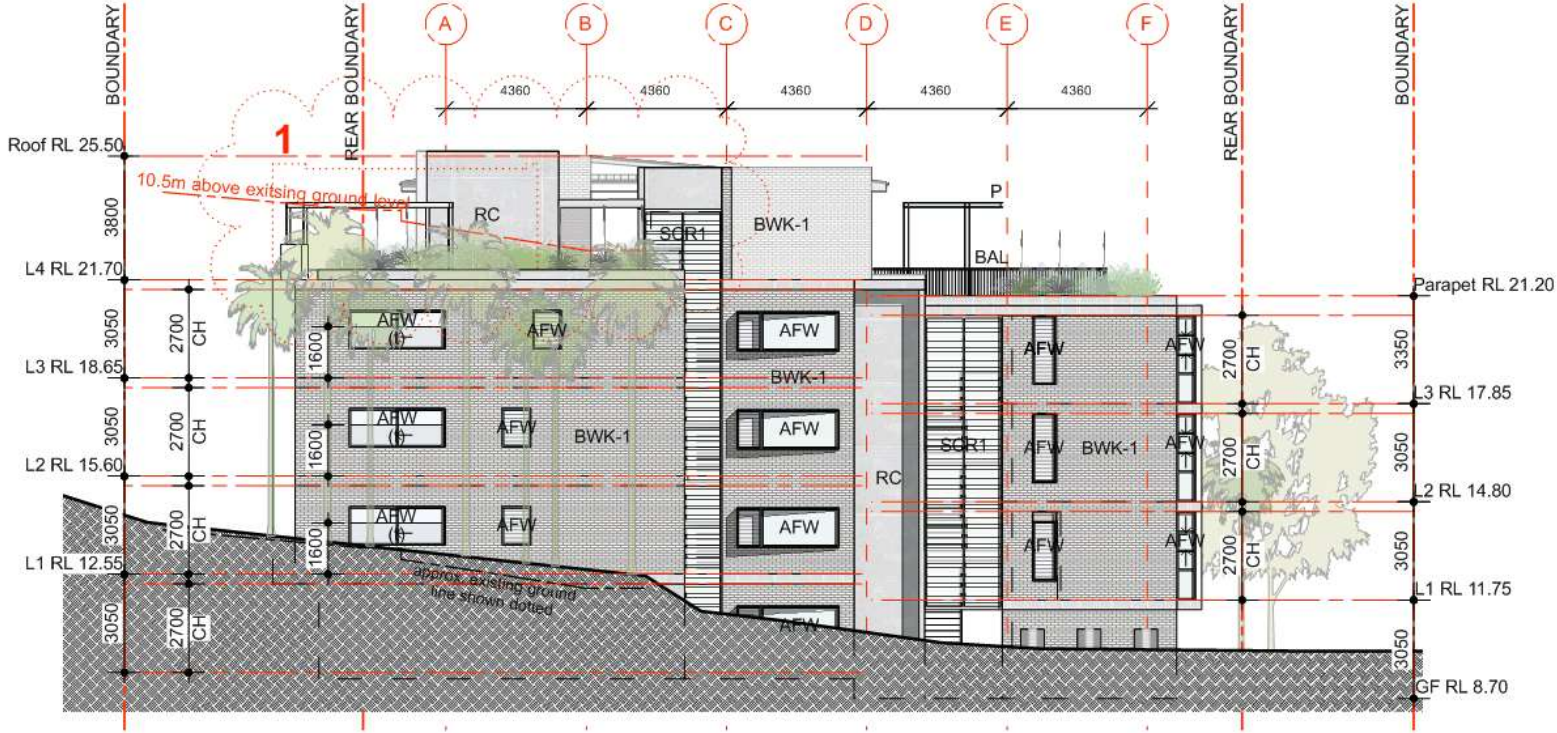
- AFW - ALUMINIUM FRAMED WINDOW, ANODISED AMBER-GOLD or similar
- (t) - TRANSLUCENT GLAZING
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- SDS - SANDSTONE WALL (REPAIR AND REBUILD EXISTING)
- SK - SKYLIGHT
- SM - STEEL MESH (STAINLESS STEEL)

1 North Elevation  
Scale: 1:200



Amendments:  
1 - Upper floor of unit  
14 on Level 4 deleted

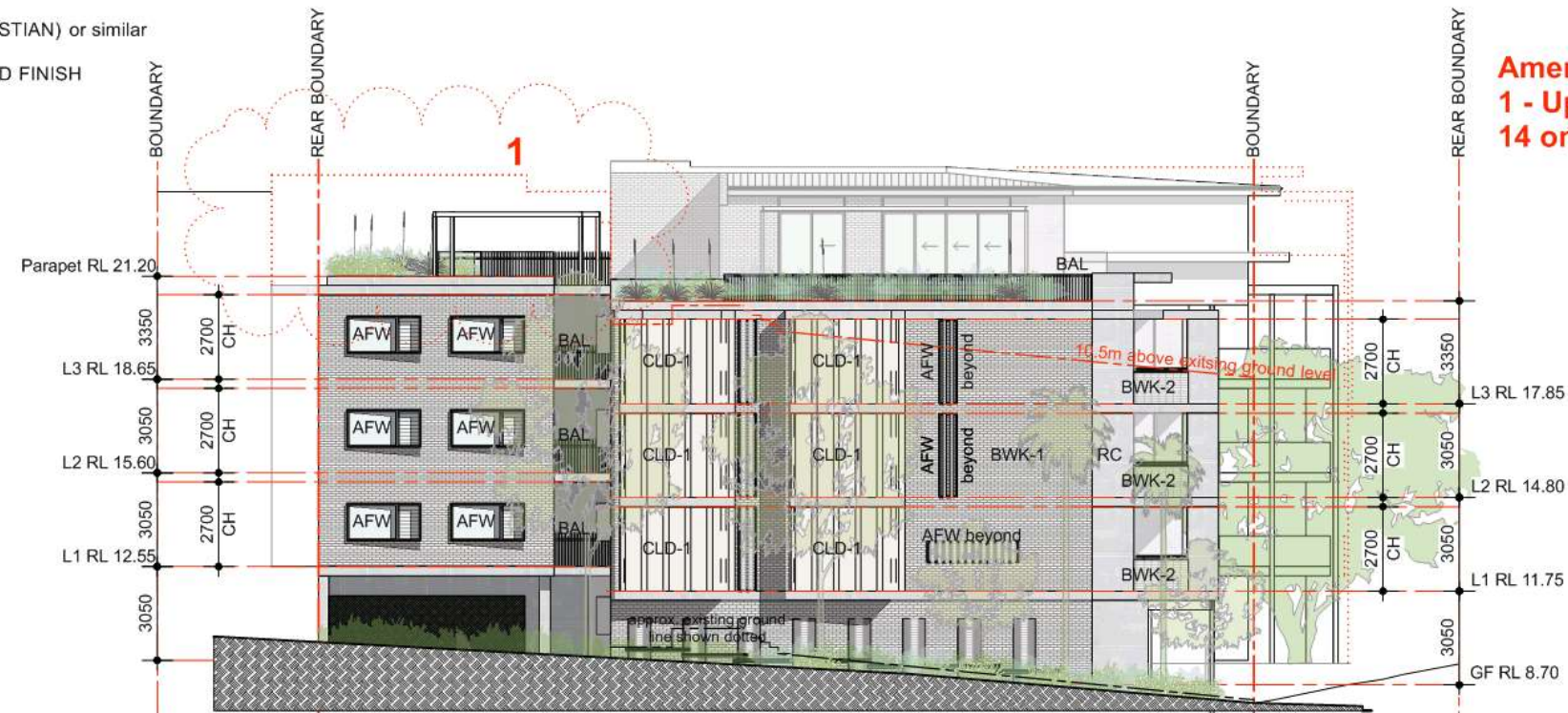
2 South Elevation  
Scale: 1:200



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	A	17/1/19	Issued for Coordination	351-53 New South Head Rd	ELEVATIONS			
	B	20/3/19	Development Application Issue	Double Bay NSW 2028	JOB NO	DRAWN	SCALE	DRAWING NO.
	C	26/11/19	Revised Development Application		18.41	AR/BD	1:200 @ A3	DA 2.201
	D	4/6/20	Revised Development Application		DATE	CHECKED	PLOT DATE	REVISION
				CLIENT				
				Kingsford Property Developments	Sept. 18	PT	4/6/20	D



1 East Elevation  
Scale: 1:200



**Amendments:**  
1 - Upper floor of unit  
14 on Level 4 deleted

2 West Elevation  
Scale: 1:200

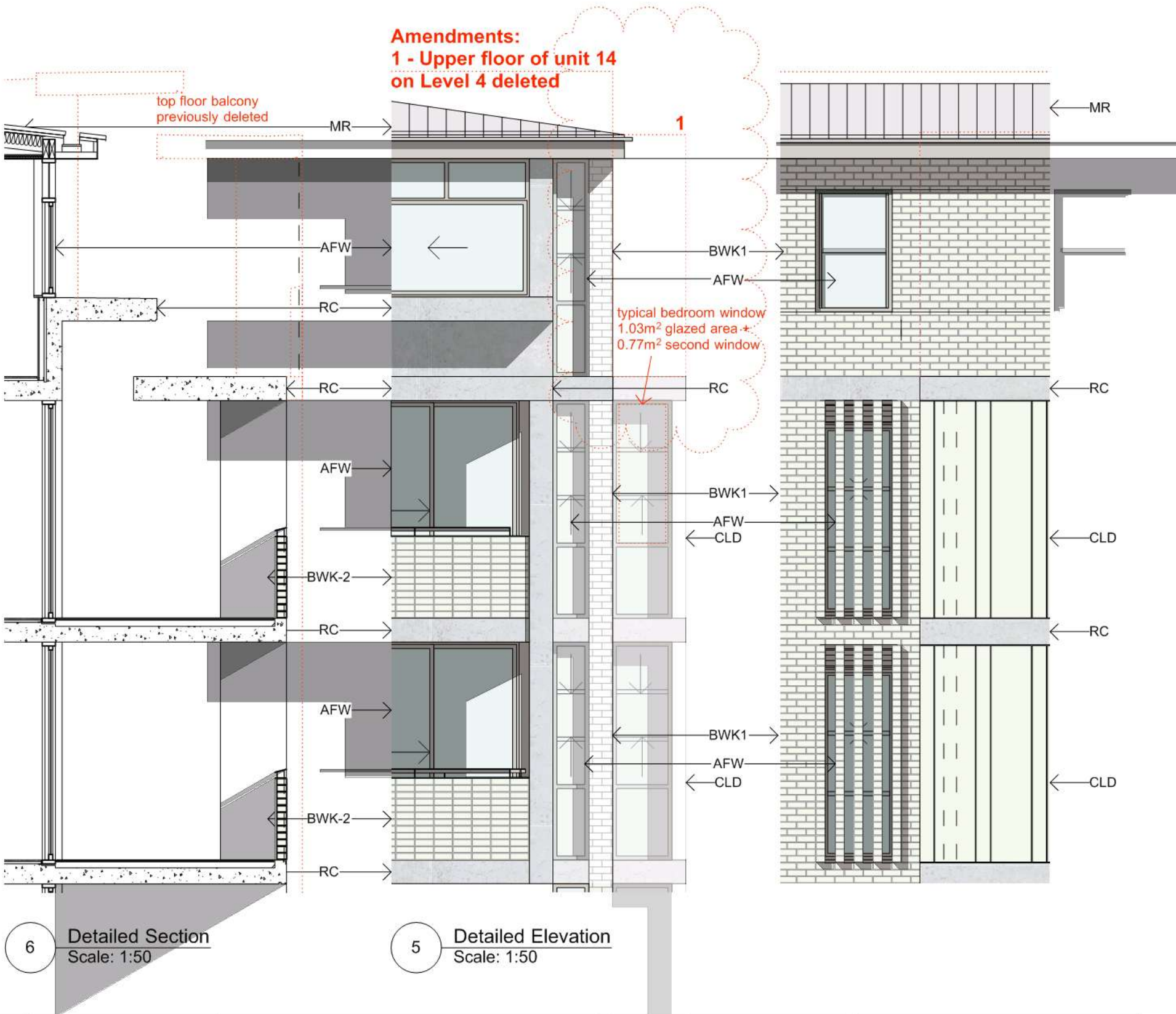


**Amendments:**  
**1 - Upper floor of unit**  
**14 on Level 4 deleted**

<div>ARCHITECTS:</div> <div><div>hill thalis</div><div>ARCHITECTS • URBAN PRINCIPLES PTY LTD</div><div>10/111 ACTON RD, ACTON NSW 2050</div><div>02 9550 1234</div><div>h.thalis@hillthalis.com.au</div><div>www.hillthalis.com.au</div></div> <div><div><div><div>Use Approved dimensions only</div><div>Do not use</div><div>Comply with the Building Code of Australia</div><div>Comply with relevant Australian Standards</div><div>Comply with relevant Australian requirements</div></div></div><div>© Copyright in all documents and drawings prepared by Hill Thalis and in any works executed from those documents and drawings and in the design and the creation and the layout thereof.</div></div>	REV	DATE	AMENDMENT	PROJECT 351-53 New South Head Rd Double Bay NSW 2028	DRAWING TITLE  ELEVATIONS																
	A	20/3/19	Development Application Issue																		
	B	26/11/19	Revised Development Application																		
	C	4/6/20	Revised Development Application																		
				CLIENT Kingsford Property Developments	<table><tr><td>JOB NO</td><td>DRAWN</td><td>SCALE</td><td>ELEVATIONS NO.</td></tr><tr><td>18.41</td><td>AR/BD</td><td>1:200 @ A3</td><td>DA 2.202</td></tr><tr><td>DATE</td><td>CHECKED</td><td>PLOT DATE</td><td>REVISION</td></tr><tr><td>Sept. 18 PT</td><td></td><td>4/6/20</td><td>C</td></tr></table>	JOB NO	DRAWN	SCALE	ELEVATIONS NO.	18.41	AR/BD	1:200 @ A3	DA 2.202	DATE	CHECKED	PLOT DATE	REVISION	Sept. 18 PT		4/6/20	C
JOB NO	DRAWN	SCALE	ELEVATIONS NO.																		
18.41	AR/BD	1:200 @ A3	DA 2.202																		
DATE	CHECKED	PLOT DATE	REVISION																		
Sept. 18 PT		4/6/20	C																		

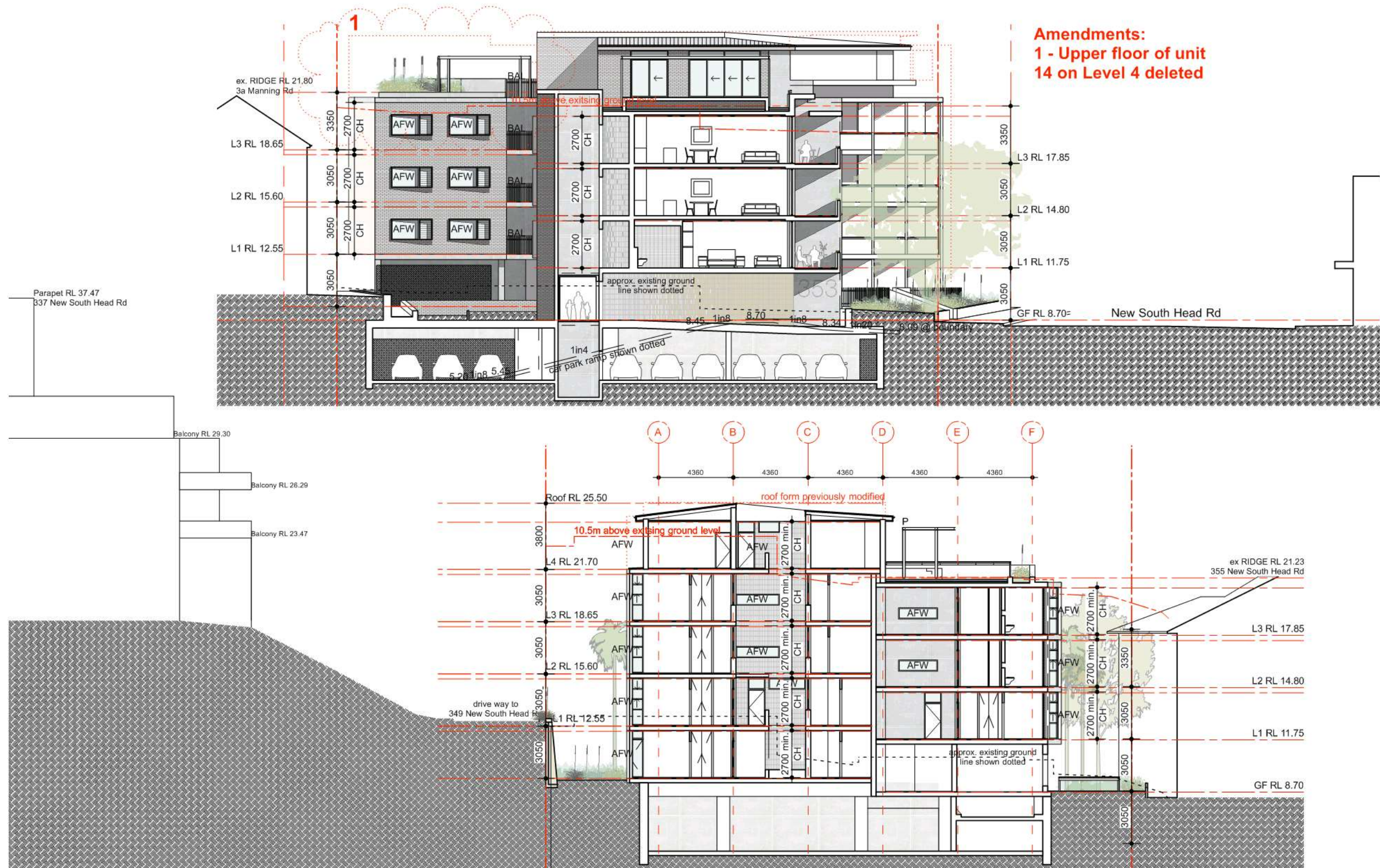


- MATERIALS LEGEND**
- AFW - ALUMINIUM FRAMED WINDOW, ANODISED AMBER-GOLD or similar
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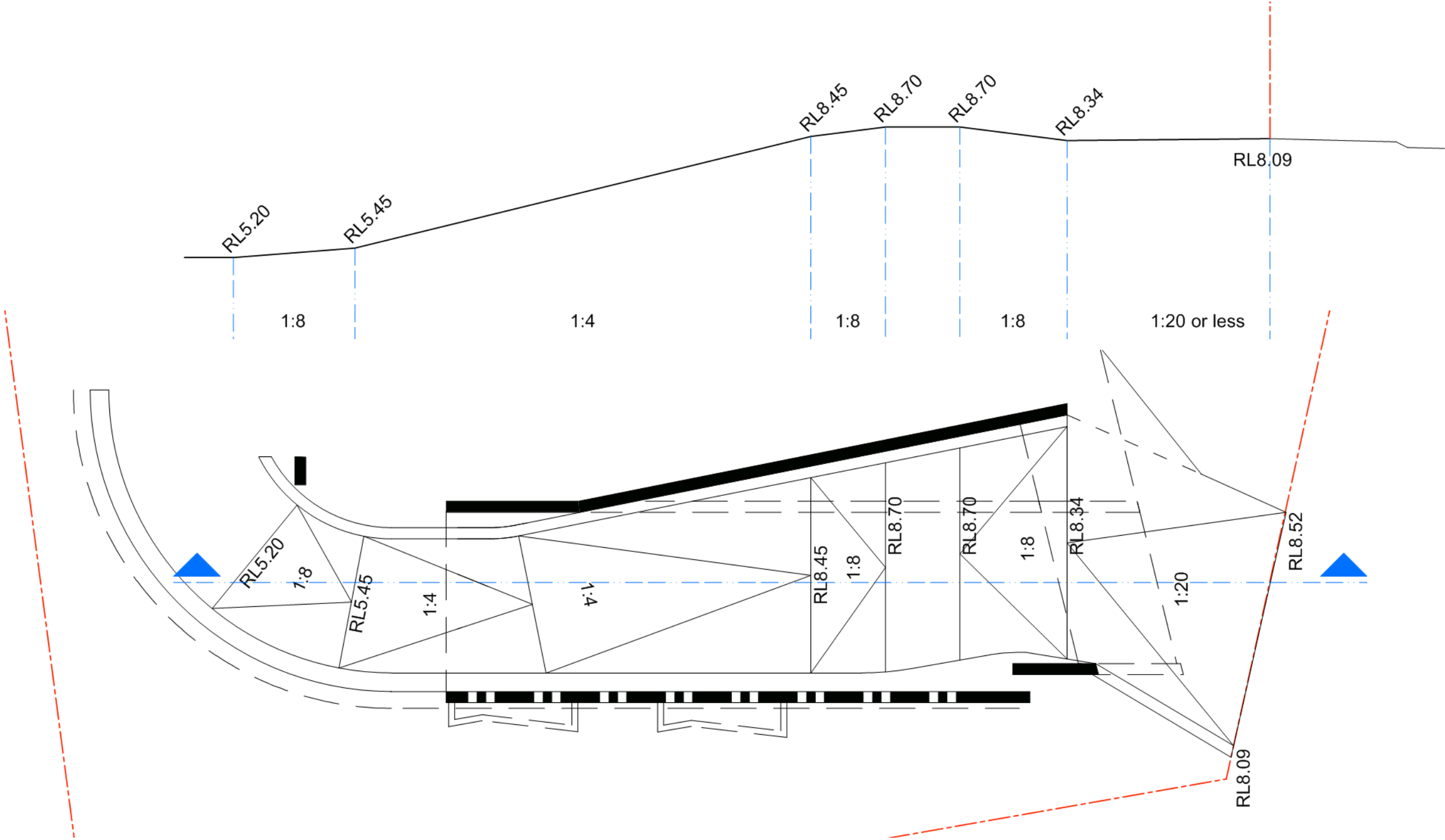


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	A	20/3/19	Development Application Issue		DETAILED ELEVATION			
	B	26/11/19	Revised Development Application		JOB NO	DRAWN	SCALE	DRAWING NO.
	C	18/3/20	Council Clarification		18.41	AR/BD	1:50 @ A3	DA 2.203
	D	4/6/20	Revised Development Application		DATE	CHECKED	PLOT DATE	REVISION
					Sept. 18	PT	4/6/20	D

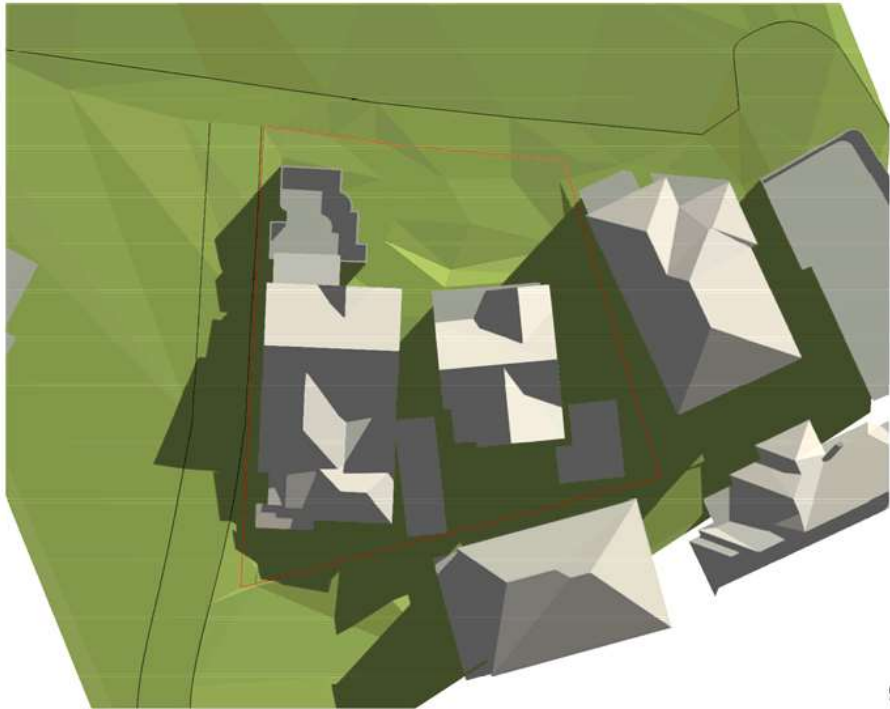


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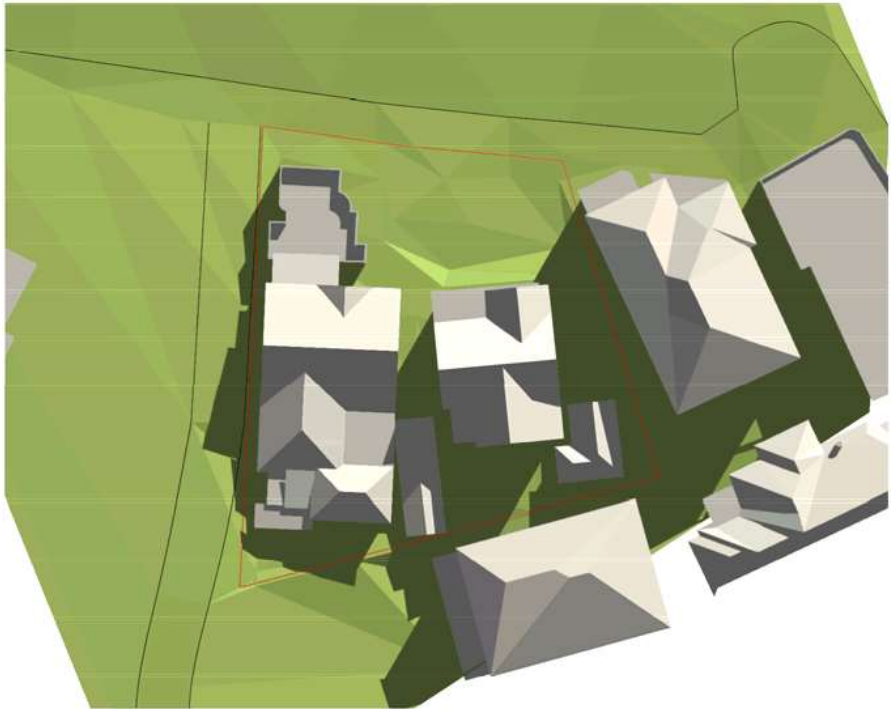




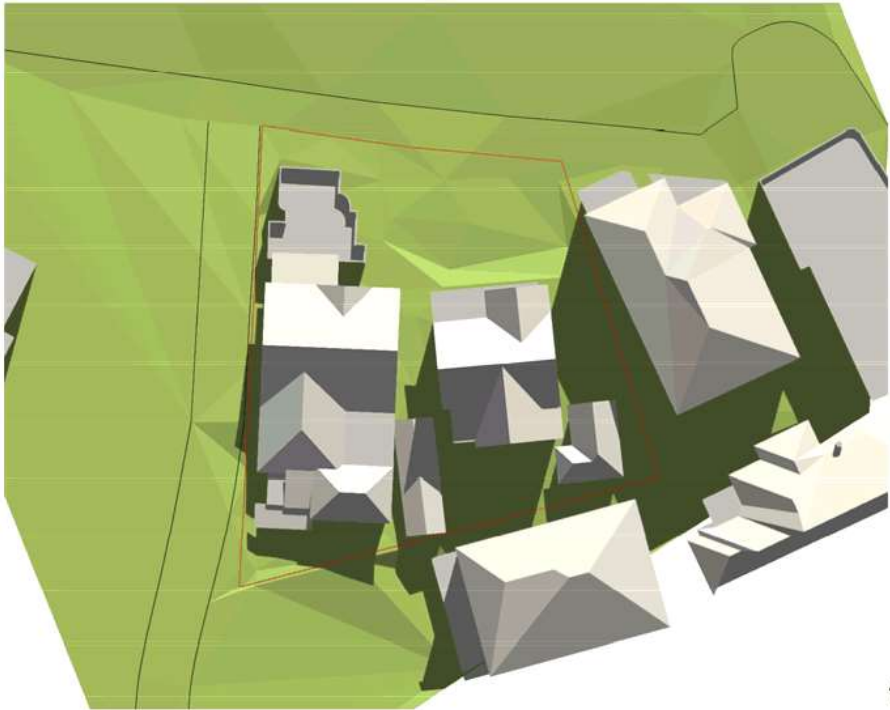
<b>ARCHITECTS:</b> <b>hill thalis</b> <small>ARCHITECTURE + URBAN PROJECTS PTY LTD 44/45, 1, 28-29 Newmarket Ave Sydney NSW 2058 Australia T 02 9111 3471 F 02 9111 3471 h.thalis@hillthalis.com.au www.hillthalis.com.au Not a registered architect. All work is done under the supervision of a registered architect.</small>	<b>REV</b> A	<b>DATE</b> 20/3/19	<b>AMENDMENT</b> Development Application Issue	<b>PROJECT</b> 351-53 New South Head Rd Double Bay NSW 2028	<b>DRAWING TITLE</b> SECTIONS - Ramp Detail			
					<b>JOB NO</b> 18.41	<b>DRAWN</b> AR/BD	<b>SCALE</b> 1:100	<b>DRAWING NO.</b> DA 2.302
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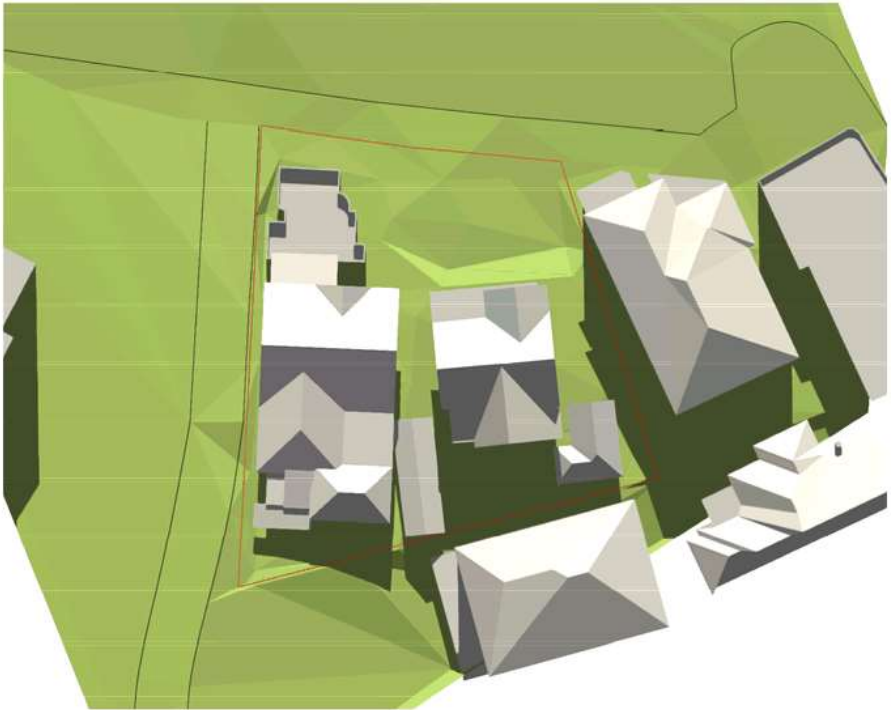
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10am



11am



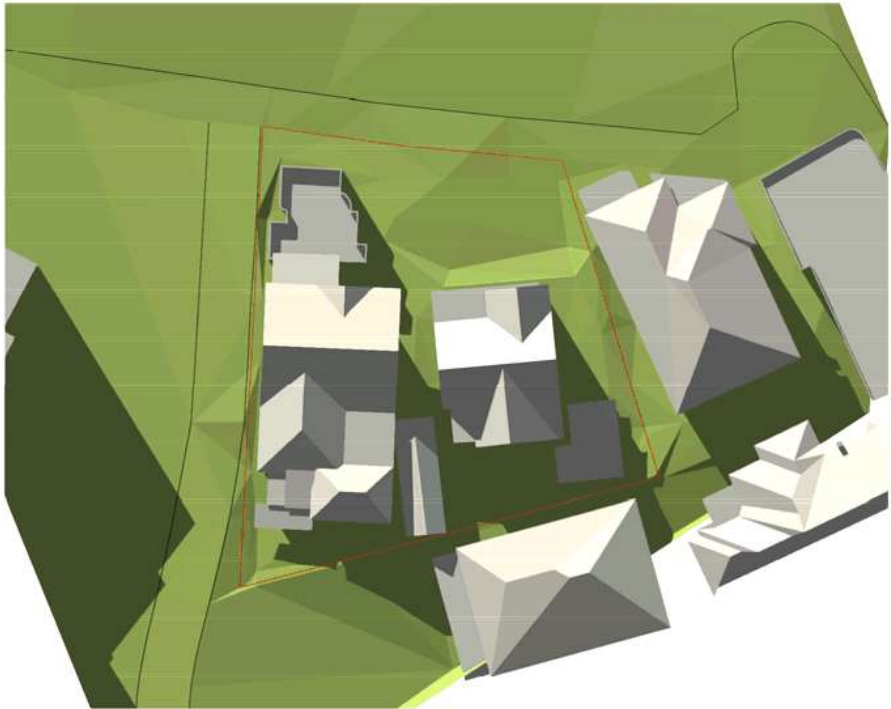
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June 21 - Winter Solstice

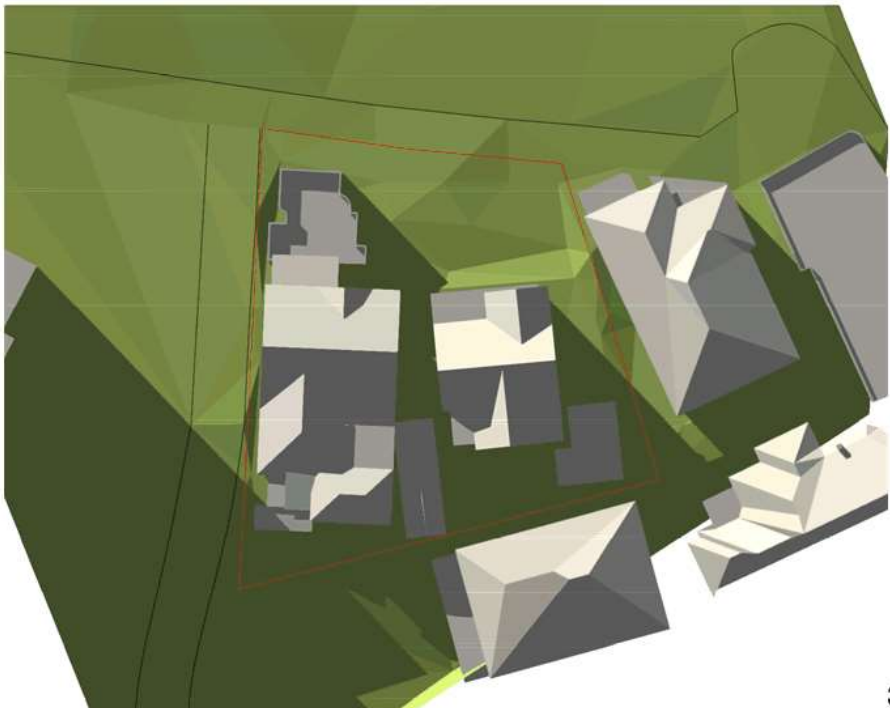
<div>ARCHITECTS: hill thalis ARCHITECTURE + URBAN PROJECTS PTY LTD UNB, 5/8-12 Westcott Ave Surry Hills, NSW 2010 Australia t 02 9111 5215 f 02 9111 5171 e admin@hillthalis.com.au www.hillthalis.com.au Registered Architect No. 14670 (2019) 14670 (2019) 14670 (2019)</div> <div>© Copyright in all documents and drawings prepared by Hill Thalis and in any work executed from those documents and drawings shall remain the property of Hill Thalis or an creation vest in Hill Thalis</div>	REV	DATE	AMENDMENT	PROJECT 351-53 New South Head Rd Double Bay NSW 2028	DRAWING TITLE Existing solar Impact to Neighbours in Plan			
					JOB NO	DRAWN	SCALE	DRAWING NO.
					18.41	BD	NTS	DA 2.602
					CLIENT Michael Petrovic	DATE	CHECKED PT	PLOT DATE 13/12/19



1pm



2pm

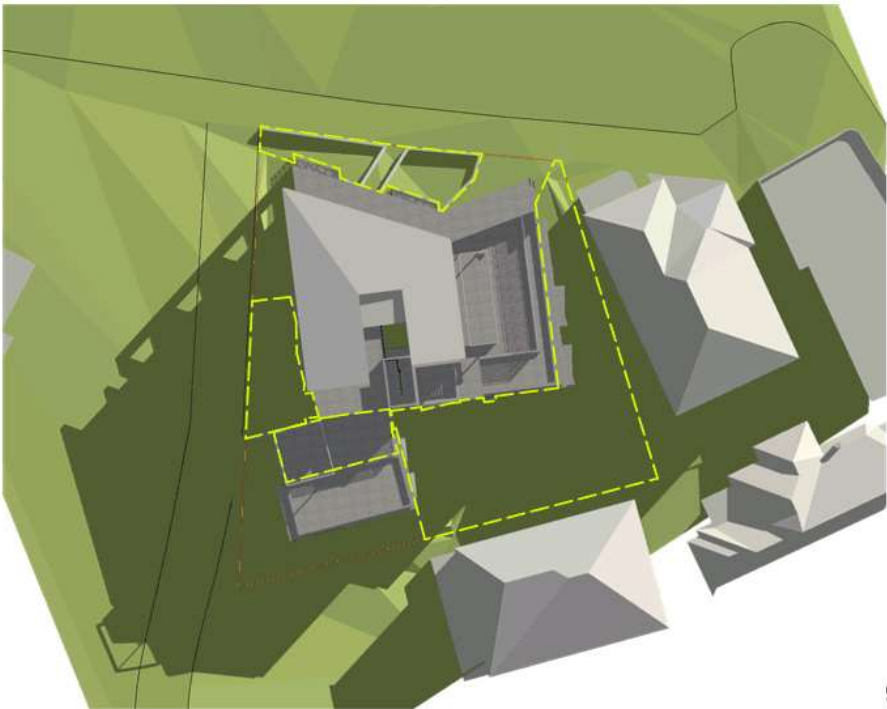


3pm

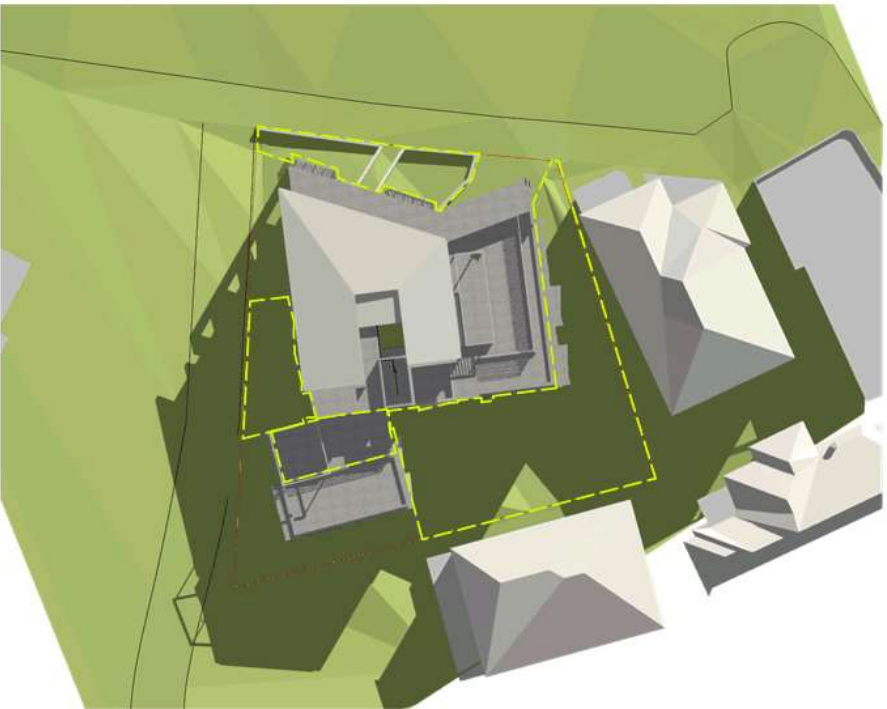
— Boundary

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						351-53 New South Head Rd Double Bay NSW 2028		Existing solar Impact to Neighbours in Plan			
						CLIENT		JOB NO	DRAWN	SCALE	DRAWING NO.
						Michael Petrovic		18.41	BD	NTS	DA 2.603
							DATE	CHECKED	PLOT DATE	REVISION	
								PT	13/12/19		





9am



10am



11am



12pm

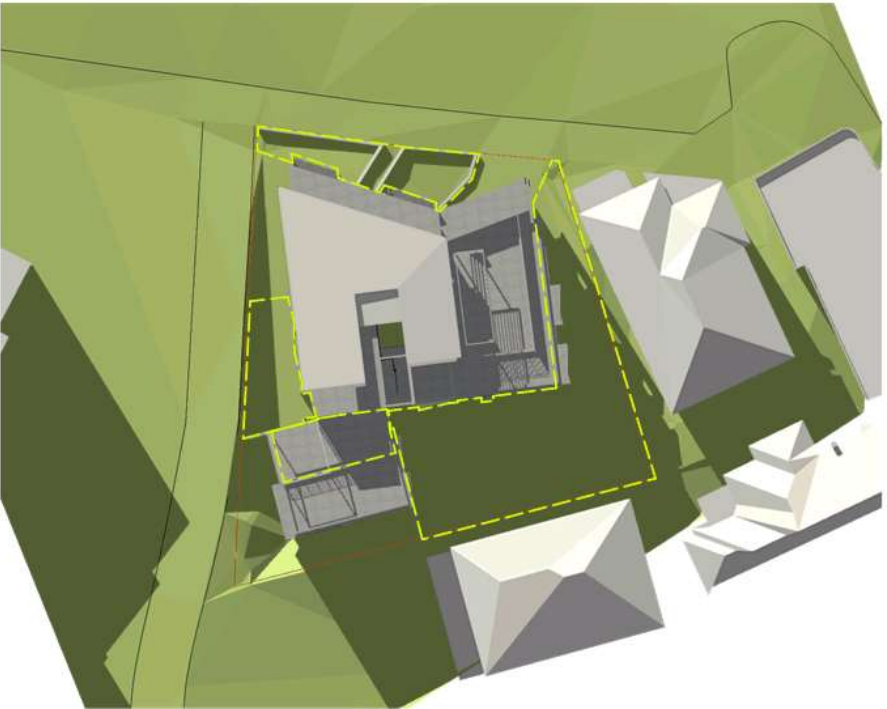
- Communal open space
- Boundary

June 21 - Winter Solstice

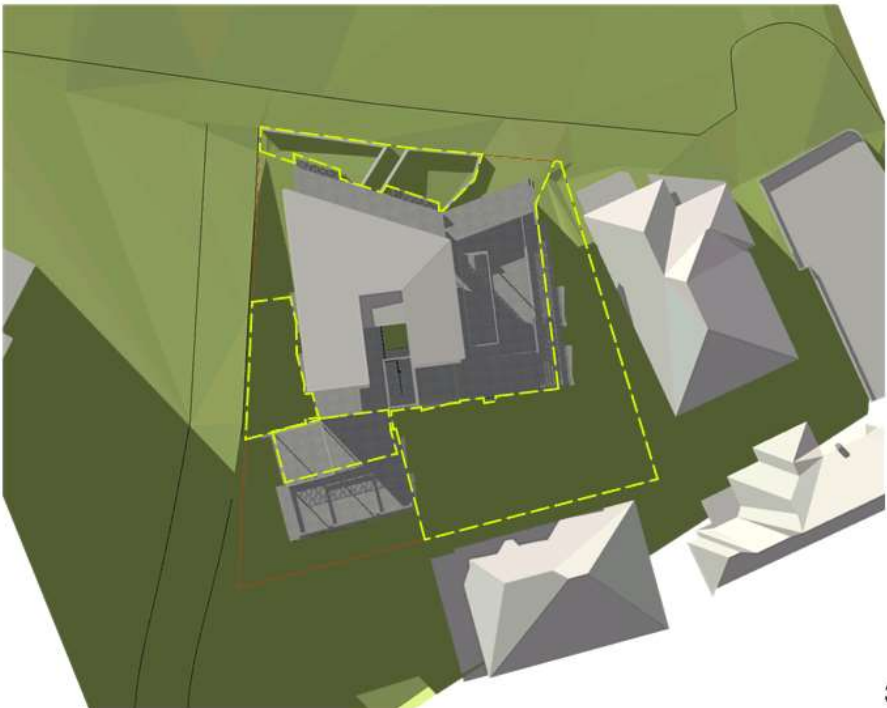
<div>ARCHITECTS:</div> <div>hill thalis</div> <div>ARCHITECTURE + URBAN RESEARCH PTY LTD</div> <div>44/45, 1-38/37 Newcombe Ave, Sydney NSW 1585 Australia 02 9231 2070, 02 9231 2071 a@hillthalis.com.au, info@hillthalis.com.au hillthalis.com.au, 100/100 Newcombe Ave Sydney NSW 1585</div> <div><div><div><div></div><div></div><div></div></div><div><div>Use Approved drawings only</div><div>2D and 3D views</div><div>Comply with the Building Code of Australia</div><div>Comply with the relevant Australian Standards</div><div>Comply with relevant Australian requirements</div></div></div></div> <div><div>© Copyright in all documents and drawings prepared by Hill Thalís and in any work executed from those documents and drawings shall remain the property of Hill Thalís or its creation used in Hill Thalís</div></div>	REV	DATE	AMENDMENT	PROJECT	DRAWING TITLE			
	A	26/11/19	Revised Development Application	351-53 New South Head Rd	Solar Impact to Neighbours in Plan			
	B	4/6/20	Revised Development Application	Double Bay NSW 2028	JOB NO	DRAWN	SCALE	DRAWING NO.
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					DATE	CHECKED	PLOT DATE	REVISION
					PT	4/6/20	B	





1pm



2pm



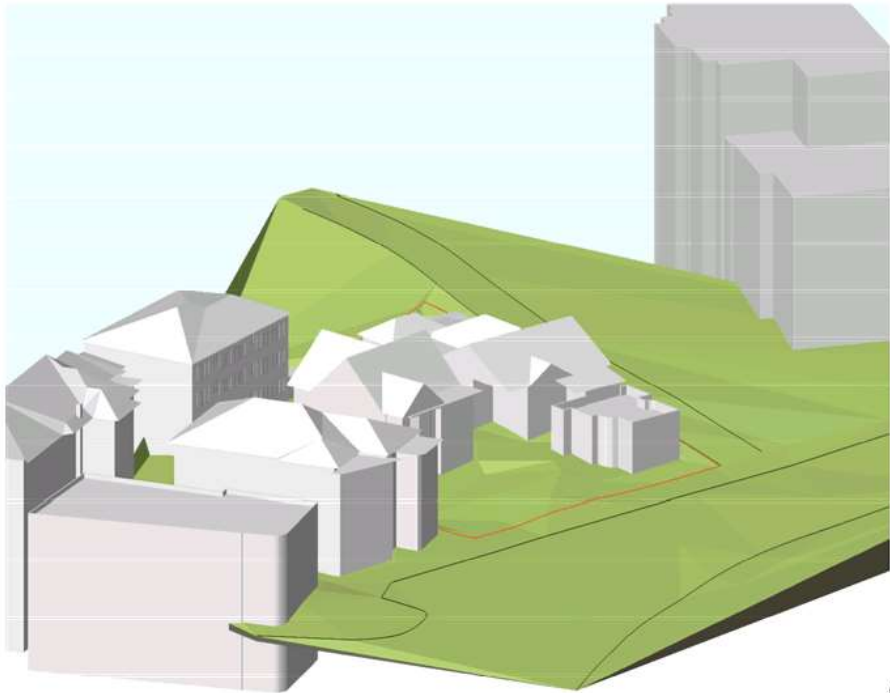
3pm

-  Communal open space
-  Boundary

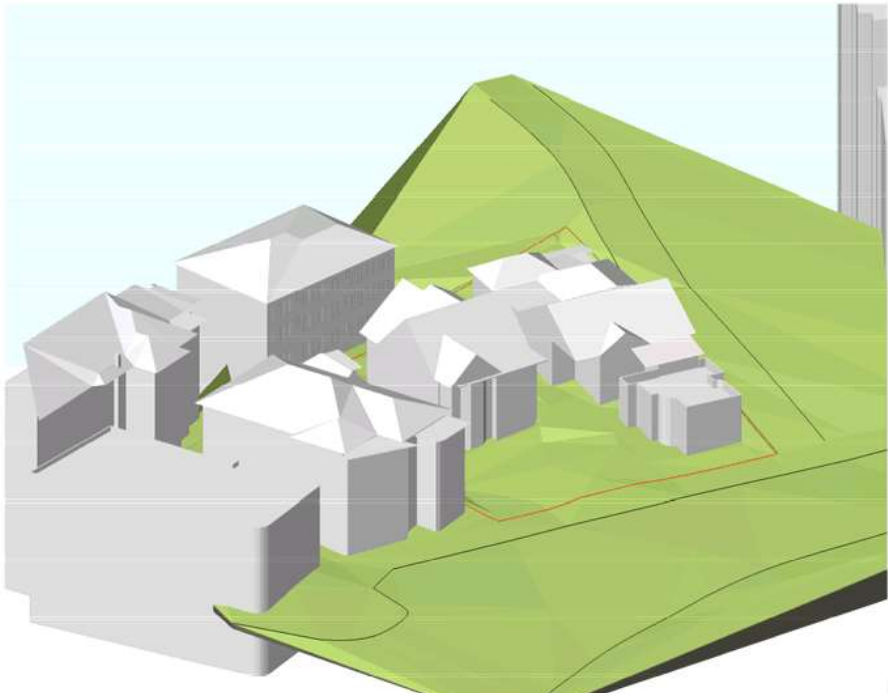
June 21 - Winter Solstice

<div>ARCHITECTS: <b>hill thalis</b> <small>ARCHITECTS + URBAN RESEARCH PTY LTD</small> <small>24/46, 5, 28/75 New South Head Rd</small> <small>Double Bay NSW 2028 Australia</small> <small>T: 02 9331 2471 F: 02 9331 3471</small> <small>A: 02 9331 2471 E: info@hillthalis.com.au</small> <small>hillthalis.com.au</small> <small>© Copyright in all documents and drawings prepared by H-T and in any work executed from those documents and drawings shall remain the property of H-T or its creation used in H-T logo</small></div>		REV	DATE	AMENDMENT	PROJECT 351-53 New South Head Rd Double Bay NSW 2028	DRAWING TITLE Solar Impact to Neighbours in Plan			
		A	26/11/19	Revised Development Application		JOB NO	DRAWN	SCALE	DRAWING NO.
		B	4/6/20	Revised Development Application		18.41	BD	NTS	DA 2.605
						CLIENT	CHECKED	PLOT DATE	REVISION





9am



10am



11am



12pm

--- Boundary  
Views set from the sun - all visible elements are in light at the stated times  
**June 21 - Winter Solstice**

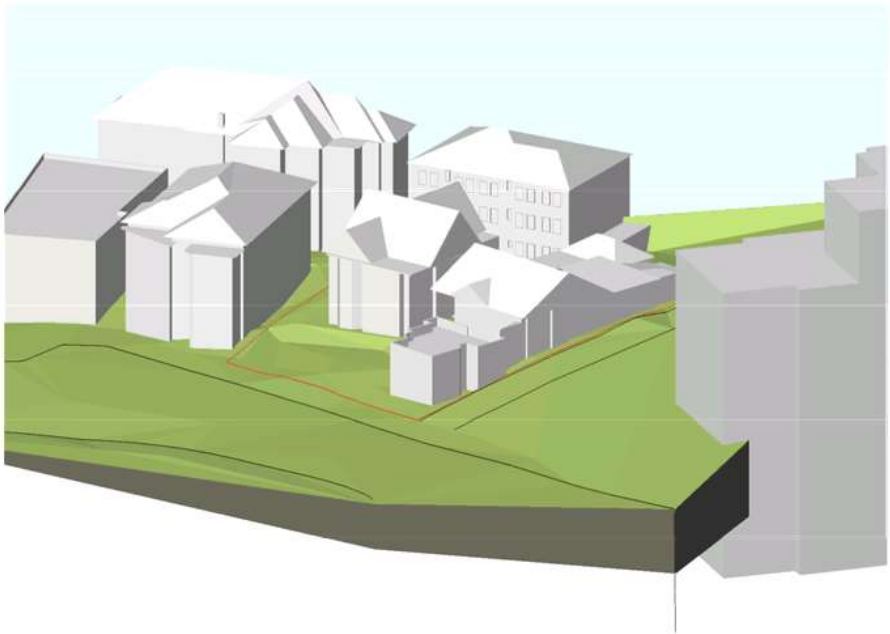
<div>ARCHITECTS:</div> <div>hill thalis</div> <div>ARCHITECTURE + URBAN PROJECTS PTY LTD</div> <div>UNB, 5/28-30, Macquarie Ave, Surry Hills, NSW 2010, Australia T: 02 9551 5275 F: 02 9551 5277 E: admin@hillthalis.com.au www.hillthalis.com.au Registered Architect: Hill Thalis #2760 Surry Hills #10385</div> <div>© Copyright in all documents and drawings prepared by Hill Thalis and in any work executed from those documents and drawings shall remain the property of Hill Thalis or an creation vest in Hill Thalis</div>		REV	DATE	AMENDMENT	PROJECT 351-53 New South Head Rd Double Bay NSW 2028	DRAWING TITLE Existing solar Impact to Neighbours			
						JOB NO.	DRAWN	SCALE	DRAWING NO.
						18.41	BD	NTS	DA 2.606
						DATE	CHECKED	PLOT DATE	REVISION
		CLIENT Michael Petrovic							PT



1pm



2pm



3pm

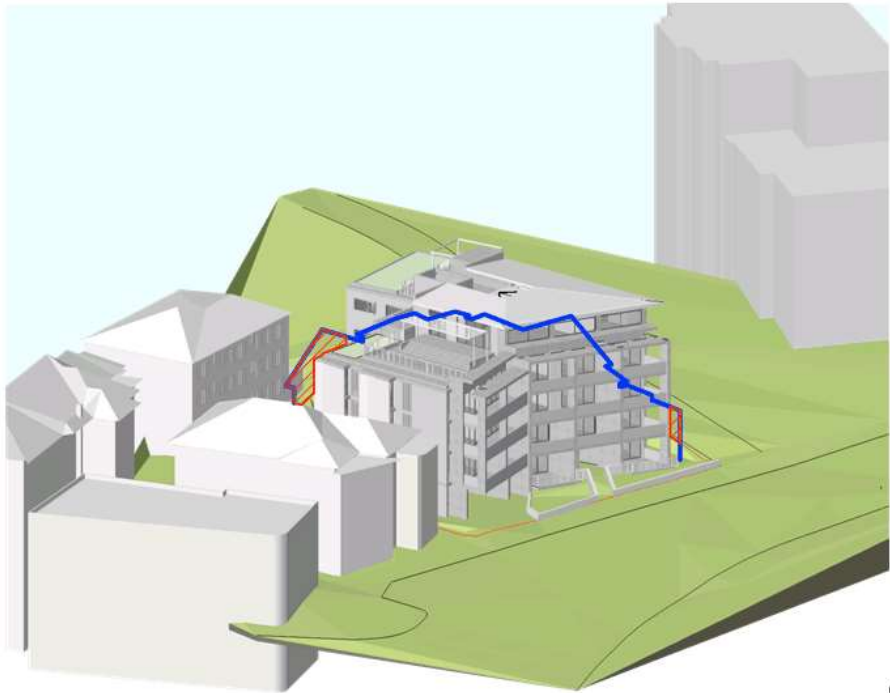
— Boundary

**3pm** Views set from the sun - all visible elements are in light at the stated times

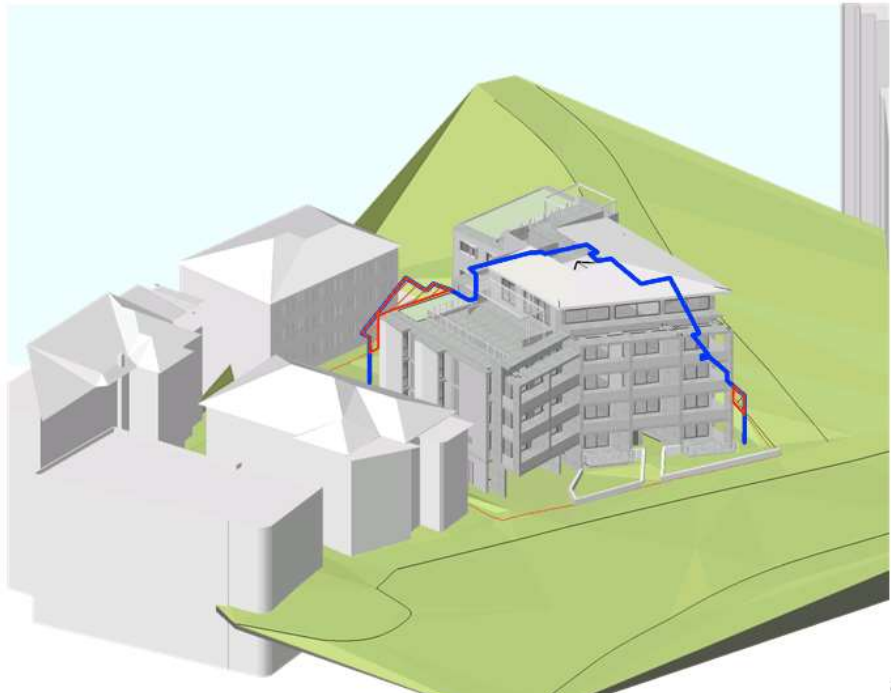
**June 21 - Winter Solstice**

<div>ARCHITECTS:</div> <div>hill thalis</div> <div>ARCHITECTURE + URBAN PROJECTS PTY LTD</div> <div>UNB, 5, 28-32 Newmarket Ave, Sydney nsw 2028 Australia T 02 9551 5475, F 02 9551 5171 E <a href="mailto:info@hillthalis.com.au">info@hillthalis.com.au</a> www.hillthalis.com.au Registered Architects: NSW Reg No 14290 Sarah Hill #1335</div> <div>© Copyright in all documents and drawings prepared by Hill Thalis and in any work executed from those documents and drawings shall remain the property of Hill Thalis or on creation vest in Hill Thalis</div>		REV	DATE	AMENDMENT	PROJECT 351-53 New South Head Rd Double Bay NSW 2028	DRAWING TITLE Existing solar Impact to Neighbours			
						JOB NO	DRAWN	SCALE	DRAWING NO.
						18.41	BD	NTS	DA 2.607
						DATE	CHECKED	PLOT DATE	REVISION
							PT	13/12/19	
					CLIENT Michael Petrovic				

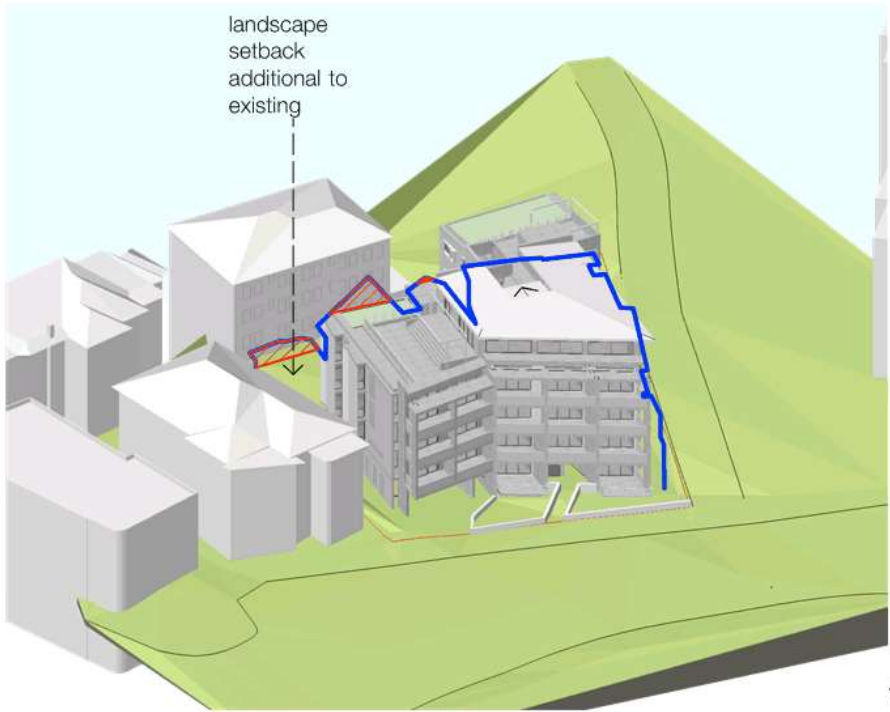




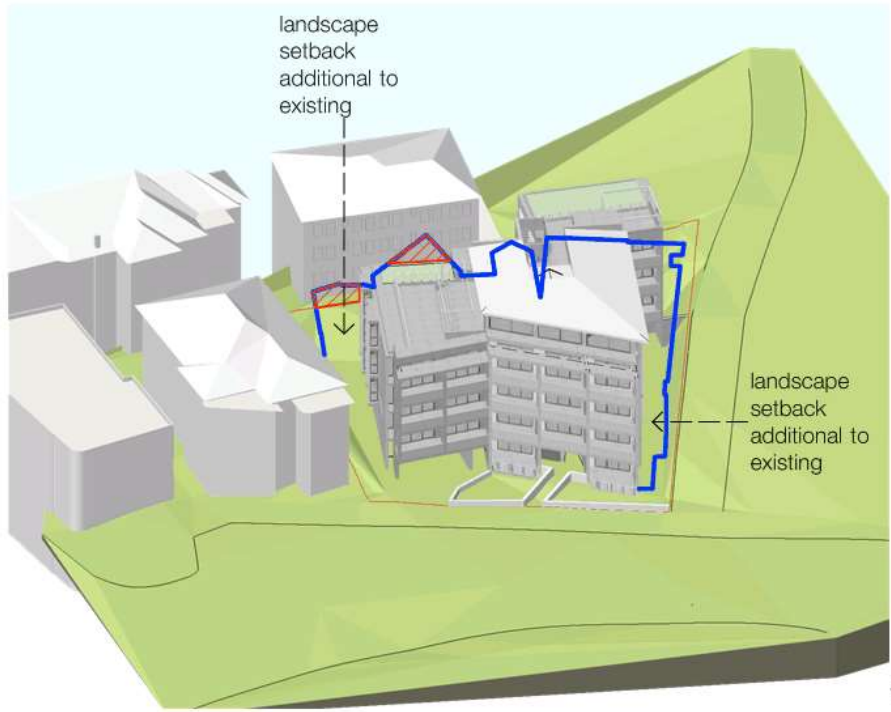
9am



10am



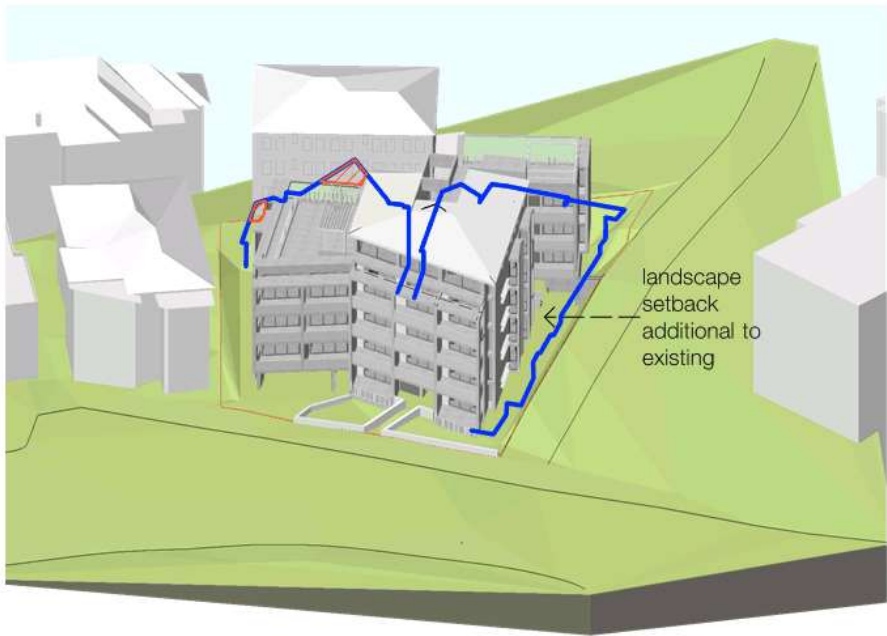
11am



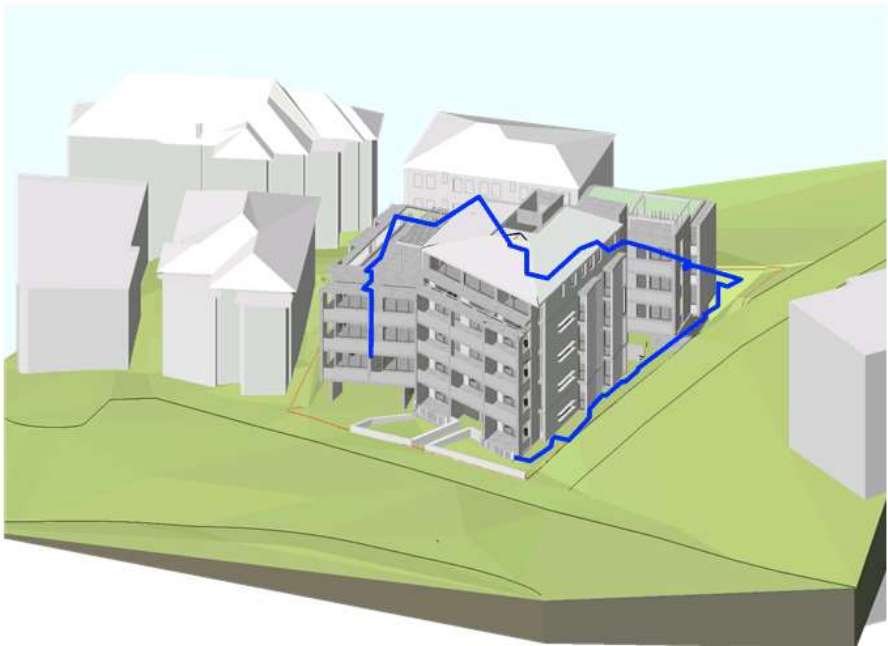
12pm

- outline of existing built form
- Neighbouring elements shaded by the existing, not the proposal
- Boundary
- Views set from the sun - all visible elements are in light at the stated times
- June 21 - Winter Solstice

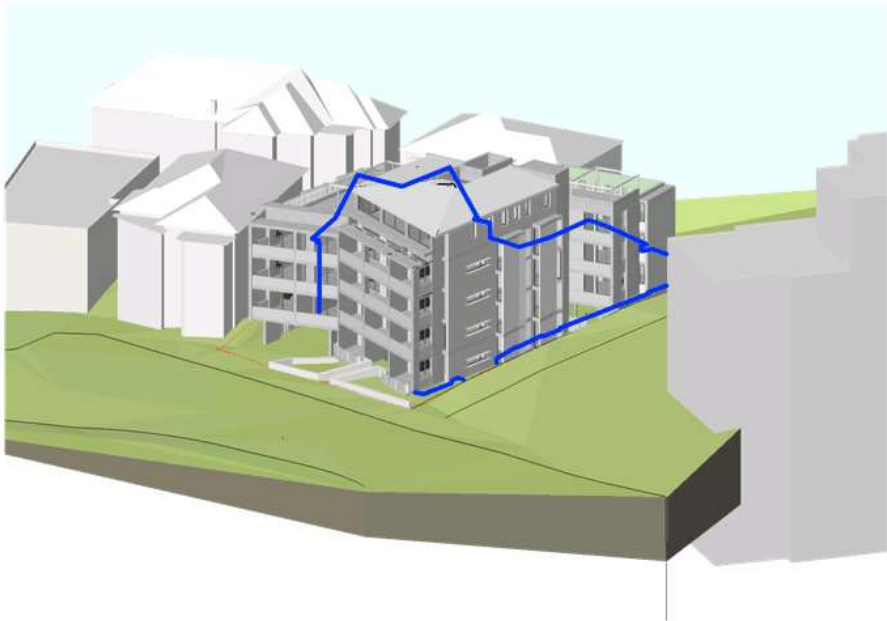
<div>ARCHITECTS:</div> <div>hill thalis</div> <div>ARCHITECTURE + URBAN RESEARCH PTY LTD</div> <div>44/45, 1, 28-32 New South Head Rd</div> <div>Sydney NSW 1585 Australia</div> <div>TEL: 02 9331 2010</div> <div>EMAIL: contact@hillthalis.com.au</div> <div>WWW: www.hillthalis.com.au</div> <div>© Copyright in all documents and drawings prepared by Hill Thalis and in any work executed from those documents and drawings shall remain the property of Hill Thalis or its creation used in Hill Thalis</div>	REV	DATE	AMENDMENT	PROJECT	DRAWING TITLE				
					Solar Impact to Neighbours from sun				
					JOB NO	DRAWN	SCALE	DRAWING NO.	
					18.41	BD	NTS	DA 2.608	
					DATE	CHECKED	PLOT DATE	REVISION	
		PT	4/6/20						
				CLIENT					
				Michael Petrovic					



1pm



2pm

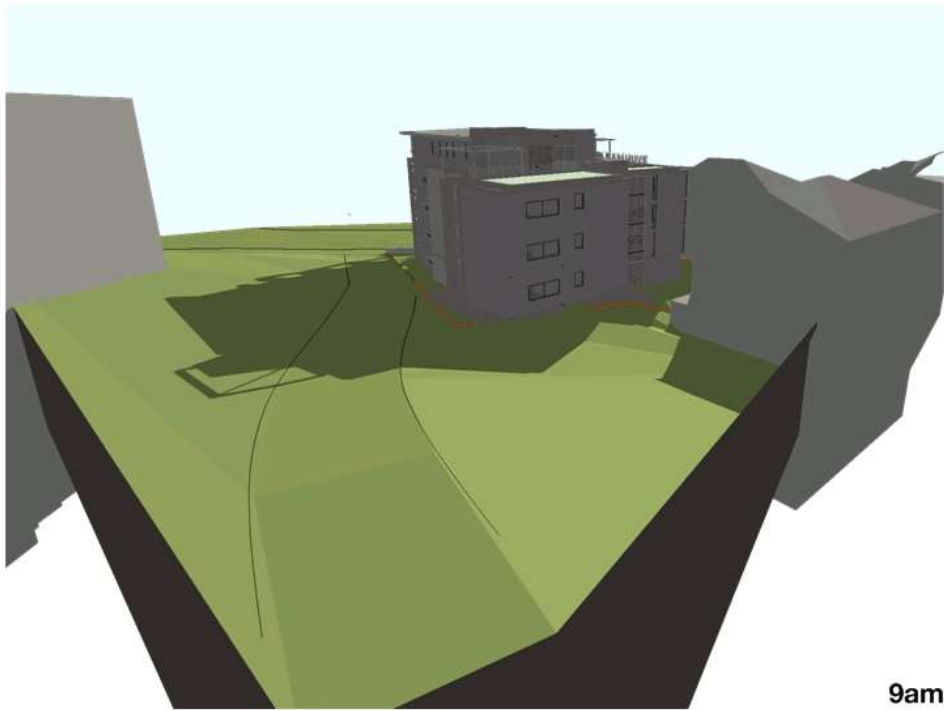


3pm

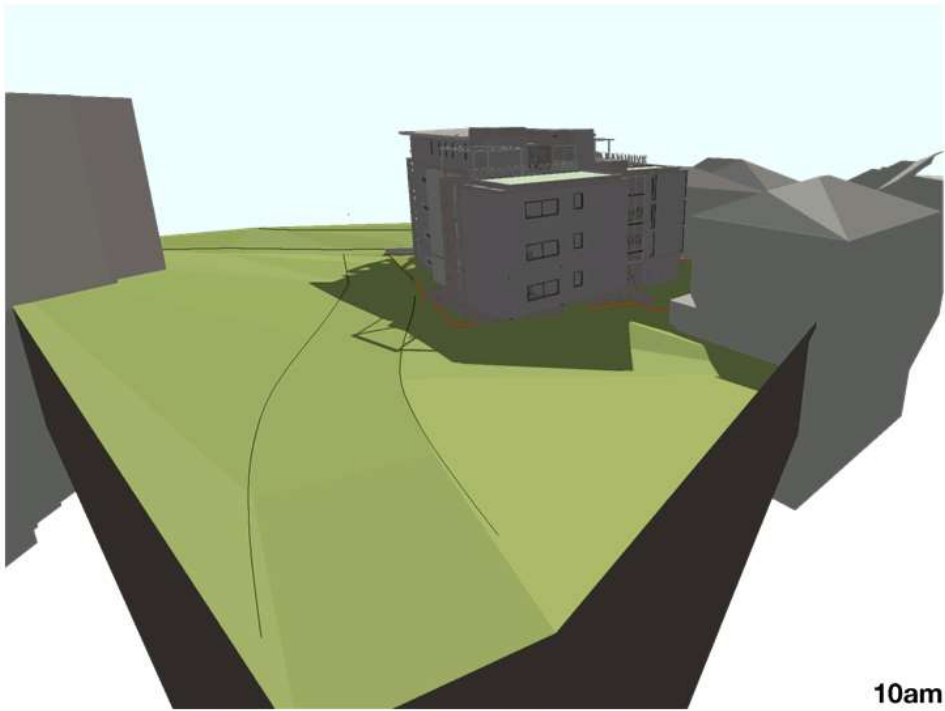
- outline of existing built form
- Neighbouring elements shaded by the existing, not the proposal
- Boundary
- Views set from the sun - all visible elements are in light at the stated times
- June 21 - Winter Solstice

<div>ARCHITECTS: <b>hill thalis</b> <small>ARCHITECTURE + URBAN RESEARCH PTY LTD</small> 34/46, 1, 28-32, Newcombe Ave, Sydney NSW 1585, Australia 02 9211 2411, 02 9211 2411 h.thalis@hillthalis.com.au, h.thalis@hillthalis.com.au h.thalis@hillthalis.com.au, h.thalis@hillthalis.com.au © Copyright in all documents and drawings prepared by Hill Thalis and in any work executed from those documents and drawings shall remain the property of Hill Thalis or its creation used in Hill Thalis</div>	REV A B	DATE 26/11/19 4/6/20	AMENDMENT Revised Development Application Revised Development Application	PROJECT 351-53 New South Head Rd Double Bay NSW 2028	DRAWING TITLE Solar Impact to Neighbours from sun			
					JOB NO 18.41	DRAWN BD	SCALE NTS	DRAWING NO. DA 2.609
					CLIENT Michael Petrovic	DATE PT	CHECKED 4/6/20	REVISION B

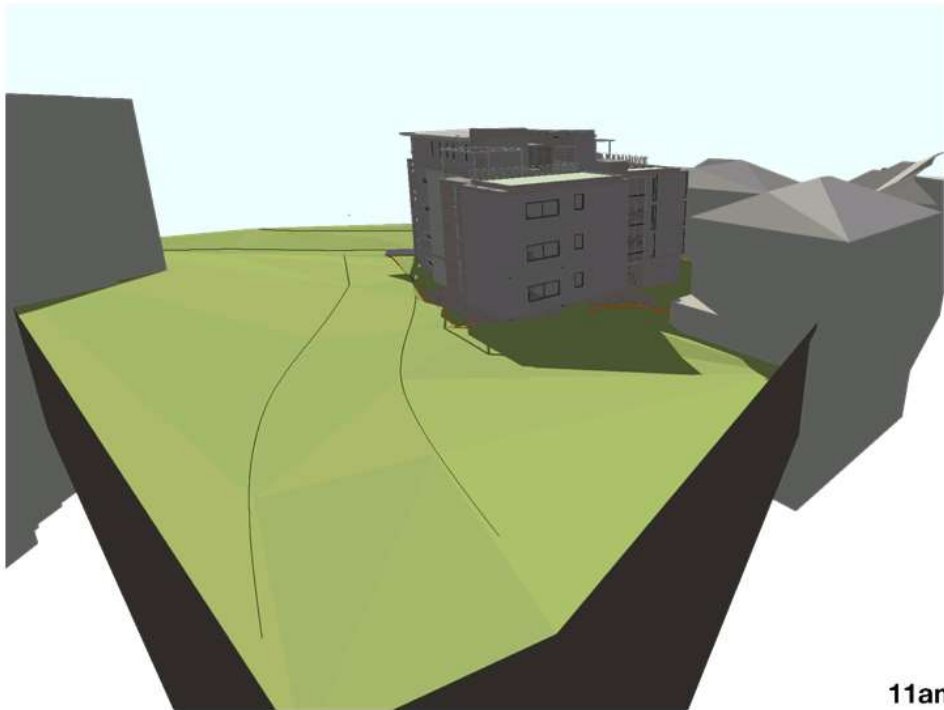




9am



10am



11am

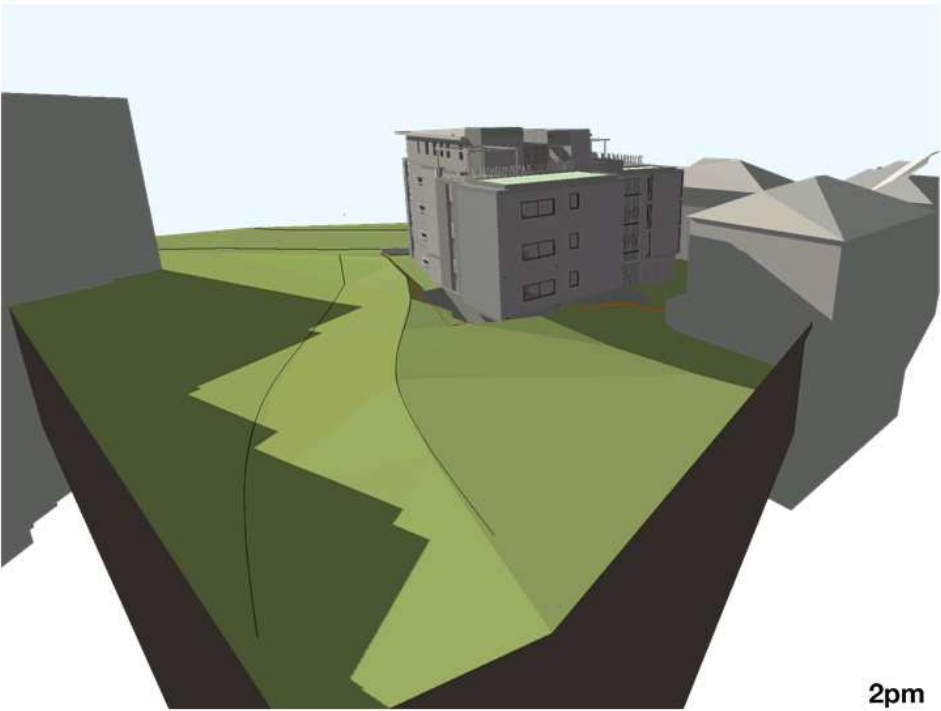
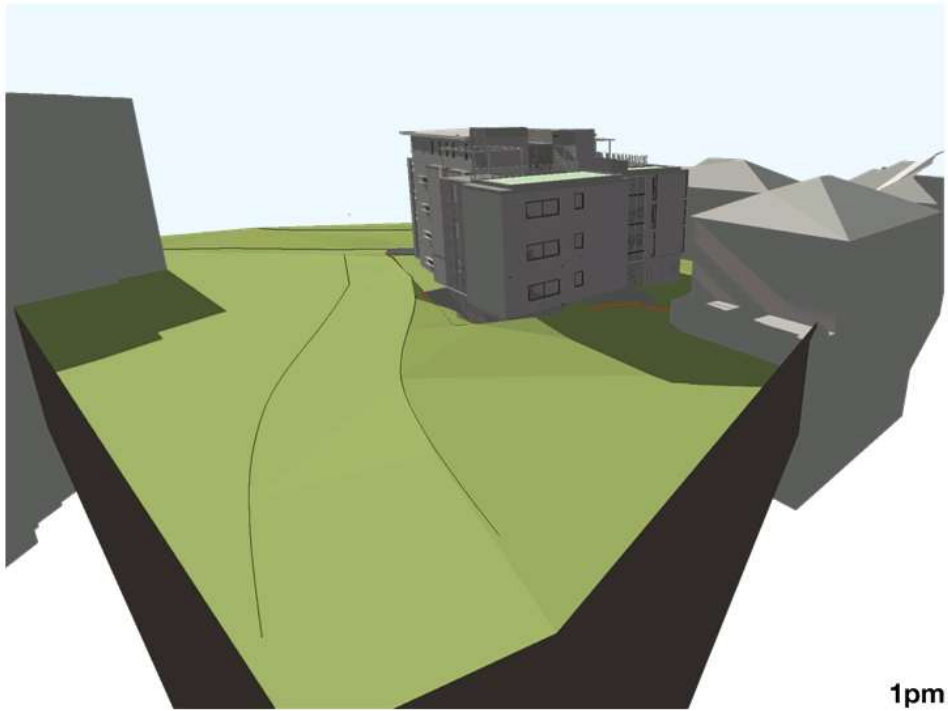


Boundary  
12pm

June 21 - Winter Solstice

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	A	26/11/19	Revised Development Application		JOB NO	DRAWN	SCALE	DRAWING NO.
	B	4/6/20	Revised Development Application		18.41	BD	NTS	DA 2.610
	CLIENT	DATE	CHECKED		PLOT DATE	REVISION		
	Michael Petrovic		PT		4/6/20		B	

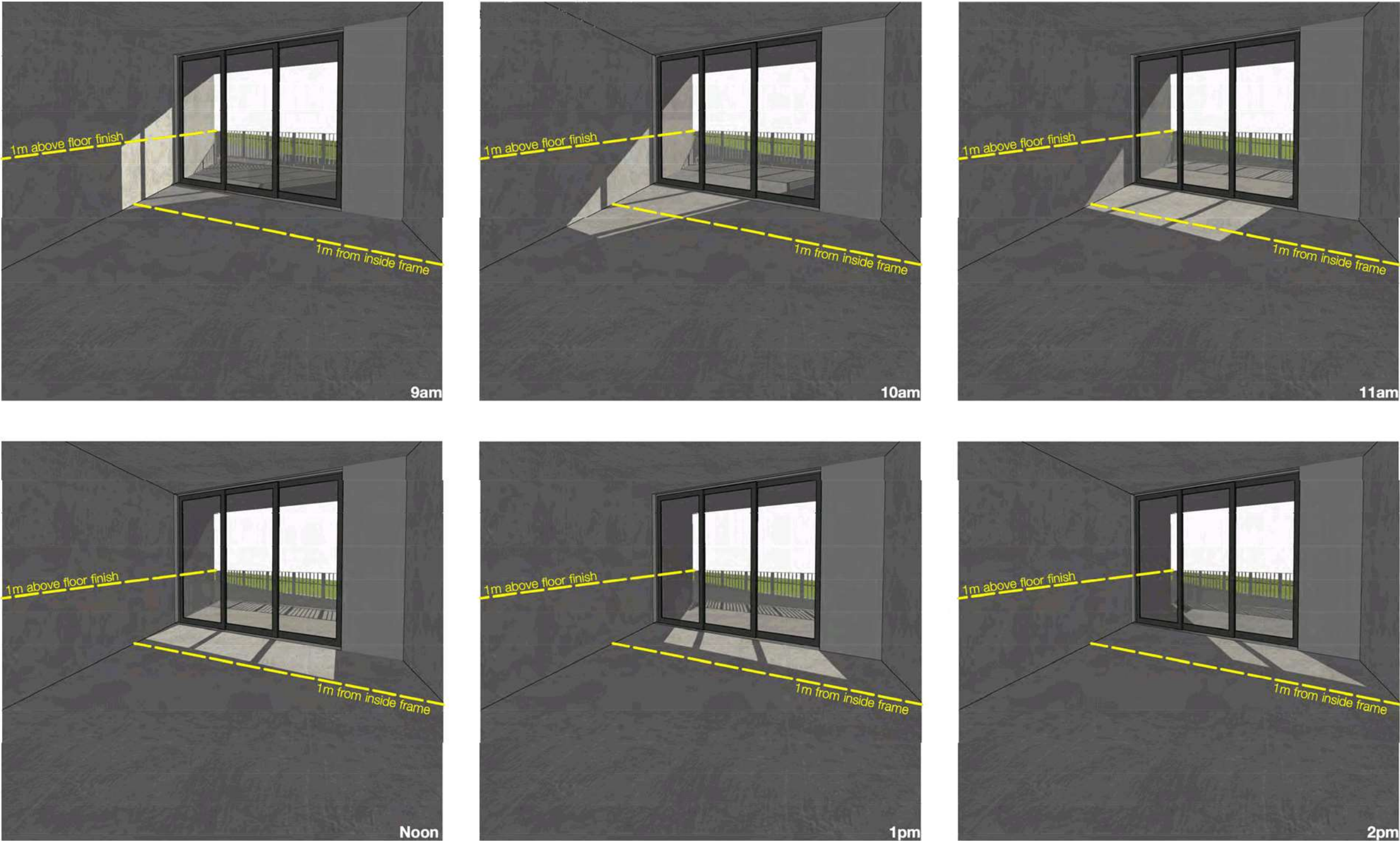




— Boundary

June 21 - Winter Solstice

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		A	26/11/19	Revised Development Application		JOB NO	DRAWN	SCALE	DRAWING NO.
		B	4/6/20	Revised Development Application		18.41	BD	NTS	DA 2.611
						CLIENT	CHECKED	PLOT DATE	REVISION
		Michael Petrovic						DATE	PT



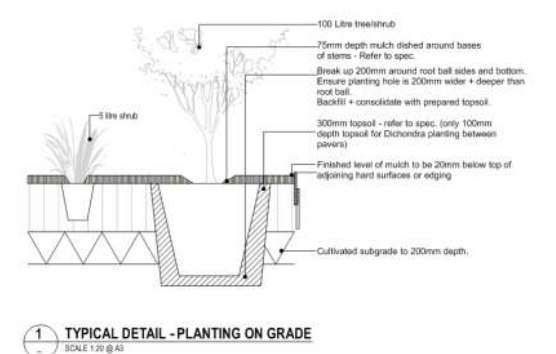
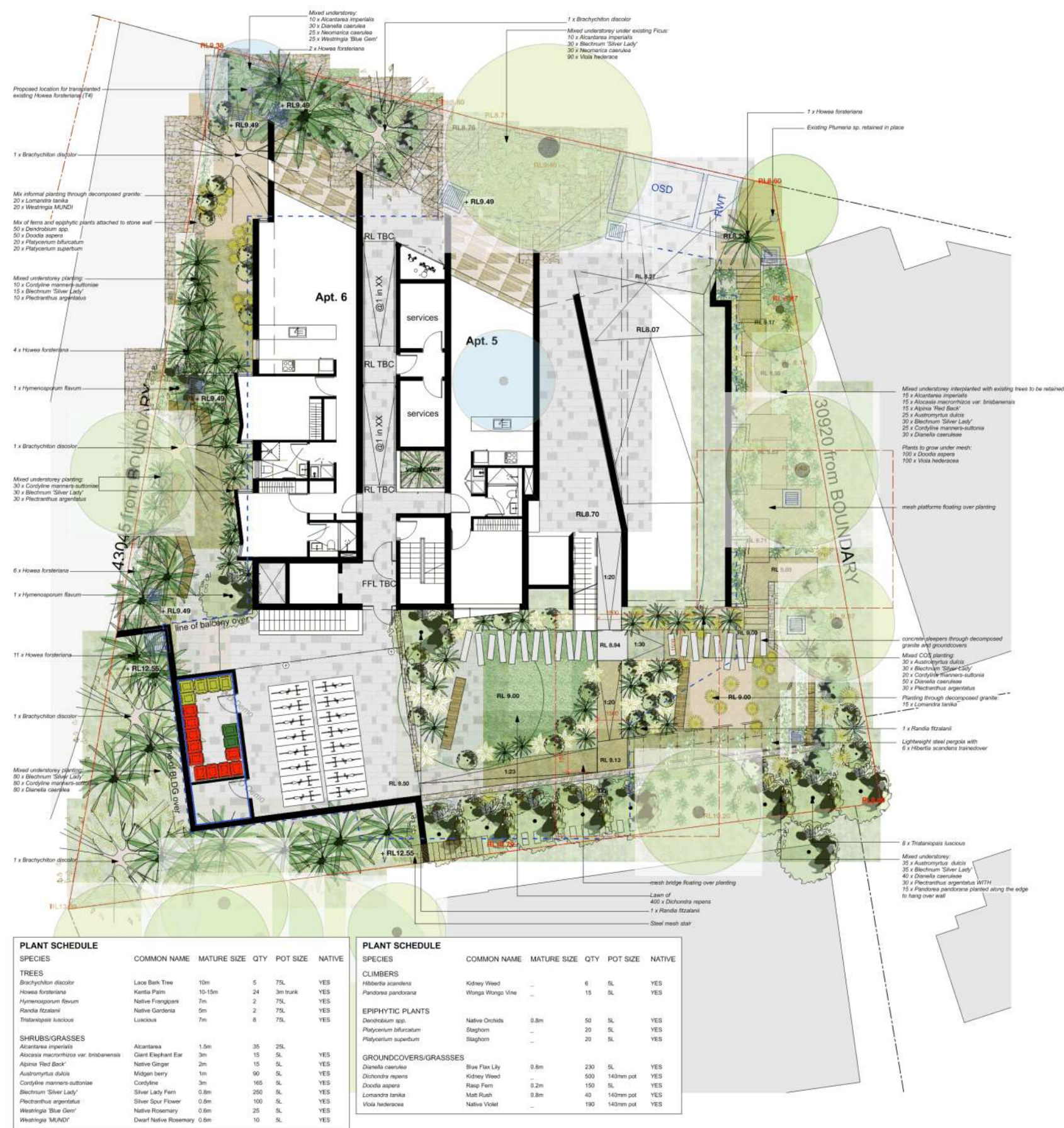
Typical Apartment - direct sunlight to living rooms and private open space on June 21 - Winter Solstice

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paving - TBC

decomposed granite

timber seat

RL 29.92

proposed levels

2<sup>nd</sup>

existing levels

Pit - refer to Stormwater Engineer's drawings

RWO  
○

Rain Water Outlet - refer to Stormwater Engineer's drawings

NOTES

All edging to garden to beds to be mild steel

All raised planters to allow for a minimum 650mm soil depth.

C

FOR DA SUBMISSION

26.03.19

B

DRAFT PLANTING REVISED

21.02.19

A

DRAFT

20.02.19

ISSUE

AMENDMENT

DATE

LANDSCAPE ARCHITECT

melissa wilson

landscape architects

Level 1, 276-278 Green Street,  
Docklands NSW 2010  
p. 9281 4365  
m. 0416 112 882  
e. melissa@refinednswn.com.au

ARCHITECT

hill thalis

architecture + urban projects pty ltd  
GPO L 40/2 Victoria Road  
Sydney NSW 2010 Australia  
P.O. Box 4205, Pitt St NSW 2011  
t administration 02 9216 2000, show @hillthalis.com.au  
www.hillthalis.com.au, P.O. Box 4205 Sydney NSW 2011

CLIENT

Michael Petrovic

PROJECT

351-53 NEW SOUTH HEAD RD  
DOUBLE BAY NSW 2028

DRAWING TITLE

LANDSCAPE  
GROUND FLOOR

SCALE

DRAWN

PROJECT NO.

1:100@A1

MW

1877

DWG NO.

ISSUE

LS01

C

N

NOTES

REFER TO DETAIL SURVEY FOR SITE IDENTIFICATION,  
BOUNDARY INFORMATION & LEVELS.  
ALL LEVELS AND DIMENSIONS TO BE CONFIRMED ON  
SITE. IF ANY DISCREPANCIES OCCUR PLEASE NOTIFY  
THE LANDSCAPE ARCHITECT









### Request for variation of a development standard pursuant to clause 4.6 of the Woollahra Local Environmental Plan 2015 (WLEP).

This Report has been prepared in accordance with clause 4.6 of the Woollahra Local Environmental Plan 2014 (WLEP). Clause 4.6 of the WLEP allows for a development standard to be varied. The amended development proposal seeks to vary the development standard for the height of buildings, contained at Clause 4.3 of the WLEP for Height of Buildings.

A variation to Clause 4.4, which prescribes floor space ratio is no longer relevant to this application. The additional floor space ratio proposed within the development that is above that permitted by clause 4.4, being 1:1, is incorporated into the development for the purpose of affordable housing, pursuant to Part 2 of State Environmental Planning Policy (Affordable Rental Housing) 2009.

The purpose of this Report is to provide sufficient justification to vary the development standard.

#### The Site

The site is located at 351-353 New South Head Road, Double Bay and is legally described as Strata Plan 2583 and Lot 2 in Deposited Plan 1081202. The site has a total area of 1,233m<sup>2</sup>.

#### The Development Application (DA)

The development application is for demolition of the existing buildings across the site, excavation for basement parking and associated building services and construction of a part four and part five storey residential flat building comprising 18 apartments, as set out in the table below.

Table 1: Apartment Summary

Bed Type	No of Apartments
Studio	2
1-Bedroom	2
2-Bedroom	9
3-Bedroom	4
<b>Total</b>	<b>17 apartments</b>

Of the aforementioned apartments proposed, 3 x 2 bedroom apartments and 1 x 3 bedroom apartment (total 4 apartments) are proposed to be used for the purpose of affordable housing.

In preparing this Report, regard has been had to the following:

- Architectural drawings, prepared by Hill Thalys Architects
- Architectural Design Statement (ADS), prepared by Hill Thalys Architects
- Landscape architecture drawings, prepared by Melissa Wilson Landscape Architects.

### The Development Standards

*Height of Buildings (clause 4.3) Clause*

4.3 of the WLEP states:

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

The height of buildings map stipulates a limit of 10.5m.

#### *Definitions*

The Dictionary to the WLEP provides the following in relation to building height:

*building height (or height of building) means:*

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing)<sup>i</sup> to the highest point of the building, or*

- (b) *In relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

*including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

### Is Clause 4.3 a Development Standard?

Clause 4.6 can only be used to vary a development standard. Development standards are relevantly defined in s 1.4 of the *Environmental Planning & Assessment Act 1979 (EP & A Act)* *inter alia* as follows:

**development standards** means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...

- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*



Being a provision of the WLEP in relation to the carrying out of development, under which a requirement is fixed in respect to height of buildings in the relevant zone, clause 4.3(2) of the WLEP is a development standard. Accordingly, clause 4.6 can be used to approve a variation to the standard.

As noted by the Chief Judge of the Land & Environment Court of NSW in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, [**Initial Action**], clause 4.6 is facultative in permitting a consent authority to grant consent for development even though that development would contravene a development standard set by an environmental planning instrument.

### The Proposal's Non-Compliance with the Development Standards

The table below provides both the development standard and the proposed building height.

Table 2: Summary of Proposed Development

Standard		Proposed	Non-Compliance
Height of Building	10.5 m	16 m	5.5 m (at maximum point.)

### Variation to the Development Standards Clause

4.6(3) of the WLEP states:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

These matters are addressed below.

(a) *that compliance with the development standard is unreasonable or unnecessary*

The common approaches for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. Cases such as *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, *Randwick Council v Micaul Holdings Pty Ltd* [2017] NSWLEC 7 and, most recently, *Initial Action*, have confirmed that adopting the *Wehbe* principles remains an appropriate approach.

There are five alternatives set out in *Wehbe*, but only one need be satisfied as provided in the table below.

Table 3: The *Wehbe* Principles



The objective of the development standard is achieved notwithstanding non-compliance with the standard	In this case, the objective of the development standard is achieved, notwithstanding noncompliance with the standard.
The underlying objective or purpose of the development standard is not relevant	Not applicable
The underlying objective or purpose would be defeated or thwarted if compliance was required	Not applicable
The standard has been abandoned or destroyed	Not applicable
The zoning of the land was unreasonable or inappropriate such that the standards for the zoning are unreasonable or unnecessary.	Not applicable

#### Achievement of the objectives of the development standards

The objectives for height of building are addressed below, as it relates to the noncompliant parts of the building.

to establish building heights that are consistent with the desired future character of the neighbourhood.

The desired future character of the neighbourhood is encapsulated within the zone objectives and the desired future character statement for the Wallaroy Precinct, contained in the Woollahra DCP.

Table 4: Compliance with the zone objectives

1 Objectives of zone	Comment
<ul style="list-style-type: none"> <li>To provide for the housing needs of the community within a medium density residential environment.</li> </ul>	<p>The proposed development will provide 18 apartments within the context of the medium density environment that surrounds the subject site. The diversity in apartment sizes and types ensures that various housing needs will be provided for. This is furthered by the inclusion of affordable housing extending to six of eighteen units within the development which will supply accommodation at a rate below the standard market value for rental accommodation. This is seen as a significant positive outcome to provide for housing needs in a location where there is a defined shortage or lower cost accommodation.</p>
<ul style="list-style-type: none"> <li>To provide a variety of housing types within a medium density residential environment.</li> </ul>	<p>As detailed in the apartment mix, the proposed development provides diversity of apartment types that are suited to the medium density residential environment.</p>



<ul style="list-style-type: none"> <li>○ To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> </ul>	<p>The proposed development provides only for residential needs due to the proximity of other services available to the east and west of the site in the Double Bay Village and Edgecliff Centre.</p>
<ul style="list-style-type: none"> <li>○ To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.</li> </ul>	<p>The proposed height and scale of the development is contextually appropriate and consistent with the desired future character of the neighbourhood. It provides a considered design outcome that will allow for a diversity in apartment size that caters to local demand for residential accommodation, whilst fitting within the site constraints and those around the subject site, particularly having regard to the landscape character prevalent within the immediate vicinity.</p> <p>Further, the inclusion of affordable housing within the proposed development, which causes additional building height subsequent upon the additional floor space proposed, does not result in the built form being inconsistent with the desired future character of the neighbourhood.</p>

***Desired Future Character – Wallaroy Precinct***

*Development is to establish a transition from the large subdivisions and residential flat buildings at New South Head Road and Edgecliff Road to the dwelling houses situated on the slopes. There is a mix of old and new buildings within this precinct. Alterations and additions to the period houses should retain key elements of the original buildings, including sense of the spacious grounds, setbacks and traditional roof forms, as viewed from the street. New dwellings may have contemporary designs, but should not detract from adjoining period housing or the predominant character of the streetscape immediately surrounding the site. Particular consideration should be given to establishing consistent front and side setbacks, and providing compatible materials, roof forms and street walls. On sloping sites, development should step down the site to maintain views, protect the privacy and solar access of adjoining and adjacent properties, and minimise cut and fill. Residential flat buildings are permitted in the northern part of the precinct up to a height of six storeys. Where these sites adjoin properties with a lower height limit, development is to establish a sympathetic transition to the boundaries; this may be through a graduation of building bulk and height, increased setbacks, or both. Development adjacent to the Woollahra Heritage Conservation Area must suitably respond to the significance of the HCA.*

The aforementioned statement makes clear that New South Head Road is dominated by apartment buildings. Further, the latter part of this statement is relevant to the proposed development. The subject site is positioned immediately adjacent a series of residential flat buildings of varying scales and proportions,





affected by the slope of the land, from west to east and south to north. The Architectural Design Statement provides the following:

*The design is based on a thorough analysis of the existing conditions (see urban analysis drawings DA 2.002-2.004 in DA submission). The scale of neighbouring buildings is diverse, varying between 2 and 13 storeys in height. This is due to the incremental redevelopment over the last 8 decades of the lower buildings around Double Bay, which have been gradually replaced by more intensive forms of development. Frontage widths and setbacks vary greatly throughout the area.*

The part four and part five storey building form proposed establishes a sympathetic transition both to the site boundaries and to the broader context of nearby buildings, where there is a significant differentiation in form, architectural design and building scale. Despite the upper floors of the building exceeding the development standards for building height, this has been suitably designed to ensure that a sympathetic relationship is achieved, especially to the taller building to the west and south of the site.

to establish a transition in scale between zones to protect local amenity,

The zoning map below demonstrates that, surrounding the site, there is a consistent desire for medium density housing. As the proposed development is for such purpose, and the adjoining properties benefit from the same zone, there is no apparent need for a transition in scale because of a change in zone.

Further, the Architectural Design Statement provides that:

*As is appropriate so close to major centres, both sides of New South Head Road and all the lots behind have long been zoned by Council to enable apartment buildings and shop top housing, and many of the neighbouring residential buildings in the immediate visual catchment well exceed the current height and floor space controls, there are quite a number of taller buildings dotted throughout the areas to the south and west, which all sit on higher ground than the subject site, and so are far more visually prominent.*

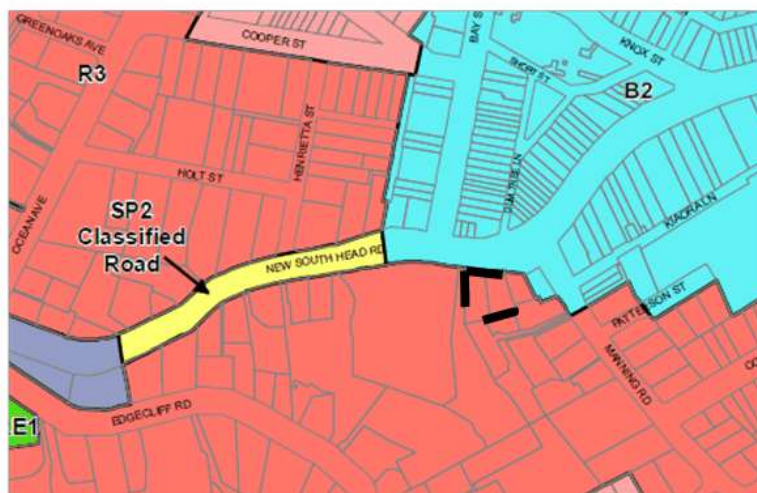


Figure 1: Zoning Map



In terms of the height standards for surrounding sites, those in the vicinity of the subject site, generally seek for a taller built form than that proposed on the subject site. This includes 14.5 m (N5) on the corner with Manning Road and on the opposing side of New South Head Road.



Aside, however, from the technical standard, is the as-built context immediately surrounding the site. Most telling is the photomontage provided which shows how the building fits within its immediate context and, in particular, the transitional nature of the form, coming down New South Head Road, towards the Double Bay Village. The demonstration of scale shows the building's context positioned either side of the subject site, with the proposed height of the development fitting comfortably between the two, without appearing obtrusive in the landscape. Specifically, to the site is the following in the Architectural Design Statement:

*The west side boundary is to an ascending driveway which services the residential tower building to the south. Further west on higher ground is a blocky 5 to 7 storey apartment building set in extensive lush gardens. Due to the dense mature planting, the harbour is hardly visible from the subject site. Therefore, the proposal's mass is concentrated to this frontage, rising to 7 storeys to the street and 4 storeys plus a common roof terrace on the higher ground to the rear.*

Further, as stated in the Architectural Design Statement, the other pertinent aspect is that:

*Outside the commercial centre, which is directly opposite the site and only just to the east, landscape setbacks are common, particularly the major landscape frontage to the immediate west. The design forms an appropriate transition between these conditions, retaining and extending the existing sandstone street wall and setting back the building to retain in a planted foreground a semi-mature Moreton Bay fig tree that is close to the wall.*

to minimise the loss of solar access to existing buildings and open space,





Behind the subject site are a series of gardens, known as Overthorpe. The proposed development will have some degree of impact on the solar access enjoyed by these at mid-winter. However, this is modest and enables sunlight over this area during the morning period and therefore complies with the relevant control for the amount of solar access received. Further, despite the building height, the viability of the existing vegetation to the south will not be compromised. The Flora and Fauna Assessment provides the following:

*Presently, the understorey and ground cover within the Overthorpe Gardens receive sunlight during the late afternoon. However, the Gardens are in shade for the majority of the day due to the dense canopy of mature trees. It is evident that the Gardens are tolerant of dense shade and have persisted due to the current low light conditions.*

*The shadow diagrams prepared by Hill Thalys (Appendix E) indicate minimal shade will be cast over the east frontage of the Gardens. Thus, any future development within the study area is unlikely to result in any adverse impact on the vegetation within the Overthorpe Gardens.*

To the existing building to the south, the shadow diagrams demonstrate that there is no material change to the solar access enjoyed to that building arising from the non-compliant component of the proposal. This has arisen from a skilful design approach that has a separation distance of 12 m to that portion of the building on the subject site from the boundary, align with limited form at the rear, on the western side of the proposed building that would cause adverse impact. This space is configured as a communal garden and will improve the outlook and amended of the immediate neighbours.

As such the objective to retain solar access, despite the additional height of the building above the development standard, is achieved.

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

#### Views

The non-compliant part of the development relates to part of Level 3 and the whole of Level 4 of the proposed development.

In terms of the effect of the non-compliant portion of the development, and its potential impact on view loss, the affected property would be directly west of the subject site, at No. 337 New South Head Road. The view available from the adjoining property would be when standing on the balconies located on the northern face of that building, looking in a northerly direction. The first balcony floor level is RL 23.47. When a standard eye height of 1.6m is applied this, the RL becomes RL 25.07.

The position of the proposed building form ceases at RL 25.55.



Figure 4: Northern elevation of the proposed development, facing New South Head Road

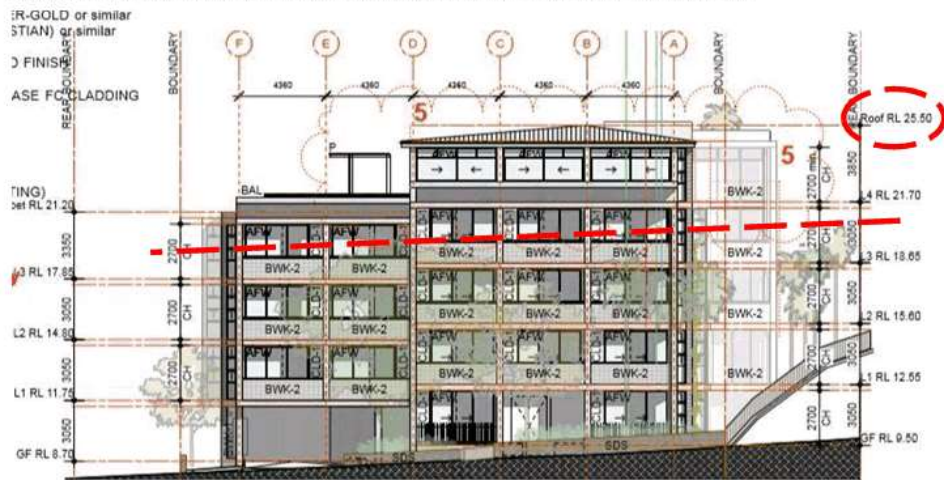


Figure 5: Section of the proposed development, showing RLs of adjoining property to the west

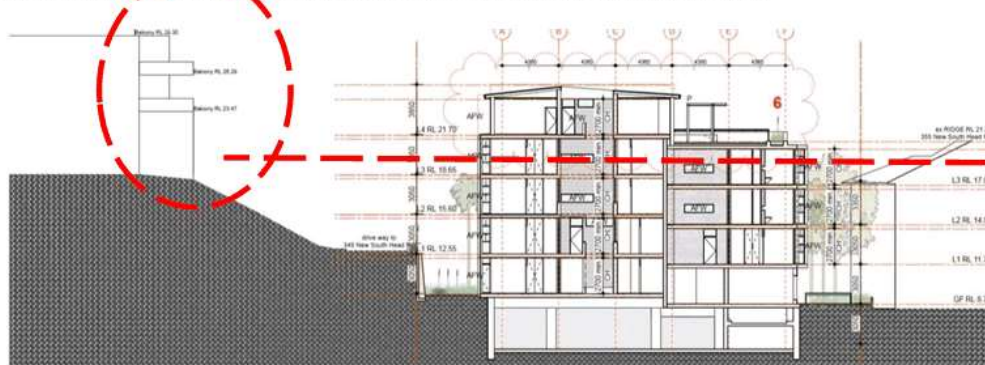


Figure 6: View of potentially affected balconies at 337 New South Head Road



This could potentially mean that there was a minor loss of 500mm of the oblique view when standing on the balcony as highlighted above. However, the position of the buildings at 337 New South Head Road means that the view is in a forward, northerly direction, from the balcony and does not transverse the subject site.

Even if this were to occur in part, the whole of the view would not be obstructed, only a very minor portion.

Therefore, from the adjoining property, the non-compliant component of the proposed development does not impede the view corridor from 337 New South Head Road.

Further the property to the rear (south) of the subject site is not affected, as the existing buildings on the site already obscure the view towards New South Head Road.

Therefore, there is no impact on potential views enjoyed from neighbouring properties as a result of the additional height proposed, over and above the development standard.

#### Loss of Privacy

On Level 3, the floor plan below demonstrates that the outlook from windows that are proximate to the site boundaries are angled in their design, vertical and enclosed on their outer walls to ensure that there are no direct opportunities for overlooking to the east, nor west of the site. Aside from this, the boundary interface is enclosed with solid walls. To the west, there is also the additional separation that is afforded by the driveway separating the two properties, along with an extensive front garden at 337 New South Head Road.





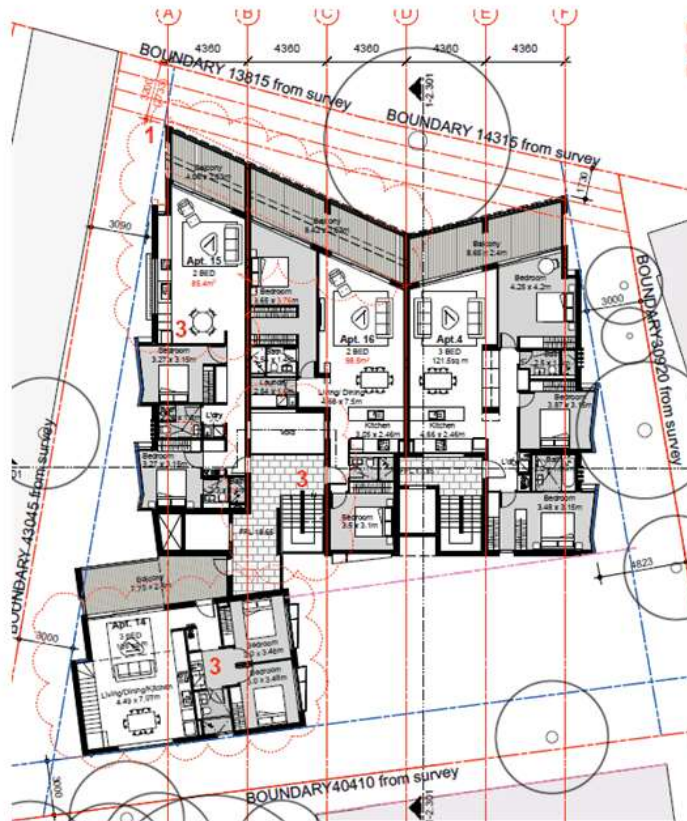


Figure 7: Third floor plan of the proposed development

At the fourth floor, the same window conditions apply to the western side of the site. For the terrace on the south-eastern corner of the subordinate building, the communal area is set in from the southern perimeter of the level below and is provided with maintenance access only. The structure is separated by the apartment surrounding this and furthered by the driveway between the properties, such that no adverse impact will result in terms of visual privacy. As such, there is no anticipated privacy impact to 337 New

South Head Road.

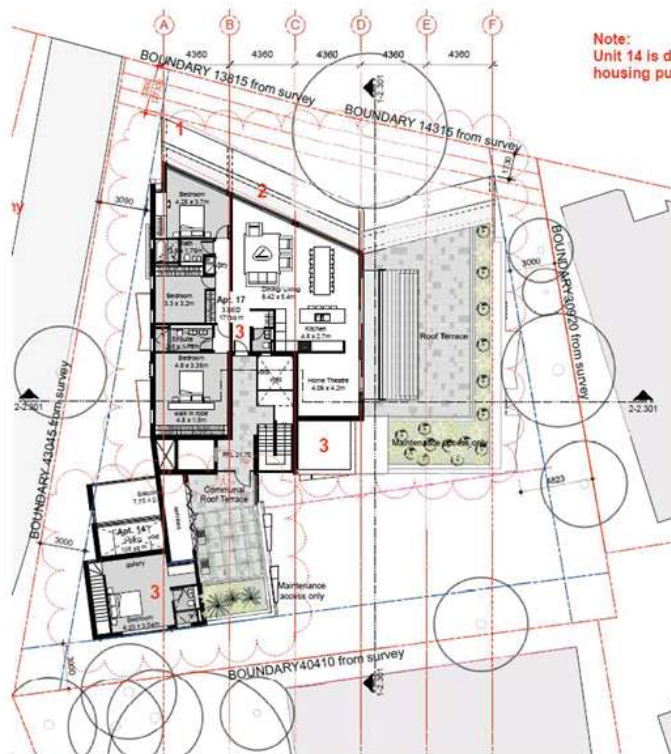


Figure 8: Fourth floor of proposed development

To the south, the private roof terrace that aligns the eastern side of the site is set, at its minimum distance, 12 m from the southern property boundary and further distances by a non-trafficable landscape area. Again, the distance and design ensure that there is no direct opportunity for overlooking to the property to the south.

To the east, the vantage is over the roof of the existing building and the parapet is set back to limit viewing down to the neighbour. However, to reduce any perceived impact the design has been



amended with a one (1) metre planter box aligning this to increase the separation distance.

Therefore, the proposed height, above that permitted, will have no adverse impact in terms of the privacy enjoyed to properties immediately surrounding the site.

Further, the Architectural Design Statement provides the following:

*Due to the restricted width of the site, the proposal departs somewhat from the numeric setback controls, however the design compensates for this by having predominantly screened or solid side elevations, the project gains daylight from all orientations, and the communal gardens that occupy the setbacks befit from sunlight and visual connections.*

#### Overshadowing

Matters of overshadowing relating to the non-compliant components of the building have been addressed above.

#### Visual Intrusion

The visual aspect surrounding the site is evidenced by the view below taken of the broader Double Bay precinct. While the subject site forms part of the Wallaroy Precinct, its primary vantage is at the interface with New South Head Road and correlates with the degree of activity and scale that forms this precinct, right through from the Double Bay Centre to Edgecliff.

This demonstrates that there is a significant depth to building form, varying scales within the precinct and a high quantum of density on individual sites. The photomontage above demonstrates that, having regard to the scale of development in the immediate vicinity of the site, the proposed height of the building, above the development standard, will not be intrusive in the visual landscape. Instead, the design of the proposal has adequate regard to the landscape features surrounding the site and enables a strong balance between built and landscape form, without being intrusive in its context. This is further reinforced by the retention of the semi-mature Moreton Bay fig tree on the New South Head Road frontage.

Figure 9: Aerial view of density within proximity of the subject site







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

There are no such views from the public domain that are relevant to this application.

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

There are sufficient environmental planning grounds, despite non-compliance with the development standards for height, as proposed on part of Level 3 and Level 4 of the building as:

- There is no adverse solar impact on the adjoining properties as a result of the non-compliant form to the south of the subject site; it is the compliant component of the building that causes effect before the non-compliant component does, such that reducing the scale of this provides no material benefit to adjoining properties.
- The proposed development provides a compliant quantum of deep soil planting areas to be enjoyed in association with the development and is not compromised as a result of the height of the building.
- The affected part of the building at Levels 3 and 4 provides a reasonable setback to the eastern boundary, having regard to the site constraints.
- The setback distance in the south-western corner of the site is sufficient having regard to the limited use of this area on the adjoining property, which is dominated by landscaping, but does not necessarily form part of a meaningful open space area, nor part of the habitable area of a dwelling.
- From the public domain, the non-compliant part of the building does not compromise the overall streetscape, being in context with the built form as it extends down the hill from the Edgecliff Centre and suitably transitions into the Double Bay Village, without compromising the visual landscaping, in



particular, which is dominated by Overthorpe's gardens to its rear. The non-compliant form is instead recessed in visual terms, particularly with the upper floor having an increased setback from the levels below, such that it fits within this landscape context and, by virtue of its materials and finishes, appears blended with the broader visual form.

- The additional height does not compromise views from the public domain surrounding the site.
- The additional height does not take away from the visual presence of the landscape setting that is provided by Overthorpe and the enjoyment of this is retained and can continue to be appreciated from New South Head Road and other vantage points in proximity to the site, despite the height of the building. The overall presence of landscaped form remains clear and evident when the property is viewed in the surrounding context.
- The quantum of height that is afforded by non-compliance with the development standard allows for the provision of additional residential accommodation of an affordable nature, in a location that is well serviced in terms of facilities, services and transport. As stated in the Architectural Design Statement:

*The site is located adjacent to the important regional centres of Double Bay and Edgecliff. Within a 5 minute/500 metres are Edgecliff train station and bus interchange, the main Double Bay shopping areas and Edgecliff commercial centre. Both centres contain many services for the benefit of residents and workers. Over 170 years of urban development, the area is evolving as a heterogeneous mix of major retail and entertainment, apartment buildings of all types and sizes, terraces and remnant individual houses.*

*The site has convenient access to Sydney's city centre, to multiple transport modes, shops, many public facilities and open spaces, and thus is well suited to this proposal as it provides high levels of amenity in an established and diverse neighbourhood.*

The Design Statement also states that:

*The site is well located close to excellent public transport, shopping and a wide range of public facilities including Council's new Library and schools, which are all within a 10 minute or less walk. There are a number of new buildings either newly built, under construction or proposed in the vicinity that accord to the proposed floor space ratios and heights.*

Given the extent of such facilities in immediate proximity, it makes strategic planning sense to utilise the location of this site to accommodate an *in situ* residential population, including in a circumstance of increased affordability, where there are sound opportunities for employment and a reduced reliance on private transport. This has positive environmental outcomes, such as reduced traffic movements and utilisation of infrastructure.



- By utilising additional building height provides a significant opportunity for meaningful communal open space as part of the proposal. An alternative scenario would see this area hemmed in by the natural topography, with limited solar access. The additional height proposed allows for this space to benefit from solar access and natural light, despite its positioning on the southern side of the building. That said, given the quantum of traffic along New South Head Road on a daily basis, communal space on the northern orientation would be a poor environmental planning outcome from an amenity perspective. The Design Statement provides that:

*To supplement the extensive though more shaded communal gardens to the rear at the ground floor, a generous communal roof terrace has been provided. This area, more than 6 metres in width, is open to the sky and mature vegetation to the rear, and so receives excellent sun – satisfying the ADG requirement. It allows all residents to enjoy the available district views. There are planters to the rear and concrete ledges and balustrades to minimise overlooking of neighbours.*

Therefore, the opportunity to elevate this space and ensure that it is afforded positive aspect in terms of privacy, view and solar access will ensure a meaningful space in association with the development. This represents a sound environmental planning response.

- Despite certain apartments being above the development standards, from an amenity perspective, the Architectural Design Statement provides the following, having regard to the non-compliant component of the development, as well as the development as a whole:

*All apartments receive controlled solar access to living areas and their various balconies and terraces.*

*All windows and sliding doors have projecting slabs and wide balcony overhangs. Winter sun will penetrate deep into all apartments as the apartment plans have a slender depth ratio. The setbacks and screen planting provides privacy to the neighbours to the south, west and east.*

*The site planning and building design maximise the benefits of passive solar design to all dwellings;*

- 17 out of 17 dwellings (100%) have windows facing north to their primary habitable rooms
- 17 out of 17 dwellings (100%) receive more than the minimum 2 hours mid-winter sun between 9am and 3pm – with many units receiving sun extended sunlight between 9am and 3pm
- all dwellings have private outdoor space that is open to sun and outlook;
- all communal areas have fresh air and daylight

Therefore, the proportion of the development above the development standard in fact improves the amenity of the building such that an equal, if not, better outcome is achieved. As such, there are sufficient environmental planning grounds to permit variation to the development standard for height.





### The Public Interest

Clause 4.6(4) states as follows:

- (4) Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) the consent authority is satisfied that:*
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

The fourth element that the Court needs to be satisfied with in order to vary the development standard is that the proposed development will be in the public interest if the standard is varied because it is consistent with the standard's and zone's objectives.

Preston CJ in *Initial Action* (para 27) described the relevant test for this requirement as follows:

*"The matter in cl 4.6(a)(ii) with which the consent authority or the Court on appeal must be satisfied is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purpose of clause 4.6(4)(a)(ii)."*

As demonstrated, the proposed development will comprehensively meet the objectives of the development standards for height of buildings and the zone objectives for the R3 Medium Density Residential zone.

Accordingly, the Court can be satisfied that it is in the public interest to vary the standard for the purpose of this development application. The implementation of the development, despite non-compliance, will ensure that existing resources are utilized without placing undue pressure on the surrounding environment, both natural and built, while comply with the relevant objectives and producing a better outcome for the development, due to its own site constraints.



Further, the provision of affordable housing within the development, by way of six additional dwellings, will provide a significant contribution in a market place where there is extremely limited affordable housing stock. The provision of integrated stock, that is not provided independently or separately, ensures that holistic communities are created, despite the socio-economic status of residents. This is a far more effective and socially integrated outcome, from a public interest perspective.

The flexibility enabled by clause 4.6 will, in this case, produce a better environmental planning outcome than would result from strict compliance, which would not result in the provision of affordable housing in association with the development proposal.

#### **Secretary's concurrence**

By Planning Circular dated 21 February 2018, the Secretary of the Department of Planning & Environment advised that consent authorities can assume concurrence to clause 4.6 requests except in the circumstances set out below:

- Lot size standards for rural dwellings
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The Circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP processes and determinations are subjected to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case.

#### **Conclusion**

The development application for the site at 351-353 New South Head Road, Edgecliff does not comply with the development standard contained at clause 4.3 of the WLEP. However, the proposal achieves the requirements pertaining to clause 4.6 of the WLEP, which allows for development standards to be varied.

Accepting the control for height of buildings as a development standard, the component of the building that exceed the height control provide a superior outcome for the site that is enunciated through a skillful and quality design that is consistent with the objectives of the standards and the zone objectives. Further, it enables affordable housing stock to be provided for a ten year period that would not otherwise be incorporated into the development. The site, given its proximity to retail, commercial and service facilities, as well as public transport, makes it highly accessible and attractive for the integrated development, as proposed. As such, it satisfies the public interest by deviating from the development standards.



The variation to the development standards should therefore be supported by the consent authority in the circumstances of the case.

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<sup>1</sup> *ground level (existing) means the existing level of a site at any point*



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### Design Verification Statement - Development Application

State Environmental Planning and Assessment Policy No. 65:  
Design Quality of Residential Flat Development

project	17 Apartments 351 – 353 New South Head Road, Double Bay
to	Woollahra Municipal Council
prepared by	Philip Thalís, Registered Architect [NSW ARB registration number: #6780]
date	18 <sup>th</sup> December, 2019

In accordance with the SEPP 65 requirements;

- As the nominated qualified designer, I verify that I led the design, prepared the SEPP 65 Design Statement and reviewed all drawings for the amended Development Application which seeks consent to construct 17 apartments in a new building at 351 – 353 New South Head Road, Double Bay.
- I hereby verify that the proposal has been designed in accordance with and in reference to the Design Quality Principles of the SEPP 65 and the Apartment Design Guide.

Yours Faithfully,



Philip Thalís LFRAIA  
Registered Architect [NSW ARB registration number: #6780]  
Director, Hill Thalís Architecture + Urban Projects

LEVEL 5, 68-72 Wentworth Ave  
Surry Hills NSW 2010 Australia  
T 02 9211 6276 F 02 9281 3171  
E admin@hillthalis.com.au  
www.hillthalis.com.au

# hill thalis

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18<sup>th</sup> December, 2019

Job no 18.41 PT/BD

## **351-53 NEW SOUTH HEAD ROAD, DOUBLE BAY DESIGN QUALITY STATEMENT**

This statement accompanies the replacement Development Application on the above site, reflecting the various changes to the proposal (detailed in red on all the plans, sections and elevations) and responding *inter alia* to comments made by Woollahra Council's Urban Designer (*noted in italics*).

### **1.0 CONTEXT AND NEIGHBOURHOOD CHARACTER**

#### An ideally located site

The site is located adjacent to the important regional centres of Double Bay and Edgecliff. Within a 5 minute / 500 metres are Edgecliff train station and bus interchange, the main Double Bay shopping areas and Edgecliff commercial centre. Both centres contain many services for the benefit of residents and workers. Over 170 years of urban development, the area is evolving as a heterogeneous mix of major retail and entertainment, apartment buildings of all types and sizes, terraces, and remnant individual houses.

The site has convenient access to Sydney's city centre, to multiple transport modes, shops, many public facilities and open spaces, *the harbour foreshore*, and thus is well suited to this proposal as it provides high levels of amenity in an established and diverse neighbourhood.

#### A Positive Street Presence

The site is an amalgamation of two large irregular lots, each occupied by large houses which have had some commercial use. The address is to the northern boundary that fronts New South Head Road, which is the primary connective main street for the eastern suburbs that hug the harbour's southern shores. The street frontages have a range of heights, varying between two large storeys up to nine storeys. Outside the commercial centre, which is directly opposite the site and only just to the east, landscape setbacks are common, particularly the major landscape frontage to the immediate west. The design forms an

Philip Thalís ARB #6780

Sarah Hill ARB #5285

Nominated Architects

LEVEL 5, 68-72 Wentworth Ave

Surry Hills NSW 2010 Australia

T 02 9211 6276 F 02 9281 3171

E admin@hillthalis.com.au

www.hillthalis.com.au



# hill thalis

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appropriate transition between these conditions, retaining and extending the existing sandstone street wall and setting back the building to retain in a planted foreground a semi-mature Moreton Bay Fig tree that is close to the wall.

*In contradistinction to Council's Urban Design response, the varied urban scale is well represented in detailed urban analysis drawings DA2.002 - 2.005 that form part of this application. Council's UD statement that buildings along New South Head Road between Manning Road and Edgecliff have a 'predominant scale of 2-3 storey is no longer accurate – such buildings are the exception, and the recently approved and constructed buildings on this side of the street are 4-5 storeys.*

*Notwithstanding the controls in the Double Bay Centre DCP, which my office prepared for Council, a number of applications in the centre have approved by Council with increased heights than envisaged by the DCP.*

Overall, the design responds to its particular site conditions, appropriately addressing the varied and evolving character of street frontage and the topography.

### An established medium / high density area

As is appropriate so close to major centres, both sides of New South Head Road and all the lots behind have long been zoned by Council to enable apartment buildings and shop-top housing, and many of the neighbouring residential buildings in the immediate visual catchment well exceed the current height and floor space controls. There are quite a number of taller buildings dotted throughout areas to the south and west, which all sit on higher ground than the subject site, and so are far more visually prominent. In contrast, many of foreground commercial buildings have significant unused redevelopment potential, with opportunities for increased height similar to this proposal.

The design is based on a thorough analysis of the existing conditions (see urban analysis drawings DA2.002-2.004 in DA submission). The scale of neighbouring buildings is diverse, varying between 2 and 13 storeys in height. This is due to the incremental redevelopment over the last 8 decades of the lower buildings around Double Bay, which have been gradually replaced by more intensive forms of development. Frontage widths and setbacks vary greatly throughout the area.

*DA 2.005 clearly shows the limited visual catchment of the proposal, which is due to New South Head Road's curving alignment. Street vistas to the proposal are quite localised and the established fig tree at the front of the site will be retained, which disproves the contention that the proposal "dominates the streetscape and will disrupt the consistent landscape character of the street". Nonetheless the street setback of the northwest corner to the street has been increased to 3.2metres to allow a larger area of new planting, as detailed on the submitted landscape architects' plans. Including the landscaped*

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*space to retain the fig tree, the street setback is considerably more than the existing neighbour to the east, and also more than new developments up the hill towards Edgecliff.*

*Due to the marked topography, buildings on the eastern side of New South Head Road on both sides of the centre are seen against a backdrop of established landscape and taller buildings on the slopes above.*

*The above analysis and the documentation in the DA package show that the proposal is well-considered in terms of Context and Neighbourhood Character.*

## 2.0 BUILT FORM AND SCALE

### Building Organisation

*This replacement proposal lowers the apartment numbers from 18 to 17. The dwelling sizes are diverse within a compact urban building, comprising a reduced total of 1 527 square metres of floor space distributed over 5 residential levels above a single level basement car park. There are two residential entries accessed directly off New South Head Road via gated but open common spaces that allow views through the building to the garden beyond. At the rear on the ground floor are communal facilities and extensive common garden spaces. Accommodation on each of the levels varies;*

- Ground Floor has 2 garden apartments*
- Level 1 has 6 smaller apartments*
- Levels 2 and 3 have larger apartments*
- Level 4 has a communal roof terrace, a large penthouse and the mezzanine of the rear apartment*

*The vertical circulation comprises two centrally located cores, each with open galleries, tiled lightwells, lifts and open stairs which provide access to all levels. The smaller eastern core serves only 4 apartments, with the remainder on the western side with the lightwell and open vista to the garden. In the manner of Professor Wilkinson's Silchester apartments on the eastern slopes of Double Bay, the common circulation is made as sheltered breezeways, integrating and open to the landscape, providing a delightful homecoming for residents. BCA advice just received confirms that the stair in the western core can be opened both to the rear and to an enlarged vertical courtyard.*

*The car park driveway is accessed off the lowest point on the New South Head Road frontage (where there is an existing driveway and a layover in the street geometry). The driveway is embedded within the building footprint to decrease its presence, noise and impact on both future residents and neighbours. This allows all the site's perimeter to be landscaped. A long section through the car park ramp has been provided.*

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Philip Thalís Architect #6780

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## Site Planning

On this irregular site with a frontage of 28.13m, communal gardens are located on all sides of this free-standing building, with more generous spaces to the south to equally benefit future residents and the neighbours to the south and east. The site slopes up from a low point on the street frontage on the south east corner, rising steeply on the diagonal to the north-west corner which is 5.97m metres higher than the street.

The built form is precisely tailored to the particular site conditions. The carpark below is predominantly located directly under the building footprint. The building setbacks consider the amenity of the neighbouring buildings while ensuring the proposed design complies with the DCP or the ADG guidelines. The setback to the northern street boundary varies between 1.7 and 5.6 metres to the face of the balconies, with the north-eastern corner aligning to the immediate neighbour to the east. To comply with the 12 metre setback in the ADG, there is a greater setback to the rear where the neighbour is built close to the south boundary.

To east side boundary, the front (north) part of the building has a setback of 3 metres, which strengthens the presentation to the street, while to the rear it tapers away to be 4.8 metres from the boundary. This matches the pattern of the neighbour, and the proposal along this side is 3 storeys over the driveway to match the scale of the neighbour. The windows along this side are purposely angled to minimise overlooking, catch northern sun and provide options for ventilation from the quieter garden side.

The west side boundary is to an ascending driveway which serves the residential tower building to the south. Further west on higher ground is a blocky 5 to 7 storey apartment building set in extensive lush gardens. Due to the dense mature planting, this neighbour is hardly visible from the subject site. Therefore the proposal's mass is concentrated to this frontage, rising to 5 storeys to the street and 4 storeys plus a common roof terrace on the higher ground to the rear.

Due to the restricted width of the site, the proposal departs somewhat from the numeric setback controls, however the design compensates for this by having predominantly screened or solid side elevations. The project gains daylight from all orientations, and the communal gardens that occupy the setbacks benefit from sunlight and visual connections.

*Counter to Council's UD comments, the site planning is carefully attuned to the site. The levels are matched to the sloping existing ground, and setbacks to neighbours carefully considered & integrated with the landscape design;*

- *To the rear boundary a generous setback is provided opposite the existing neighbouring building, which is set very close to the boundary and relies on this property for its outlook (this*

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Philip Thalys Architect #6780

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setback exceeds the 12metres required under the ADG – not acknowledged in the UD assessment);

- The frontage along the western boundary is broken into two distinct forms, separated by an open balcony. The setback from the driveway along the western boundary is all occupied by dense planting in deep soil
- The setback along the eastern side is actually more generous than the existing condition
- The rain forest garden to the rear is already heavily shaded, and assessments undertaken with this application show that any additional shadow will not adversely affect this landscape.

## Urban Presence

The building alignment to the street accords with the eastern neighbour and the former building at the western frontage, with a garden setback fronting the street. On the street façade, deeply modelled angled balconies allow views up and down the street. The façade's heights rise with the slope of the land and in relation to neighbours' heights, many of which are well above the 10.5metre LEP height.

The architectural expression is united by a palette of materials and balanced asymmetrical forms that should make it an exemplar of such an apartment building type. Well-scaled concrete blade walls set the outboard corners, framing projecting concrete slabs. The body of the building is a white face brick, with lightweight cladding on the angled projecting bays which provide modelling and well-proportioned articulation to the side elevations. The proposal creates an appropriate urban presence to the primary street and side boundary frontages.

*The Built Form and Scale need to be understood as intrinsic to the design, which at times on such a complex site may vary from the generic and untested LEP controls. Therefore we maintain that it is incorrect to state that the scheme does not comply with this design principle.*

## **3.0 DENSITY**

### Density appropriate to the context

While the proposed density is above the current Council's Planning Controls, it is consistent with many neighbouring buildings and appropriate to this highly urban context which has a strong visual relationship to Double Bay Centre. The site is well located close to excellent public transport, shopping and a wide range of public facilities including Council's new Library and schools, which are all within a 10 minute or less walk. There are a number of new buildings either newly built, under construction or proposed in the vicinity that accord to the proposed floor space ratios and heights.

The revised proposal has 17 apartments in a variety of configurations. The project adds to the area's housing stock, with compact dwellings suitable for singles or couples, particularly those interested in taking advantage of frequent public transport into the city, nearby parks and the harbourfront, shops

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and employment in the immediate area. The apartment plans are finely tailored to these particular site conditions.

The enclosed building footprint varies from level to level. At its greatest extent on Levels 1 and 2, the overall footprint (including balconies, circulation and external walls) has been slightly reduced to only 601 square metres. The total floor space of 1 527 square metres, and a proposed Floor Space Ratio of 1.24:1, of which a significant percentage (0.3:1) is to be designated as Affordable Housing under the Affordable Housing SEPP. The FSR of the remainder is therefore 0.95:1 and compliant with the LEP (refer Drawing DA2.015 for detailed calculations).

The proposed development provides an appropriate type of accommodation that supplements Double Bay's existing housing stock. The accord with the context's heights and the high levels of amenity achieved demonstrate that the project is not an overdevelopment of the site.

## Density promoting housing choice

A mix of unit plans are proposed, with diverse architectural characters and qualities. The 17 new apartments offer compact internal arrangements to provide a selection of more affordable accommodation, tailored to the particular site conditions. The variations include;

- 1 x level two bedroom garden apartment, with direct street access and private terrace;
- 1 x level one bedroom apartment, with direct street access and with private terrace;
- 2 x single level studio apartments with north facing balconies;
- 1 x single level one bedroom apartment with north facing balcony;
- 2 x single level two bedroom through apartments with north facing balconies;
- 4 x single level two bedroom corner apartments with north facing balconies;
- 2 x single level adaptable two bedroom apartments with no common walls and large north facing balconies;
- 2 x single level three bedroom corner apartment with north facing balcony;
- 1 x two level three bedroom corner apartment with no common walls and a north facing balcony;
- 1 x three bedroom + home theatre penthouse apartment with large roof terrace;

Therefore the proposed development provides a mix of accommodation to support the needs of a future population. The diversity, design merit and the high levels of amenity achieved demonstrate that the project is an appropriate development of this site in this location.

## **4.0 SUSTAINABILITY**

The project fully complies with BASIX, as demonstrated by the compliance documentation provided as part of this application.

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## Compact living and renewal – working hard to produce sustainable outcomes

The renewal of this site promotes Compact City planning principles and is consistent with a raft of planning objectives.

## Sunlight and daylight

All apartments receive controlled solar access to living areas and their various balconies and terraces. All windows and sliding doors have projecting slabs and wide balcony overhangs. Winter sun will penetrate deep into all apartments as the apartment plans have a slender depth ratio. The setbacks and screen planting provides privacy to the neighbours to the south, west and east.

The site planning and building design maximise the benefits of passive solar design to all dwellings:

- 17 out of 17 dwellings (100%) have windows facing north to their primary habitable rooms
- 17 out of 17 dwellings (100%) receive more than the minimum 2 hours mid-winter sun between 9am and 3pm – with many units receiving sun extended sunlight between 9am and 3pm
- all dwellings have private outdoor space that is open to sun and outlook;
- all communal areas have fresh air and daylight

## Passive cross ventilation

All primary private open spaces open directly off living rooms and main bedrooms and offer protection from direct sun to interiors in summer. All of the apartments in the proposal gain light and air from at least two sides, while 12 of the 17 dwellings (70%) achieve light and air from 3 or more sides. The dwellings have been designed to exploit good air cross flow by the ability to manipulate differential air pressures through the careful selection of window types on opposing elevations, including the two studio apartments which have secondary windows to the lightwell and open stair.

All dwellings are cooled through passive means through their thin cross sections, assisted with air movement by ceiling fans, so that they do not need to rely on air conditioning. The width in the main body of the proposed building varies between 8.4m and 17.8m (the rear part is just 7.5m) – clearly less than the SEPP65 maximum of 18m. All areas in all unit are within 8 metres of openable windows for good ventilation.

## Passive sun control

Sun control, in the form of balconies, slab overhangs, deep reveals and the like is provided to living area and bedroom windows which have west, east or north orientation.

## Passive thermal control

The expressed structure of the building is a concrete frame, with brick and lightweight infill construction with insulation. Coupled with the use of concrete floors to habitable rooms, this maximises the benefit of thermal mass in regulating internal temperatures. Use of concrete in this way also helps to achieve

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excellent acoustic attenuation of noise issues – allowing the building to have multiple operable windows without compromising the internal acoustic environment.

### Minimising energy usage

Energy use is reduced by;

- All 17 apartments (100%) are cross ventilated, with secondary windows on the quieter sides;
- 12 of the 17 kitchens (70%) have operable windows;
- Many toilets/bathrooms have daylight and operable windows;
- The careful selection of elements such as low energy bulbs to common areas, motion sensor lighting and the like;
- Water heating is proposed to be centralised gas hot water to minimise energy usage;
- The lobbies and common stairs on all floors are sheltered but open to natural light and ventilation.
- The areas of flat roof are fully insulated.

The gardens and associated planting aid the creation of a suitable micro climate.

### Minimising water usage

Even on this heavily constrained site the project is planning to make use of captured roof water for garden irrigation within the site. Beyond BASIX compliance, it is included to extend the environmental performance of the building. The landscape species are selected to minimise water consumption.

*Despite the above description and superior performance of the building obvious in its design, Council's UD questioned the deep soil and cross ventilation. Additional drawings have been prepared to further address these issues.*

## 5.0 LANDSCAPE

On such tight urban sites, landscape area is usually at a premium. Whereas due to its compact planning, this proposal complies with the deep soil landscape area of at least 50% of the site area outside the buildable area and the landscape area required by the Woollahra LEP (refer to drawing DA2.006). The deep soil is provided along almost the entire site perimeter, to allow the planting of consolidated landscape with trees. Where a portion of the garden to the rear is over the basement, good soil depth is provided to allow the sustainable growth of screen planting.

To supplement the extensive though more shaded communal gardens to the rear at ground floor, a generous communal roof terrace has been provided. This area, more than 6 metres in width, is open to the sky and mature vegetation to the rear, and so receives excellent sun – satisfying the ADG

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requirement. It allows all residents to enjoy the available district views. There are planters to the rear, and concrete ledges and balustrades to minimise overlooking of neighbours.

*The areas of the both the combined communal gardens are calculated on DA2.026, showing that Council's requirement has been met.*

*The deep soil landscape is calculated on DA2.007, showing that it exceeds Council's minimum requirements.*

The landscape design has been carried out by leading landscape architects, Melissa Wilson Landscape Architecture. The design takes advantage of the site conditions and features terraced courtyards and common gardens.

*For the above reasons, the scheme does comply with the Landscape Design principle.*

## 6.0 AMENITY

### Compact spaces with high amenity

The shallow apartment plans with sheltered lightwells and ventilation on multiple sides ensures that all will have premium cross ventilation. Their window design, orientation and solar controls will also maximise cooling in summer and heating in winter. The compact apartment plans are extremely efficient, maximising habitable rooms that open out to outlook and outdoor areas to north, east, west and south. *With the open air communal circulation throughout, there are operable fan light windows above all apartment entry doors.*

There are no single-orientation south units - in fact, there are no single orientation units, despite its tight urban site conditions.

### Appropriate private open spaces

All apartments have generous private outdoor spaces appropriate to differing uses, and are located to take advantage of sun and outlook. These private open spaces exceed the ADG minimum dimensions and areas. Careful consideration of position of window openings, louvres and design of blade walls ensures that privacy from the street, adjoining properties and between dwellings is thoroughly considered.

### Privacy between dwellings

The provision of the diverse range of types and scales of outdoor spaces has been arranged to ensure that each dwelling has ample privacy within the site. Careful consideration has been given to the thickness, height and type of balustrades and thresholds, and manipulation of the cross section, to

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prevent direct overlooking of the ground level courtyards – and to direct upper level outlook to district views wherever possible.

### Being a good neighbour

Windows have been designed to minimise overlooking of neighbouring sites. *The splay geometry, projecting blades and 3m minimum offset of all windows from the boundary allows for adequate separation distances to be achieved with neighbouring residential development.* In response to the ADG guidance, windows are inset, angled or shielded to prevent overlooking.

### Adaptability

The internal layouts of the dwellings have been carefully considered to provide adaptability to suit the changing needs of future occupants. The internal layouts comply with code requirements and expectations, with a total of 38.89% of dwellings having compliant adaptable or silver level performance.

### Ceiling heights

In conformity with SEPP 65, all living and bedroom spaces have 2.7 metre high ceilings as a minimum. The top floor units have some loftier interior or exterior volumes.

### Servicing and Car Parking Provision

Bike parking is conveniently located in a secure area at ground floor, adjoining the western entry. Other services such as plant rooms, metering and garbage are also discretely located at ground floor. Storage cages are compactly located in the basement car park, which is located directly under the building footprint. The car parking provides spaces for all apartments except the studios, with tandem spaces for the 3 bedroom apartments.

### Storage

All dwellings have adequate built in storage, supplemented by additional storage cages in the basement (see notation on the plans).

*Relative to the ADG norms of cross ventilation (60% required, 100% provided), sun access (70% required, 100% provided) and other requirements, the varied apartments in this DA have a superior level of amenity. The relationship to the neighbours has been satisfactorily resolved on all frontages through specific design responses. Of vertical proportions, the windows on the side boundaries exceed the light and ventilation requirements for bedrooms required under the NCC. Therefore in our view it is incorrect to claim that the DA does not comply with the Density design principle.*

## 7.0 SAFETY

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## Security within the site

Safety and security in both the street and within the site will be provided by the outlook and the overlooking windows and balconies that provides passive surveillance from all apartments.

The site perimeter is secure and the main street entries are provided with self-closing security gates with intercom. The careful consideration of the site planning avoids furtive spaces that are not overlooked. *The building entries are clearly denoted to the street, and can be supplemented by signage and letterboxes. They have a clear line of sight deep into the plan, are daylight and open to the generous rear garden.*

Internally the clear and transparent circulation pathways and stairs provide the conditions for a safe and secure environment.

## Access and safety

Access and BCA assessments have already been carried out, and their recommendations incorporated into the submitted design.

## **8.0 HOUSING DIVERSITY AND SOCIAL INTERACTION**

### Affordable Housing

*The replacement Development Application includes 4 larger apartments to subject to the provisions of the Affordable Housing SEPP. These comprise xmx2, or 0.3:1 FSR, leaving the remainder of the FSR at 0.95:1, under the 1.0:1 LEP control.*

### Small is beautiful

Australians build the largest and most profligate houses in terms of space and density, in the world. In contrast this proposal has a suite of distinctive, site specific plan configurations that offer a range of accommodation, from the more compact to the more generous. The dwellings offer comfortable well-planned living choices.

### A new building that will become part of the neighbourhood

The project is located on a main street open to the bustle of Double Bay. The neighbourhood has a lively street life in terms of public transport, vehicle and pedestrian traffic and activities. The site is suited to active residents, perhaps a younger population, who are likely to walk or cycle to work, who want proximity to the local amenity and infrastructure including shops, restaurants, public transport, local schools, Council's Library, Steyne Park and the beautiful promenade and beach on Double Bay's waterfront.

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All dwellings are well planned to maximise available space, and living rooms open to external private areas. With lift access to all dwellings, the basement and roof terrace, the site planning allows contemporary dwellings with both adaptable and silver level liveability rating to be available for people with restricted mobility.

### Communal facilities

The main entry promenades, communal roof terrace, open foyers, site facilities, compact carpark and gardens should all ensure a sense of community for the future inhabitants. Circulation areas, including stairs and landings, are covered but largely open air.

## 9.0 AESTHETICS

### A rigorous architectural expression

The aesthetic qualities of the project are embodied in its architectural approach. The overall form is punctuated and given scale by the interplay its main distinctive elements. These include expressed concrete frame, infill face brick and lightweight vertical panels framed by concrete slabs, overhanging balconies and projecting bays to break down the overall massing. The considered composition of these elements will give the facades a direct and well-proportioned character.

The building's expression is created by the rigorous, elemental arrangement of contemporary materials of concrete, brick, recessed glass, and lightweight panels. Within the concrete frame, windows, panels and balustrades give a well-proportioned quality to all façades. The common areas at ground floor and as they rise through the building's lightwells are all tiled, providing a colourful and reflective homecoming for future residents.

### Environmental performance coupled with amenity

The facades have a strong character, designed as finely detailed elevations that interpret the SEPP 65 requirements to create integrated frontages. The proposed architectural character expresses in a positive way the environmental and amenity objectives embodied throughout the design. For example the balconies have been designed to provide amenity with privacy and acoustic protection, and have a rhythmic presence in the elevations.

### Scale to New South Head Road

*In the replacement Development Application, the scale to New South Head Road has been reduced as the top floor balcony has been deleted, the setback at the north-west corner increased, and the roof form lowered around the entire perimeter of the main building.*

### A model apartment building type

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The form and scale of the facades set a strong precedent for the urban character of the building stock in Double Bay's fringes, and the proposed design is a refined model for such types. The three-dimensional design provides appropriate modulation and detail that responds in a confident contemporary way to the nearby buildings, without recourse to pastiche of period detail.

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## CONCLUSION

With the revisions, the proposed transformation of 351-353 New South Head Road has been carefully considered to achieve a high quality architectural and urban design resolution, including;

- The **site is ideal** for compact and amenable apartments, with a range of price points.
- The site is situated on the edge of the regionally important Double Bay centre, is within easy walk of a wide range of facilities, and therefore **offers shopping, work and recreational opportunities for future residents.**
- Edgecliff Station, buses and the ferry service are all within easy walk, making the site **ideally located for urban consolidation.**
- The project **provides a positive presence to its street frontage**, and car parking, escapes and services are discretely located.
- The project has a **distinctive architectural character and scale** that will be an appropriate addition to Double Bay's urban landscape.
- The **extensive landscaped spaces** provided, which include compliant areas of deep soil planting, are of the equal benefit of future residents and the neighbouring properties.
- The communal roof terrace **offers substantial amenity and potential sociability** for the future residents, and is inset to respect the privacy of neighbours.
- **Setbacks and screening to the neighbours on each side** has been carefully considered.
- **Environmentally Sustainable Design (ESD)** has been holistically incorporated into many aspects of the project.
- The project will create a **high-quality residential environment** for future residents, offering compact, well-planned apartments with character and high amenity.
- The proposal **satisfactorily considers the privacy** and overlooking of the neighbouring properties.
- The resolution of urban, architectural, environmental and social design considerations demonstrates that the proposal is an **appropriate fit to its site and context.**
- The site's redevelopment provides contemporary residential accommodation, incorporating the principles of adaptability and accessibility, to **increase the housing choices available in Double Bay.**
- Given the qualities of the proposal and the **high level of compliance with all SEPP 65 principles**, with very good amenity well above ADG requirements, we encourage Woollahra Council to consider this application favourably.

Registered Architect [NSW ARB registration number: #6780]

Director, Hill Thalís Architecture + Urban Projects, Professor of Practice in Architecture UNSW, LFRAIA

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HILL THALIS  
Philip Thalís Architect #6780



24<sup>th</sup> April, 2020  
Job no 18.41 PT

**351-53 NEW SOUTH HEAD ROAD, DOUBLE BAY  
RESPONSE TO ISSUES RAISED BY COUNCIL (email 17th April 2020)**

Following our meeting on site with Mr Nick Economou and Wilson Perdigao, planners at Woollahra Council, on the 17<sup>th</sup> April and the subsequent email and telephone exchanges with Mr Perdigao, we take this opportunity to respond below to the issues that have been raised, including comments by Council's Urban designer.

It is important to note at the outset that the DA seeks consent for an integrated urban, architectural and landscape solution. Such projects are always more than a response to a checklist, and on such complex sites as this, we acknowledge that a resolved and coordinated scheme may always be open to different opinions and weighting of criteria. Nonetheless we are firmly of the opinion, based on our extensive experience, that this DA can become a fine, durable building in a well-designed landscape setting, an exemplar of good design in a highly urban environment.

**1.0 Response to concluding Urban Design comments received from Council**

The concluding statement of Council's Urban Design Officer referral (attached) recommendation states:

*"The proposed development requires further amendments to respond to my above comments in order to satisfy the ADG and SEPP 65 requirements and provide a better urban design outcome. I recommend:*

*· that the proposed height is reduced to create a less dominant bulk and scale that maintains the dominance of the existing tree canopies on the streetscape. Considering the role of the existing dense tree canopies including heritage trees in providing a natural buffer between Double Bay Centre and Wallaroy Residential Area, I believe a less dominant bulk and scale provides a better urban design outcome.*

HT Response:

The proposal has a stepped form that relates to both the rising topography and to the varied heights of the neighbouring buildings. The form has a significant street setback in the centre of the site to accommodate a sizeable but still growing Moreton Bay Fig tree. The Critical Root Zone for this tree was determined on the advice of an arborist. As detailed on the landscape plans that accompany the DA, the front setback is occupied by a generous area of deep soil planting. Following discussions with Council following DA lodgement, additional trees have been added on the north-west corner of the site, shown in both the landscape plans and the photomontages (2 x Kentia Palms – 10-15 metres height and a Brachychiton -10 metres height) – if desired planting with a denser foliage could be investigated). There is also deep soil planting along both side boundaries, including the retention of mature trees along the eastern boundary, which are and will continue to be visible from the street.

Philip Thalís ARB #6780  
Sarah Hill ARB #5285  
Nominated Architects  
LEVEL 5, 68-72 Wentworth Ave  
Surry Hills NSW 2010 Australia  
T 02 9211 6276 F 02 9281 3171  
E admin@hillthalis.com.au  
www.hillthalis.com.au

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The substantial grouping of heritage trees in the Wallaroy Residential Area stand on higher ground behind and beside this site. Due to the marked topography and their scale, they will always be significantly higher than the proposed building, thus retaining the distinctive green vista currently enjoyed from New South Head Road within the centre. For completeness, it is also important to report that many of these heritage trees stand in the grounds of taller buildings (between 5 and 13 storeys), which are clearly visible in the streetscape in and above the tree canopy.

These key points are not acknowledged in the Urban Design assessment.

The Urban Design assessment also does not acknowledge the urban analysis submitted, in both text and graphic representation. It does not properly represent the site's highly urban situation, the convenient availability of public transport, shopping and services, the proximity to the harbour and the city centre. These are all fundamental characteristics of the context, which we contend support the scheme as designed.

- *that the proposal provides opportunities for more mature trees on front setback area.*

## HT Response:

The landscape plan has been prepared by a highly credentialed landscape architect Melissa Wilson. The retention and space allowed for the Moreton Bay Fig tree to grow to maturity are important considerations – the many such figs found along New South Head Road would indicate that such trees often grow to a height and spread of at least 20 metres if not more – in fact much larger than the scale of the proposed building.

- *that the proposal provides a better amenity for residents in terms of the location of the principle communal open space, pedestrian entry and internal unit amenity."*

## HT Response:

The principal open space is purposely located at the rear of the site, for the quieter enjoyment of residents and to provide a green setting not only for this development but also for the 3 neighbouring apartment buildings, which are all located close to this site's boundary and so rely on this site for their amenity, outlook and sun. The generous dimensions of this garden space allow both residents and neighbours to equally enjoy the green oasis here designed.

As demonstrated in the submitted drawings, the area of communal landscape is well in excess of the minimum requirements, now 42% of the site area. As well as the generous rear garden, which we acknowledge would be shady in mid-winter (as accurately represented on the shadow diagrams submitted), there are other communal garden spaces on both eastern and western boundaries and at the front of the site that receive good sun.

Additionally, a communal roof terrace is provided. Since the meeting on site, it has been expanded in area and so receives excellent sun year round. It must also be noted that all 17 apartments have north-facing balconies (not mentioned in the UD Assessment) that meet or exceed ADG requirements.

This means that residents will have many options to enjoy the sun, the various garden spaces and the roof terrace.

The two residential entries traverse the front garden, then enter sheltered gated spaces with a clear line of sight to both lifts and stairs, and importantly through the entire building to the rear communal spaces. A pair of open stairs rise through the building. The benefits of this welcoming homecoming experience are fully explained in the detailed SEPP 65 Design Quality Statement, as amended to respond to the earlier UD comments. The exemplar of Silchester Apartments' entry, open stair and courtyard by Professor Wilkinson is also cited in the DA.

The amenity of the apartments is well in excess of SEPP 65 and ADG minima. 100% of apartments face north, 100 % of apartments are cross-ventilated and many enjoy 3 orientations. All apartments are efficiently planned and meet the room dimensions set out in the ADG in every respect. We refer you to the extensive explanation provided in the SEPP 65 Design Quality Statement, which offers ample evidence to refute the un-detailed assertion that the internal amenity of apartments is deficient.

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HILL THALIS  
Philip Thalys Architect #6780





## 2.0 Response to other issues raised

This section responds to comments and criticisms made in the Urban Design assessment of SEPP 65 Design Quality Principles, and selected DCP clauses;

### SEPP 65

- 1 Context; - refer to comments above
- 2 Built Form and Scale; - refer comments above

Regarding the measurement of FSR, updated drawings are provided (attached) incorporating the following;

Deletion of the loft area of the topmost rear apartment, which allows for a larger communal roof terrace and removes 27.5m from the floor space

Inclusion of the ground floor entries as they pass with the building  
(as discussed with Council, the upper level lobbies have open stairs and a high degree of openness relative to their small area – so are not included in Floor Space)

Detailed plans and calculation showing the areas included on all levels  
The revised FSR (excluding the 4 apartments subject to the Affordable Housing provisions) is 1.0:1, so not Clause 4.6 is required.

- 4 Sustainability – SEPP65 requirements concentrate on passive environmental performance, use of robust materials and deep soil areas for water infiltration and landscape. The high level of passive environmental performance is demonstrated in the submitted plans and supported by detailed written analysis in the submitted SEPP65 report. The scheme performs well above ADG minimum requirements. As required, each apartment complied with state legislation for BASIX.

Additionally, the utilisation of well-located sites, close to public transport and amenity – for medium scaled housing such as this is an important component of achieving the sustainability of cities more broadly. The site is highly appropriate to achieving sustainable patterns of living at this urban scale, and in making a contribution to the larger sustainability agenda for Sydney.

- 5 Landscape; refer comments above
- 6 Amenity; refer comments above

The windows adjoining the side boundaries are carefully designed to allow good sunlight and natural ventilation while obviating privacy from, or overlooking to, the neighbours. The bedrooms greatly exceed of the quantum of window and ventilation required under the NCC, so we reject any inference that they are inadequate or substandard and would need to understand which statutory instrument this claim is being tied to.

We note the preponderance of development today which provides floor to ceiling and wall to wall glass to bedrooms – creating a predominant urban expression of the backs of drawn curtains to the urban realm. Our research and experience informs us that bedrooms require some sense of 'refuge' from the exterior realm – as opposed to more active living spaces in apartments that should enjoy a greater relationship of 'prospect' and openness. We consider this balance is effectively met in this proposal.

### DCP

- 3d Communal and public open space; refer comments above

The landscape area along the western boundary is designated on the Landscape Architects' plans as decomposed granite (see legend) – it is permeable.

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The total landscape area (DA2.008) and the total communal open space (DA2.026) are both demonstrated in the drawings to be well above the minima prescribed in the DCP or SEPP 65. That the generous rear garden is shaded in mid-winter (it would be a cool summer oasis) is more than compensated by the many communal areas that would be in good year round sun.

## 3G Pedestrian access and entries

As required in the DCP, the 2 entries are clearly legible to the public domain, are accessible and are integrated with the landscape design and sandstone street wall. The 2 ground floor units are capable of also be accessed directly from the street. Both entries have a sheltered porch, a front gate, and direct sightlines through the thin cross section buildings to the rear areas.

## 4G Storage

Storage for each and every apartment is calculated on drawings DA2.022-23. As demonstrated, in every case the storage provided is comfortably in excess of the ADG requirements. The ADG requires a minimum wardrobe length of 1.5m per bedroom (therefore not included in the storage quantum), the balance is permitted to be incorporated into general apartment storage.



Philip Thalys

Registered Architect [NSW ARB registration number: #6780]  
Director, Hill Thalys Architecture + Urban Projects, Professor of Practice in Architecture UNSW, LFRAIA

Attachment;  
Revised SEPP 65 Design Statement  
(as amended to address earlier UD comments)



**REVISED DESIGN QUALITY STATEMENT  
(previously updated)**

This statement accompanies the replacement Development Application on the above site, reflecting the various changes to the proposal (detailed in red on all the plans, sections and elevations) and responding *inter alia* to comments made by Woollahra Council's Urban Designer (noted in *italics*).

**1.0 CONTEXT AND NEIGHBOURHOOD CHARACTER**

An ideally located site

The site is located adjacent to the important regional centres of Double Bay and Edgecliff. Within a 5 minute / 500 metres are Edgecliff train station and bus interchange, the main Double Bay shopping areas and Edgecliff commercial centre. Both centres contain many services for the benefit of residents and workers. Over 170 years of urban development, the area is evolving as a heterogeneous mix of major retail and entertainment, apartment buildings of all types and sizes, terraces, and remnant individual houses.

The site has convenient access to Sydney's city centre, to multiple transport modes, shops, many public facilities and open spaces, *the harbour foreshore*, and thus is well suited to this proposal as it provides high levels of amenity in an established and diverse neighbourhood.

A Positive Street Presence

The site is an amalgamation of two large irregular lots, each occupied by large houses which have had some commercial use. The address is to the northern boundary that fronts New South Head Road, which is the primary connective main street for the eastern suburbs that hug the harbour's southern shores. The street frontages have a range of heights, varying between two large storeys up to nine storeys. Outside the commercial centre, which is directly opposite the site and only just to the east, landscape setbacks are common, particularly the major landscape frontage to the immediate west. The design forms an appropriate transition between these conditions, retaining and extending the existing sandstone street wall and setting back the building to retain in a planted foreground a semi-mature Moreton Bay Fig tree that is close to the wall.

In contradistinction to Council's Urban Design response, the varied urban scale is well represented in detailed urban analysis drawings DA2.002 - 2.005 that form part of this application. Council's UD statement that buildings along New South Head Road between Manning Road and Edgecliff have a 'predominant scale of 2-3 storey is no longer accurate – such buildings are the exception, and the recently approved and constructed buildings on this side of the street are 4-5 storeys.

Notwithstanding the controls in the Double Bay Centre DCP, which my office prepared for Council, a number of applications in the centre have approved by Council with increased heights than envisaged by the DCP.

Overall, the design responds to its particular site conditions, appropriately addressing the varied and evolving character of street frontage and the topography.

An established medium / high density area

As is appropriate so close to major centres, both sides of New South Head Road and all the lots behind have long been zoned by Council to enable apartment buildings and shop-top housing, and many of the neighbouring residential buildings in the immediate visual catchment well exceed the current height and floor space controls. There are quite a number of taller buildings dotted throughout areas to the south and west, which all sit on higher ground than the subject site, and so are far more visually prominent. In contrast, many of foreground commercial buildings have significant unused redevelopment potential, with opportunities for increased height similar to this proposal.

The design is based on a thorough analysis of the existing conditions (see urban analysis drawings DA2.002-2.004 in DA submission). The scale of neighbouring buildings is diverse, varying between 2 and 13 storeys in height. This is due to the incremental redevelopment over the last 8 decades of the lower buildings around Double Bay, which have been gradually replaced by more intensive forms of development. Frontage widths and setbacks vary greatly throughout the area.

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Philip Thalys Architect #6780

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DA 2.005 clearly shows the limited visual catchment of the proposal, which is due to New South Head Road's curving alignment. Street vistas to the proposal are quite localised and the established fig tree at the front of the site will be retained, which disproves the contention that the proposal "dominates the streetscape and will disrupt the consistent landscape character of the street". Nonetheless the street setback of the northwest corner to the street has been increased to 3.2metres to allow a larger area of new planting, as detailed on the submitted landscape architects' plans. Including the landscaped space to retain the fig tree, the street setback is considerably more than the existing neighbour to the east, and also more than new developments up the hill towards Edgecliff.

Due to the marked topography, buildings on the eastern side of New South Head Road on both sides of the centre are seen against a backdrop of established landscape and taller buildings on the slopes above.

The above analysis and the documentation in the DA package show that the proposal is well-considered in terms of Context and Neighbourhood Character.

## 2.0 BUILT FORM AND SCALE

### Building Organisation

*This replacement proposal lowers the apartment numbers from 18 to 17. The dwelling sizes are diverse within a compact urban building, comprising a reduced total of 1 527 square metres of floor space distributed over 5 residential levels above a single level basement car park. There are two residential entries accessed directly off New South Head Road via gated but open common spaces that allow views through the building to the garden beyond. At the rear on the ground floor are communal facilities and extensive common garden spaces. Accommodation on each of the levels varies;*

Ground Floor has 2 garden apartments

Level 1 has 6 smaller apartments

Levels 2 and 3 have larger apartments

Level 4 has a communal roof terrace, a large penthouse and the mezzanine of the rear apartment

The vertical circulation comprises two centrally located cores, each with open galleries, tiled lightwells, lifts and open stairs which provide access to all levels. The smaller eastern core serves only 4 apartments, with the remainder on the western side with the lightwell and open vista to the garden. *In the manner of Professor Wilkinson's Silchester apartments on the eastern slopes of Double Bay, the common circulation is made as sheltered breezeways, integrating and open to the landscape, providing a delightful homecoming for residents. BCA advice just received confirms that the stair in the western core can be opened both to the rear and to an enlarged vertical courtyard.*

The car park driveway is accessed off the lowest point on the New South Head Road frontage (where there is an existing driveway and a layover in the street geometry). The driveway is embedded within the building footprint to decrease its presence, noise and impact on both future residents and neighbours. This allows all the site's perimeter to be landscaped. *A long section through the car park ramp has been provided.*

### Site Planning

On this irregular site with a frontage of 28.13m, communal gardens are located on all sides of this free-standing building, with more generous spaces to the south to equally benefit future residents and the neighbours to the south and east. The site slopes up from a low point on the street frontage on the south east corner, rising steeply on the diagonal to the north-west corner which is 5.97m metres higher than the street.

The built form is precisely tailored to the particular site conditions. The carpark below is predominantly located directly under the building footprint. The building setbacks consider the amenity of the neighbouring buildings while ensuring the proposed design complies with the DCP or the ADG guidelines. The setback to the northern street boundary varies between 1.7 and 5.6 metres to the face of the balconies, with the north-eastern corner aligning to the immediate neighbour to the east. To comply with the 12 metre setback in the ADG, there is a greater setback to the rear where the neighbour is built close to the south boundary.

To east side boundary, the front (north) part of the building has a setback of 3 metres, which strengthens the presentation to the street, while to the rear it tapers away to be 4.8 metres from the

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Philip Thalys Architect #6780

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boundary. This matches the pattern of the neighbour, and the proposal along this side is 3 storeys over the driveway to match the scale of the neighbour. The windows along this side are purposely angled to minimise overlooking, catch northern sun and provide options for ventilation from the quieter garden side.

The west side boundary is to an ascending driveway which serves the residential tower building to the south. Further west on higher ground is a blocky 5 to 7 storey apartment building set in extensive lush gardens. Due to the dense mature planting, this neighbour is hardly visible from the subject site. Therefore the proposal's mass is concentrated to this frontage, rising to 5 storeys to the street and 4 storeys plus a common roof terrace on the higher ground to the rear.

Due to the restricted width of the site, the proposal departs somewhat from the numeric setback controls, however the design compensates for this by having predominantly screened or solid side elevations. The project gains daylight from all orientations, and the communal gardens that occupy the setbacks benefit from sunlight and visual connections.

Counter to Council's UD comments, the site planning is carefully attuned to the site. The levels are matched to the sloping existing ground, and setbacks to neighbours carefully considered & integrated with the landscape design;

- To the rear boundary a generous setback is provided opposite the existing neighbouring building, which is set very close to the boundary and relies on this property for its outlook (this setback exceeds the 12metres required under the ADG – not acknowledged in the UD assessment);
- The frontage along the western boundary is broken into two distinct forms, separated by an open balcony. The setback from the driveway along the western boundary is all occupied by dense planting in deep soil
- The setback along the eastern side is actually more generous than the existing condition
- The rain forest garden to the rear is already heavily shaded, and assessments undertaken with this application show that any additional shadow will not adversely affect this landscape.

## Urban Presence

The building alignment to the street accords with the eastern neighbour and the former building at the western frontage, with a garden setback fronting the street. On the street façade, deeply modelled angled balconies allow views up and down the street. The façade's heights rise with the slope of the land and in relation to neighbours' heights, many of which are well above the 10.5metre LEP height.

The architectural expression is united by a palette of materials and balanced asymmetrical forms that should make it an exemplar of such an apartment building type. Well-scaled concrete blade walls set the outboard corners, framing projecting concrete slabs. The body of the building is a white face brick, with lightweight cladding on the angled projecting bays which provide modelling and well-proportioned articulation to the side elevations. The proposal creates an appropriate urban presence to the primary street and side boundary frontages.

The Built Form and Scale need to be understood as intrinsic to the design, which at times on such a complex site may vary from the generic and untested LEP controls. Therefore we maintain that it is incorrect to state that the scheme does not comply with this design principle.

## 3.0 DENSITY

### Density appropriate to the context

While the proposed density is above the current Council's Planning Controls, it is consistent with many neighbouring buildings and appropriate to this highly urban context which has a strong visual relationship to Double Bay Centre. The site is well located close to excellent public transport, shopping and a wide range of public facilities including Council's new Library and schools, which are all within a 10 minute or less walk. There are a number of new buildings either newly built, under construction or proposed in the vicinity that accord to the proposed floor space ratios and heights.

The revised proposal has 17 apartments in a variety of configurations. The project adds to the area's housing stock, with compact dwellings suitable for singles or couples, particularly those interested in taking advantage of frequent public transport into the city, nearby parks and the harbourfront, shops and employment in the immediate area. The apartment plans are finely tailored to these particular site conditions.

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Philip Thalís Architect #6780



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The enclosed building footprint varies from level to level. At its greatest extent on Levels 1 and 2, the overall footprint (including balconies, circulation and external walls) has been slightly reduced to only 601 square metres. The total floor space of 1 527 square metres, and a proposed Floor Space Ratio of 1.24:1, of which a significant percentage (0.3:1) is to be designated as Affordable Housing under the Affordable Housing SEPP. The FSR of the remainder is therefore 0.95:1 and compliant with the LEP (refer Drawing DA2.015 for detailed calculations).

The proposed development provides an appropriate type of accommodation that supplements Double Bay's existing housing stock. The accord with the context's heights and the high levels of amenity achieved demonstrate that the project is not an overdevelopment of the site.

## Density promoting housing choice

A mix of unit plans are proposed, with diverse architectural characters and qualities. The 17 new apartments offer compact internal arrangements to provide a selection of more affordable accommodation, tailored to the particular site conditions. The variations include;

- 1 x level two bedroom garden apartment, with direct street access and private terrace;
- 1 x level one bedroom apartment, with direct street access and with private terrace;
- 2 x single level studio apartments with north facing balconies;
- 1 x single level one bedroom apartment with north facing balcony;
- 2 x single level two bedroom through apartments with north facing balconies;
- 4 x single level two bedroom corner apartments with north facing balconies;
- 2 x single level adaptable two bedroom apartments with no common walls and large north facing balconies;
- 2 x single level three bedroom corner apartment with north facing balcony;
- 1 x two level three bedroom corner apartment with no common walls and a north facing balcony;
- 1 x three bedroom + home theatre penthouse apartment with large roof terrace;

Therefore the proposed development provides a mix of accommodation to support the needs of a future population. The diversity, design merit and the high levels of amenity achieved demonstrate that the project is an appropriate development of this site in this location.

## 4.0 SUSTAINABILITY

The project fully complies with BASIX, as demonstrated by the compliance documentation provided as part of this application.

### Compact living and renewal – working hard to produce sustainable outcomes

The renewal of this site promotes Compact City planning principles and is consistent with a raft of planning objectives.

### Sunlight and daylight

All apartments receive controlled solar access to living areas and their various balconies and terraces. All windows and sliding doors have projecting slabs and wide balcony overhangs. Winter sun will penetrate deep into all apartments as the apartment plans have a slender depth ratio. The setbacks and screen planting provides privacy to the neighbours to the south, west and east.

The site planning and building design maximise the benefits of passive solar design to all dwellings;

- 17 out of 17 dwellings (100%) have windows facing north to their primary habitable rooms
- 17 out of 17 dwellings (100%) receive more than the minimum 2 hours mid-winter sun between 9am and 3pm – with many units receiving sun extended sunlight between 9am and 3pm
- all dwellings have private outdoor space that is open to sun and outlook;
- all communal areas have fresh air and daylight

### Passive cross ventilation

All primary private open spaces open directly off living rooms and main bedrooms and offer protection from direct sun to interiors in summer. All of the apartments in the proposal gain light and air from at least two sides, while 12 of the 17 dwellings (70%) achieve light and air from 3 or more sides. The dwellings have been designed to exploit good air cross flow by the ability to manipulate differential air pressures through the careful selection of window types on opposing elevations, including the two studio apartments which have secondary windows to the lightwell and open stair.

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All dwellings are cooled through passive means through their thin cross sections, assisted with air movement by ceiling fans, so that they do not need to rely on air conditioning. The width in the main body of the proposed building varies between 8.4m and 17.8m (the rear part is just 7.5m) – clearly less than the SEPP65 maximum of 18m. All areas in all unit are within 8 metres of openable windows for good ventilation.

## Passive sun control

Sun control, in the form of balconies, slab overhangs, deep reveals and the like is provided to living area and bedroom windows which have west, east or north orientation.

## Passive thermal control

The expressed structure of the building is a concrete frame, with brick and lightweight infill construction with insulation. Coupled with the use of concrete floors to habitable rooms, this maximises the benefit of thermal mass in regulating internal temperatures. Use of concrete in this way also helps to achieve excellent acoustic attenuation of noise issues – allowing the building to have multiple operable windows without compromising the internal acoustic environment.

## Minimising energy usage

Energy use is reduced by;

- All 17 apartments (100%) are cross ventilated, with secondary windows on the quieter sides;
- 12 of the 17 kitchens (70%) have operable windows;
- Many toilets/bathrooms have daylight and operable windows;
- The careful selection of elements such as low energy bulbs to common areas, motion sensor lighting and the like;
- Water heating is proposed to be centralised gas hot water to minimise energy usage;
- The lobbies and common stairs on all floors are sheltered but open to natural light and ventilation.
- The areas of flat roof are fully insulated.

The gardens and associated planting aid the creation of a suitable micro climate.

## Minimising water usage

Even on this heavily constrained site the project is planning to make use of captured roof water for garden irrigation within the site. Beyond BASIX compliance, it is included to extend the environmental performance of the building. The landscape species are selected to minimise water consumption.

Despite the above description and superior performance of the building obvious in its design, Council's UD questioned the deep soil and cross ventilation. Additional drawings have been prepared to further address these issues.

## 5.0 LANDSCAPE

On such tight urban sites, landscape area is usually at a premium. Whereas due to its compact planning, this proposal complies with the deep soil landscape area of at least 50% of the site area outside the buildable area and the landscape area required by the Woollahra LEP (refer to drawing DA2.006). The deep soil is provided along almost the entire site perimeter, to allow the planting of consolidated landscape with trees. Where a portion of the garden to the rear is over the basement, good soil depth is provided to allow the sustainable growth of screen planting.

To supplement the extensive though more shaded communal gardens to the rear at ground floor, a generous communal roof terrace has been provided. This area, more than 6 metres in width, is open to the sky and mature vegetation to the rear, and so receives excellent sun – satisfying the ADG requirement. It allows all residents to enjoy the available district views. There are planters to the rear, and concrete ledges and balustrades to minimise overlooking of neighbours.

The areas of the both the combined communal gardens are calculated on DA2.026, showing that Council's requirement has been met.

The deep soil landscape is calculated on DA2.007, showing that it exceeds Council's minimum requirements.

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The landscape design has been carried out by leading landscape architects, Melissa Wilson Landscape Architecture. The design takes advantage of the site conditions and features terraced courtyards and common gardens.

For the above reasons, the scheme does comply with the Landscape Design principle.

## 6.0 AMENITY

### Compact spaces with high amenity

The shallow apartment plans with sheltered lightwells and ventilation on multiple sides ensures that all will have premium cross ventilation. Their window design, orientation and solar controls will also maximise cooling in summer and heating in winter. The compact apartment plans are extremely efficient, maximising habitable rooms that open out to outlook and outdoor areas to north, east, west and south. *With the open air communal circulation throughout, there are operable fan light windows above all apartment entry doors.*

There are no single-orientation south units - in fact, there are no single orientation units, despite its tight urban site conditions.

### Appropriate private open spaces

All apartments have generous private outdoor spaces appropriate to differing uses, and are located to take advantage of sun and outlook. These private open spaces exceed the ADG minimum dimensions and areas. Careful consideration of position of window openings, louvres and design of blade walls ensures that privacy from the street, adjoining properties and between dwellings is thoroughly considered.

### Privacy between dwellings

The provision of the diverse range of types and scales of outdoor spaces has been arranged to ensure that each dwelling has ample privacy within the site. Careful consideration has been given to the thickness, height and type of balustrades and thresholds, and manipulation of the cross section, to prevent direct overlooking of the ground level courtyards – and to direct upper level outlook to district views wherever possible.

### Being a good neighbour

Windows have been designed to minimise overlooking of neighbouring sites. *The splay geometry, projecting blades and 3m minimum offset of all windows from the boundary allows for adequate separation distances to be achieved with neighbouring residential development.* In response to the ADG guidance, windows are inset, angled or shielded to prevent overlooking.

### Adaptability

The internal layouts of the dwellings have been carefully considered to provide adaptability to suit the changing needs of future occupants. The internal layouts comply with code requirements and expectations, with a total of 38.89% of dwellings having compliant adaptable or silver level performance.

### Ceiling heights

In conformity with SEPP 65, all living and bedroom spaces have 2.7 metre high ceilings as a minimum. The top floor units have some loftier interior or exterior volumes.

### Servicing and Car Parking Provision

Bike parking is conveniently located in a secure area at ground floor, adjoining the western entry. Other services such as plant rooms, metering and garbage are also discretely located at ground floor. Storage cages are compactly located in the basement car park, which is located directly under the building footprint. The car parking provides spaces for all apartments except the studios, with tandem spaces for the 3 bedroom apartments.

### Storage

All dwellings have adequate built in storage, supplemented by additional storage cages in the basement (see notation on the plans).

Relative to the ADG norms of cross ventilation (60% required, 100% provided), sun access (70% required, 100% provided) and other requirements, the varied apartments in this DA have a superior level of

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amenity. The relationship to the neighbours has been satisfactorily resolved on all frontages through specific design responses. Of vertical proportions, the windows on the side boundaries exceed the light and ventilation requirements for bedrooms required under the NCC. Therefore in our view it is incorrect to claim that the DA does not comply with the Density design principle.

## 7.0 SAFETY

Security within the site

Safety and security in both the street and within the site will be provided by the outlook and the overlooking windows and balconies that provides passive surveillance from all apartments.

The site perimeter is secure and the main street entries are provided with self-closing security gates with intercom. The careful consideration of the site planning avoids furtive spaces that are not overlooked. *The building entries are clearly denoted to the street, and can be supplemented by signage and letterboxes. They have a clear line of sight deep into the plan, are daylight and open to the generous rear garden.*

Internally the clear and transparent circulation pathways and stairs provide the conditions for a safe and secure environment.

Access and safety

Access and BCA assessments have already been carried out, and their recommendations incorporated into the submitted design.

## 8.0 HOUSING DIVERSITY AND SOCIAL INTERACTION

Affordable Housing

The replacement Development Application includes 4 larger apartments to subject to the provisions of the Affordable Housing SEPP. These comprise xxm2, or 0.3:1 FSR, leaving the remainder of the FSR at 0.95:1, under the 1.0:1 LEP control.

Small is beautiful

Australians build the largest and most profligate houses in terms of space and density, in the world. In contrast this proposal has a suite of distinctive, site specific plan configurations that offer a range of accommodation, from the more compact to the more generous. The dwellings offer comfortable well-planned living choices.

A new building that will become part of the neighbourhood

The project is located on a main street open to the bustle of Double Bay. The neighbourhood has a lively street life in terms of public transport, vehicle and pedestrian traffic and activities. The site is suited to active residents, perhaps a younger population, who are likely to walk or cycle to work, who want proximity to the local amenity and infrastructure including shops, restaurants, public transport, local schools, Council's Library, Steyne Park and the beautiful promenade and beach on Double Bay's waterfront.

All dwellings are well planned to maximise available space, and living rooms open to external private areas. With lift access to all dwellings, the basement and roof terrace, the site planning allows contemporary dwellings with both adaptable and silver level liveability rating to be available for people with restricted mobility.

Communal facilities

The main entry promenades, communal roof terrace, open foyers, site facilities, compact carpark and gardens should all ensure a sense of community for the future inhabitants. Circulation areas, including stairs and landings, are covered but largely open air.

## 9.0 AESTHETICS

A rigorous architectural expression

The aesthetic qualities of the project are embodied in its architectural approach. The overall form is punctuated and given scale by the interplay its main distinctive elements. These include expressed concrete frame, infill face brick and lightweight vertical panels framed by concrete slabs, overhanging

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balconies and projecting bays to break down the overall massing. The considered composition of these elements will give the facades a direct and well-proportioned character.

The building's expression is created by the rigorous, elemental arrangement of contemporary materials of concrete, brick, recessed glass, and lightweight panels. Within the concrete frame, windows, panels and balustrades give a well-proportioned quality to all façades. The common areas at ground floor and as they rise through the building's lightwells are all tiled, providing a colourful and reflective homecoming for future residents.

Environmental performance coupled with amenity

The facades have a strong character, designed as finely detailed elevations that interpret the SEPP 65 requirements to create integrated frontages. The proposed architectural character expresses in a positive way the environmental and amenity objectives embodied throughout the design. For example the balconies have been designed to provide amenity with privacy and acoustic protection, and have a rhythmic presence in the elevations.

Scale to New South Head Road

In the replacement Development Application, the scale to New South Head Road has been reduced as the top floor balcony has been deleted, the setback at the north-west corner increased, and the roof form lowered around the entire perimeter of the main building.

A model apartment building type

The form and scale of the facades set a strong precedent for the urban character of the building stock in Double Bay's fringes, and the proposed design is a refined model for such types. The three-dimensional design provides appropriate modulation and detail that responds in a confident contemporary way to the nearby buildings, without recourse to pastiche of period detail.



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## CONCLUSION

With the revisions, the proposed transformation of 351-353 New South Head Road has been carefully considered to achieve a high quality architectural and urban design resolution, including;

The **site is ideal** for compact and amenable apartments, with a range of price points.

The site is situated on the edge of the regionally important Double Bay centre, is within easy walk of a wide range of facilities, and therefore **offers shopping, work and recreational opportunities for future residents.**

Edgecliff Station, buses and the ferry service are all within easy walk, making the site **ideally located for urban consolidation.**

The project **provides a positive presence to its street frontage**, and car parking, escapes and services are discretely located.

The project has a **distinctive architectural character and scale** that will be an appropriate addition to Double Bay's urban landscape.

The **extensive landscaped spaces** provided, which include compliant areas of deep soil planting, are of the equal benefit of future residents and the neighbouring properties.

The communal roof terrace **offers substantial amenity and potential sociability** for the future residents, and is inset to respect the privacy of neighbours.

**Setbacks and screening** to the neighbours on each side and to the rear has been carefully considered.

**Environmentally Sustainable Design (ESD)** has been holistically incorporated into many aspects of the project.

The project will create a **high-quality residential environment** for future residents, offering compact, well-planned apartments with character and high amenity.

The proposal **satisfactorily considers the privacy** and overlooking of the neighbouring properties.

The resolution of urban, architectural, environmental and social design considerations demonstrates that the proposal is an **appropriate fit to its site and context.**

The site's redevelopment provides contemporary residential accommodation, incorporating the principles of adaptability and accessibility, to **increase the housing choices available in Double Bay.**

Given the qualities of the proposal and the **high level of compliance with all SEPP 65 principles**, with very good amenity well above ADG requirements, we encourage Woollahra Council to consider this application favourably.



Philip Thalys

Registered Architect [NSW ARB registration number: #6780]  
Director, Hill Thalys Architecture + Urban Projects, Professor of Practice in Architecture UNSW, LFRAIA

Completion Date: 24 February 2020

**REFERRAL RESPONSE**  
**URBAN DESIGN**

FILE NO: Development Applications/ 226/2019/1

ADDRESS: 351 New South Head Road DOUBLE BAY 2028

PROPOSAL: Demolition of existing buildings, construction of a new residential flat building including provision of affordable rental housing (SEPP ARH 2009) with basement parking

FROM: N Vandchali

TO: Mr W Perdigao

**Information**

Architectural drawings:

Drawing List:		
2.001	Title Sheet	Rev C
2.002	Context Analysis	Rev A
2.003	Site Analysis	Rev A
2.004	Built Form Context	Rev A
2.005	View to Site Analysis	Rev A
2.006	Site Controls	Rev B
2.007	Deep Soil Analysis	Rev C
2.008	Demolition Plan	Rev A
2.015	FSR Calculation	Rev B
2.021	Apartment Mix	Rev B
2.022	Apartment Types	Rev C
2.023	Apartment Types	Rev C
2.024	Adaptable Unit Plan	Rev B
2.025	Apartment Types	Rev C
2.026	Communal Open Space	Rev B
2.100	Site Plan	Rev B
2.101	Basement Level Plan	Rev B
2.102	Ground Floor Plan	Rev C
2.103	Level 1 Floor Plan	Rev B
2.104	Level 2 Floor Plan	Rev B
2.105	Level 3 Floor Plan	Rev B
2.106	Level 4 Floor Plan	Rev B
2.107	Roof Plan	Rev B
2.201	Elevations	Rev C
2.202	Elevations	Rev B
2.203	Detailed Elevation	Rev B
2.301	Sections	Rev B
2.302	Sections Ramp Detail	Rev A
2.602	Existing solar Impact	
2.603	Existing solar Impact	
2.604	Solar Impact	Rev A
2.605	Solar Impact	Rev A
2.606	Existing solar Impact	
2.607	Existing solar Impact	
2.608	Solar Impact	Rev A
2.609	Solar Impact	Rev A
2.610	View north across gardens	Rev A
2.611	View north across gardens	Rev A
2.612	Internal Solar Penetration	

BASIX CERTIFICATE NO: 9922642M  
NATHERS CERTIFICATE NO: 0003718707

Statement of Environmental Effects: HAMPTONS PROPERTY SERVICES Pty  
Ltd – December 2019

Survey:

**Background**

The original development application was lodged on 25 June 2019. In December 2019 amendment to the original DA was lodged in response to Council's assessment of the original DA. This referral response provides a comprehensive assessment of the amended proposal against the SEPP 65 principles, the ADG requirements, and the previous urban design referral response dated 15 August 2019.

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## Proposal

## Proposal

The proposal comprises:

- Demolition of the existing buildings.
- Construction of a four and five-storey residential flat building with 17 residential apartments and associated basement parking and landscaping.

## Controls


- State Environmental Planning Policy No. 65 (SEPP 65): Apartment Design Guide (ADG)
- Woollahra Local Environment Plan 2014 (WLEP2014)
- Woollahra Development Control Plan 2015 (WDCP2015)

## Compliance

The following is an assessment of the proposal against the SEPP 65 Principles.

<b>Principle</b>	<b>Statement</b>	<b>Assessment</b>	<b>Complies</b>
<b>Principle 1: Context and Neighbourhood Character</b>	<p><i>Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.</i></p> <p><i>Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</i></p>	<p>The proposal has responded to my previous comments with regards to the 'corner character' and has removed the five-storey element facing New South Head Road (NSH Rd). However, it still concerns me with regards to the following:</p> <p>The subject site is located adjacent to the Overthrope Garden State Heritage Garden and No. 5 Manning Road Local Heritage Item. The Overthrope Site provides a continuous green streetscape at this section of New South Head Road. The existing character of the subject site contributes to the landscape character of Overthrope Garden. This results in creating a green node emphasising an endpoint for Double Bay Centre and the beginning of Wallaroy Residential Precinct.</p>	<b>NO</b>

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		 <p>Despite being numerically compliant with the front setback requirements, the proposed excessive 4-5 storey bulk and scale is still highly visible from the public domain. It dominates the existing landscape setting of its immediate surrounding context. It disrupts the character of the existing landscape cluster at this location and creates a building with a more 'town centre' character.</p>  <p>It does not enhance the landscape character of NSH Rd as recommended by WDCP 2015 B1.4.2.</p> <p><i>(O1) To respect and enhance the streetscape character and <u>key elements of the precinct</u>.*</i></p> <p><i>(O8) To retain and reinforce the green setting of mature street trees, private trees and garden plantings.</i></p> <p><i><u>*Streetscape character and key elements of the precinct:</u></i></p> <p><i>g) the highly visible tree canopy</i></p>	
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		<i>providing a dense green backdrop to views from Sydney Harbour and surrounding lands.</i>	
<b>Principle 2: Built Form and Scale</b>	<p><i>Good design achieves a <u>scale, bulk and height appropriate</u> to the existing or desired future character of the street and surrounding buildings.</i></p> <p><i>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, <u>articulation</u> and the <u>manipulation of building elements</u>.</i></p> <p><i>Appropriate built form defines the public domain, contributes to the character of <u>streetscapes</u> and parks, including their <u>views and vistas</u>, and provides internal amenity and outlook.</i></p>	<p>In addition to the above: The proposed largest consolidated communal open space is located on the southern part of the subject site. It does not appear that this area receives sufficient solar access as required by the ADG (DA 2.605). I require further information which demonstrates that the proposed communal open spaces satisfy the ADG requirements.</p> <p>The proposed GFA calculation does not consider the horizontal circulation spaces on the ground level. Considering the location of the entry gate (lobby), this volume of space affects the overall density of the building.</p> <p>It does not also provide a high-quality pedestrian entrance (refer to my comments in Section 3G).</p>	
<b>Principle 3: Density</b>	<p><i>Good design achieves a <u>high level of amenity</u> for residents and each apartment, resulting in a density appropriate to the site and its <u>context</u>.</i></p> <p><i>Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, <u>public transport</u>, access to jobs, community facilities and the environment.</i></p>	<p>I refer to my previous referral response dated 15 August 2019:</p> <p><i>'The overall dwelling density responds to the existing character and desired future character of the area. However, the appropriateness of the overall density is dependent on the proposed bulk and scale, achieving suitable amenity and streetscape outcomes'.</i></p>	<b>YES</b>
<b>Principle 4: Sustainability</b>	<p><i>Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of</i></p>	<p>The applicant has responded to my previous comments with regards to the deep soil and cross ventilation calculation.</p>	<b>YES Subject to further clarification</b>

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	<i>natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.</i>	The proposed landscape area on the western boundary is calculated as a deep soil area (DA 2008). However, it appears to have a hard landscape in the majority of the area as a communal open space. Further clarification is required regarding this matter.	
<b>Principle 5: Landscape</b>	<p><i>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</i></p> <p><i>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.</i></p>	<p>Please refer to Principle one with regards to the landscape character of the subject site as well as my previous comments dated 15 August 2019.</p> <p>Also, the proposed deep soil area on the southwestern part of the site appears to be disconnected from the rest of the landscape area. Is there any specific reason why this section does not integrate with the rest of the landscape area?</p>	<b>NO</b>

<b>Principle 6: Amenity</b>	<p><i>Good design positively influences internal and external <u>amenity for residents and neighbours</u>. Achieving good amenity contributes to positive living environments and resident wellbeing.</i></p> <p><i>Good amenity combines appropriate room dimensions and shapes, access to <u>sunlight</u>, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.</i></p>	<p>Insufficient solar access to the main communal open space at the rear setback area compromises the amenity for residents. Narrow windows on side boundaries compromise the amenity (outlook) of the proposed units.</p>	<b>NO</b>
<b>Principle 7: Safety</b>	<p><i>Good design optimises safety and security, within the development and the public domain. It provides for <u>quality public and private spaces</u> that are clearly defined and fit for the intended purpose. Opportunities to maximise <u>passive surveillance of public and communal areas</u> promote safety.</i></p> <p><i>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well-lit and <u>visible areas</u> that are easily maintained and appropriate to the location and purpose.</i></p>	<p>The proposal provides an appropriate response to this principle.</p>	<b>YES</b>
<b>Principle 8: Housing Diversity and Social</b>	<p><i>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household</i></p>	<p>Refer to my previous referral response.</p>	<b>YES</b>

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<b>Interaction</b>	<p><i>budgets.</i></p> <p><i>Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a <u>broad range of people</u>, providing opportunities for social interaction amongst residents.</i></p>		
<b>Principle 9: Aesthetics</b>	<p><i>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of <u>materials, colours and textures</u>.</i></p> <p><i>The <u>visual appearance</u> of well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</i></p>	Refer to my previous referral response.	<b>YES</b>

The apartment design guide

Standard	Required	Proposed	Complie
<b>Part 3: Siting the development</b>			
<b>3A - Site analysis</b>	<i>Responsive to opportunities and constraints of site conditions and streetscape</i>	I refer to my previous comments dated 15 August 2019.	<b>NO</b>

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<b>3D - Communal and public open space</b>	<p>Minimum communal space area 25% of site area</p> <p>Minimum 50% direct sunlight to the <u>principal usable part of the communal open space</u> for a minimum of 2 hours between 9am and 3pm on 21 June (mid-winter)</p> <p>Communal open space should have a minimum dimension of 3m, and larger developments should consider greater dimensions</p>	<p>It appears that the proposed communal open space on the rear setback area receives less than 2 hours of solar access for 50% of its area.</p>	<b>NO</b>															
<b>3E – Deep soil zones</b>	<p>- Deep soil zones that allow for and support healthy plant and tree growth</p> <table> <tr> <th>Site area</th> <th>Minimum dimension</th> <th>Deep soil zone (% of the site area)</th> </tr> <tr> <td>Less than 650m<sup>2</sup></td> <td>-</td> <td>7%</td> </tr> <tr> <td>650 m<sup>2</sup> – 1,500m<sup>2</sup></td> <td>3m</td> <td></td> </tr> <tr> <td>Greater than 1,500m<sup>2</sup></td> <td>6m</td> <td></td> </tr> <tr> <td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td> <td>6m</td> <td></td> </tr> </table>	Site area	Minimum dimension	Deep soil zone (% of the site area)	Less than 650m <sup>2</sup>	-	7%	650 m <sup>2</sup> – 1,500m <sup>2</sup>	3m		Greater than 1,500m <sup>2</sup>	6m		Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m		<p>According to the calculation provided (DA 2.008), the proposed development meets the minimum required deep soil area. However, I question the proposed landscape area on the western side boundary. A large proportion of the area is allocated for hard landscaping, but it is calculated as a deep soil area.</p> <p>My previous comments:  <i>‘The proposed landscaped area on the western boundary appears to be mostly hard surfaces. I recommend the majority of the landscape on the western boundary as a deep soil area to provide a soft transition to the adjoining heritage item to the west and mitigate the perceived bulk and scale’.</i></p>	<b>Further clarification is required</b>
Site area	Minimum dimension	Deep soil zone (% of the site area)																
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<b>3F – Visual privacy</b>	<p>Adequate building separation between neighbours to achieve reasonable external and internal visual privacy.</p> <p>Minimum separation distances from buildings to side and rear boundaries:</p>	<p>I have reviewed the applicant’s response on page eight of the SEE. However, this is my opinion that the proposed arrangement of the habitable windows on side boundaries</p>	<b>YES</b>															

	<p><i>Building height</i></p> <p><i>Habitable rooms and balconies</i></p> <p><i>Non-habitable rooms</i></p>	<p>compromises the amenity and outlook of the proposed bedrooms. This is not a good urban design outcome. With greater separation distances, the proposed bedroom windows would be able to face the side boundary landscape have a bigger size.</p> <p>With regards to the proposed Units 7 &amp; 10 in each level, using proper screens and louvres to redirect the views would satisfy my previous comments.</p>	
	<p>Up to 12m (4 storeys)</p> <p>Up to 25m (5-8 storeys)</p> <p>6m</p> <p>9m</p> <p>3m</p> <p>4.5m</p> <p>Generally one step in the built form as the height increases due to building separations is desirable. Additional steps should be careful not to cause a 'ziggurat' appearance</p> <p>Apartment buildings should have an increased separation distance of 3m (in addition to the requirements set out in design criteria 1) when adjacent to a different zone that permits lower density residential development to provide for a transition in scale and increased landscaping</p>		
<b>3G – Pedestrian access and entries</b>	<p>Building entries and pedestrian access connects to and addresses the public domain</p> <p>Access areas clearly visible from public domain</p> <p>Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge</p>	<p>The proposed pedestrian entry gate and lift lobby are located deep into the façade. They are not visible and legible from the public domain. This does not satisfy ADG 3G-2.</p> <p>I recommend an entry gate at the beginning of the pedestrian hallway to enhance its safety and visibility.</p>	<b>NO</b>
<p><b>Part 4: Designing the Building</b></p> <p><u><b>Amenity</b></u></p>			



<b>4A – Solar and daylight access</b>	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter in the Sydney Metropolitan Area  A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid -winter		<b>YES</b>										
<b>4B – Natural ventilation</b>	At least 60% of apartments are naturally cross ventilated in the first 9 storeys Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line	The amended architectural plans demonstrate that the proposal satisfies the minimum cross-ventilation requirements under the ADG.	<b>YES</b>										
<b>4G – Storage</b>	<div>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</div> <table><thead><tr><th>Dwelling type</th><th>Storage size volume</th></tr></thead><tbody><tr><td>1 bedroom</td><td>6m3</td></tr><tr><td>2 bedroom</td><td>8m3</td></tr><tr><td>3+ bedrooms</td><td>10m3</td></tr><tr><td>Studio</td><td>4m2</td></tr></tbody></table> <div>Note: At least 50% of the required storage is to be located within the apartment</div>	Dwelling type	Storage size volume	1 bedroom	6m3	2 bedroom	8m3	3+ bedrooms	10m3	Studio	4m2	The proposed storage area, as shown in DA 2.022 – 2.024 includes the bedroom/bathroom storages. This does not satisfy the minimum requirements under the ADG. A new calculation excluding this area is required.	<b>Additional information required</b>
Dwelling type	Storage size volume												
1 bedroom	6m3												
2 bedroom	8m3												
3+ bedrooms	10m3												
Studio	4m2												

#### Urban Design Review and Recommendation

The proposed development requires further amendments to respond to my above comments in order to satisfy the ADG and SEPP 65 requirements and provide a better urban design outcome. I recommend:

- that the proposed height is reduced to create a less dominant bulk and scale that maintains the dominance of the existing tree canopies on the streetscape. Considering the role of the existing dense tree canopies including heritage trees in providing a natural buffer between Double Bay Centre and Wallaroy Residential Area, I believe a less dominant bulk and scale provides a better urban design outcome.
- that the proposal provides opportunities for more mature trees on front setback area.
- that the proposal provides a better amenity for residents in terms of the location of the principle communal open space, pedestrian entry and internal unit amenity.

Completion Date: 15.08.2019

## **REFERRAL RESPONSE URBAN DESIGN**

FILE NO: Development Applications/ 226/2019/1

ADDRESS: 351 New South Head Road DOUBLE BAY 2028

PROPOSAL: Demolition of existing buildings, construction of a new residential flat building for 18 units with basement parking

FROM: N. Vandchali

TO: Mr W Perdigao

### **Information**

Architectural drawings:

#### **Drawing List:**

2.001	Title Sheet
2.002	Context Analysis
2.003	Site Analysis
2.004	Built Form Context
2.005	View to Site Analysis
2.006	Site Controls
2.007	Deep Soil Analysis
2.010	FSR Calculation
2.021	Apartment Mix
2.022	Apartment Types
2.023	Apartment Types
2.024	Adaptable Unit Plan
2.100	Site Plan
2.101	Basement Level Plan
2.102	Ground Floor Plan
2.103	Level 1 Floor Plan
2.104	Level 2 Floor Plan
2.105	Level 3 Floor Plan
2.106	Level 4 Floor Plan
2.107	Roof Plan
2.201	Elevations
2.202	Elevations
2.203	Detailed Elevation
2.301	Sections

Statement of Environmental Effects: <sup>\*including updated ground floor and basement drawings</sup> HAMPTONS PROPERTY SERVICES Pty Ltd – June 2019

Survey: ERIC SCERRI & ASSOCIATES PTY LTD

## Background

The development application was lodged on 25 June 2019. The referral response provides a comprehensive assessment of the development application against the SEPP 65 principles and the ADG.

## Context

The subject site is the amalgamation of two lots (351 and 353) located in the Wallaroy Precinct on the southern edge of New South Head Road (NSH Rd). It is zoned R3 medium density residential.

The site is directly adjacent to the heritage item known as Overthorpe Gardens which is located to the west and south-west of the site. It is listed as a State heritage item, on the NSW Heritage database and a local item in the Woollahra LEP 2014. To the south, the subject site is also adjacent to a local heritage item at 5 Manning Road that has significant trees and vegetation.

## Proposal

The proposal comprises:

- Demolition of the existing buildings.
- Construction of a four and five-storey residential flat building with 18 residential apartments and associated basement parking and landscaping.

## Controls

- State Environmental Planning Policy No. 65 (SEPP 65): Apartment Design Guide (ADG)
- Woollahra Local Environment Plan 2014 (WLEP2014)
- Woollahra Development Control Plan 2015 (WDCP2015)

## Compliance

The following is an assessment of the proposal against the SEPP 65 Principles.

<i>Principle</i>	<i>Statement</i>	<i>Assessment</i>	<i>Complies</i>
<b>Principle 1: Context and Neighbourhood Character</b>	<i>Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.</i>  <i>Responding to context</i>	The proposed development does not provide an appropriate response to the existing streetscape and desired future character along NSH Rd. The main inconsistencies are: - Existing higher density (4-5 storey) developments along the road, Between Edgecliff and Double Bay Centre, respond to the topography. Approaching Double Bay Centre from the west, the scale of the existing developments facing NSH Rd decreases in response to the downward slope of the topography. Within the immediate surrounding	<b>NO</b>

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	<p><i>involves identifying the desirable elements of an area's <u>existing or future character</u>. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, <u>streetscape and neighbourhood</u>. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</i></p>	<p>context of the subject site, the predominant scale is a 2-3 storey street wall height including the adjoining site to the east at No. 355 NSH Rd.</p> <p>-There is a strong and consistent landscape character along the southern edge of NSH Rd between Henrietta Street and Manning Road, including the subject site. The landscape character is the dominant feature of the site's character and the streetscape.</p> <p>-The subject site is a regular mid-block parcel with no corner character. The view locations provided in the architectural drawings to show the site visibility are selective and not significant views compared to other corner sites in Double Bay Centre identified by the LEP 2014 which are significant corner sites marking the arrival points.</p> <p>-The proposed 4-5 storey street wall height fronting NSH Rd dominates the streetscape and will disrupt the consistent landscape character of the street.</p> <p>-The future desired street wall height along NSH Rd within Double Bay Centre is 4 storeys as per the DCP 2015 D5. The subject site is located outside the centre and should respond to its adjoining sites, the R3 zone objectives and provide a sensitive built form transition to its adjacent heritage landscape item.</p> <p>-The surrounding higher density developments (which are compared to the subject site) are either located in higher density zones, higher topographical locations or in areas with less visual dominance on the streetscape.</p>	
<b>Principle 2: Built Form and Scale</b>	<p><i>Good design achieves a <u>scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings</u>.</i></p> <p><i>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, <u>articulation and the manipulation of building elements</u>. Appropriate built form <u>defines the public domain</u>, contributes to the character of <u>streetscapes and parks</u>, including their <u>views and vistas</u>, and provides internal amenity and outlook.</i></p>	<p>In addition to Principle 1, the proposed development exceeds the maximum allowable building depth on the western side inconsistent with Chapter B3 of the DCP. This reduces the chance for an adequate landscape buffer on the southern boundary and increases the perceived bulk and scale.</p> <p>The proposed GFA calculation (as per Drawing DA 2.015) does not appear to consider the horizontal circulation area. This may affect the proposed density on the subject site. Pending the planning officer's assessment, recalculation may be required to provide the correct proposed FSR.</p> <p>The excessive height and scale result in unsatisfactory overshadowing impacts on the heritage garden to the west and south compared to the existing building on the site and/or a compliant development. According to the SEE, the gardens are affected by the existing tree canopies for the majority of the day and the vegetation are shade tolerant. However, the key point is that the proposed non-compliant built form causes significant overshadowing on adjoining sites. Also, there are a number of</p>	<b>NO</b>

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		palm trees on the eastern boundary which require high levels of solar access.	
<b>Principle 3: Density</b>	<i>Good design achieves a <u>high level of amenity</u> for residents and each apartment, resulting in a density appropriate to the site and its <u>context</u>. Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, <u>public transport</u>, access to jobs, community facilities and the environment.</i>	The overall dwelling density responds to the existing character and desired future character of the area. However, the appropriateness of the overall density is dependent on the proposed bulk and scale achieving suitable amenity and streetscape outcomes.	<b>YES</b>
<b>Principle 4: Sustainability</b>	<i>Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of <u>natural cross ventilation and sunlight</u> for the amenity and liveability of residents and passive thermal design for <u>ventilation</u>, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and <u>deep soil zones</u> for groundwater recharge and vegetation.</i>	As per Sec 3E of this report, more information on the deep soil and cross ventilation is required to demonstrate the consistency with this principle.	<b>Additional information required</b>
<b>Principle 5: Landscape</b>	<i>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments <u>with good amenity</u>. A <u>positive image and contextual fit</u> of well-designed developments is achieved by contributing to the <u>landscape character of the streetscape and neighbourhood</u>.</i>  <i>Good landscape design enhances the development's environmental</i>	To preserve and enhance the existing dense landscape along this section of NSH Rd it is recommended that the development provide a larger front setback to accommodate more mature trees.  To the western boundary, the majority of the proposed landscape appears to be paved areas. A dense soft landscape is recommended at this side to mitigate the perceived bulk and scale and reinforce the continuity of the existing heritage landscape.	<b>NO</b>

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	<p>performance by retaining positive natural features which <u>contribute to the local context</u>, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, <u>respect for neighbours' amenity</u>, provides for practical establishment and long term management.</p>		
<b>Principle 6: Amenity</b>	<p>Good design positively influences internal and external <u>amenity for residents</u> and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing.</p> <p>Good amenity combines appropriate room <u>dimensions and shapes</u>, access to <u>sunlight</u>, natural ventilation, <u>outlook, visual</u> and acoustic privacy, <u>storage</u>, indoor and outdoor space, efficient layouts and service areas, and ease of <u>access</u> for all age groups and degrees of mobility.</p>	<p>Insufficient separation distances to the eastern boundary result in acoustic privacy issues and exacerbate overshadowing impacts on the adjacent sites.</p> <p>The proximity of the built form to the western and southern boundaries results in additional unsatisfactory overshadowing impacts on the heritage vegetation.</p> <p>It also compromises the amenity of the proposed units by having narrow windows on side boundaries.</p>	<b>NO</b>
<b>Principle 7: Safety</b>	<p>Good design optimises safety and security, within the development and the public domain. It provides for <u>quality public and private spaces</u> that are clearly defined and fit for the intended purpose. Opportunities to maximise <u>passive surveillance of public and communal areas</u> promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well-lit and <u>visible areas</u></p>	<p>The proposal provides an appropriate response to this principle.</p>	<b>YES</b>

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	<i>that are easily maintained and appropriate to the location and purpose.</i>		
<b>Principle 8: Housing Diversity and Social Interaction</b>	<p><i>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</i></p> <p><i>Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a <u>broad range of people</u>, providing opportunities for social interaction amongst residents.</i></p>	The proposal provides an appropriate response to this principle.	<b>YES</b>
<b>Principle 9: Aesthetics</b>	<p><i>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of <u>materials, colours and textures</u>.</i></p> <p><i>The <u>visual appearance</u> of well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</i></p>	The proposal provides an appropriate response to this principle.	<b>YES</b>

The apartment design guide

Standard	Required	Proposed	Complies
<b>Part 2: Developing the controls</b>			
<b>2F – Building separation</b>	<p><i>Up to four storeys (approximately 12m):</i></p> <ul style="list-style-type: none"> <li>12m between habitable rooms/balconies</li> <li>9m between habitable and non-habitable rooms</li> <li>6m between non-habitable rooms</li> </ul> <p><i>Five to eight storeys (approximately 25m):</i></p> <ul style="list-style-type: none"> <li>18m between habitable rooms/balconies</li> <li>12m between habitable and non-habitable rooms</li> <li>9m between non-habitable rooms</li> </ul> <p><i>Nine storeys and above (over 25m):</i></p> <ul style="list-style-type: none"> <li>24m between habitable rooms/balconies</li> <li>18m between habitable and non-habitable rooms</li> <li>12m between non-habitable rooms</li> </ul>	<p>The proposed development provides approximately 3-5m separation distances to the western and eastern side boundaries. This includes habitable windows and balconies. The proposal relies on window screening, small windows and window orientation, which compromises the amenity of the proposed units.</p> <p>Additionally, the adjoining site to the east is a narrow, isolated site with habitable windows facing the common boundary. The proposed development maximises its development potential at the expense of the neighbour's amenity.</p> <p>To the south, the proposed development provides 3m separation distances, which exacerbates the overshadowing impacts to the south.</p>	
<b>Part 3: Siting the development</b>			
<b>3A - Site analysis</b>	<i>Responsive to opportunities and constraints of site conditions and streetscape</i>	<p>The proposal exceeds the maximum volume of excavation inconsistent with the DCP. This is also not consistent with the ADG with regards to maintaining the landform.</p> <p>Section 2.2. 301 shows that Apt 06 on the ground level is approximately 3m below the natural ground level. This results in a minimal outlook for the proposed bedroom windows. It compromises the unit amenity.</p>	<b>No</b>
<b>3C – Public domain</b>	<i>Transition between private and public domain is achieved without compromising safety and security Amenity of the public domain is</i>	The proposed northern facade dominates the streetscape. To achieve a contextually appropriate built form outcome, a larger front setback and	

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	<i>retained and enhanced Length of solid walls should be limited along street frontages Terraces, balconies and courtyard apartments should have direct street entry, where appropriate</i>	lower street wall height is recommended. The proposal provides a five-storey built form element with a length of 25m within close proximity to its western boundary adjacent to a heritage landscape. A lower wall height with a high degree of soft landscaping at this side is recommended to provide a suitable transition to the heritage item.																
<b>3D - Communal and public open space</b>	<i>Minimum communal space area 25% of site area Minimum 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (mid-winter) Communal open space should have a minimum dimension of 3m, and larger developments should consider greater dimensions</i>	The architectural drawings do not show the percentage of the communal open spaces, their exact location on the ground level or how they achieve minimum solar access requirements as per the ADG. Further information is required to assess its consistency with the ADG requirements. The proposed deep soil area on the southwestern side of the site appears to be disconnected from the rest of the landscape. It is recommended that this is better integrated with the rest of the landscape to achieve better passive surveillance and create greater opportunities for communal open space.	<b>Additional information required</b>															
<b>3E – Deep soil zones</b>	<i>Deep soil zones that allow for and support healthy plant and tree growth</i> <table><tr><th>Site area</th><th>Minimum dimension</th><th>Deep soil zone (% of the site area)</th></tr><tr><td>Less than 650m<sup>2</sup></td><td>-</td><td>7%</td></tr><tr><td>650 m<sup>2</sup> – 1,500m<sup>2</sup></td><td>3m</td><td></td></tr><tr><td>Greater than 1,500m<sup>2</sup></td><td>6m</td><td></td></tr><tr><td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td><td>6m</td><td></td></tr></table>	Site area	Minimum dimension	Deep soil zone (% of the site area)	Less than 650m <sup>2</sup>	-	7%	650 m <sup>2</sup> – 1,500m <sup>2</sup>	3m		Greater than 1,500m <sup>2</sup>	6m		Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m		Considering landscaping over structure as deep soil area is not satisfactory. The proposal is required to provide a deep soil area with a minimum depth of 3m and 7% of the site area. Further clarification on the location and dimensions of the proposed deep soil area is required to demonstrate its consistency with the ADG requirements. The proposed landscaped area on the western boundary appears to be mostly hard surfaces. It is recommended that the proposal consider making the majority of the landscape on the western boundary a deep soil area to provide a soft transition to the adjoining heritage item to the west and mitigate the perceived bulk and scale.	<b>Additional information required</b>
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<b>3F – Visual privacy</b>	<i>Adequate building separation between neighbours to achieve reasonable external and internal visual privacy. Minimum separation distances from buildings to side and rear boundaries:</i>	The proposed separation distances between Units 7 and 10 in each level results in potential visual and acoustic impacts. This compromises the amenity of the proposed units.	<b>No</b>															

	<p><i>Building height</i></p> <p><i>Habitable rooms and balconies</i></p> <p><i>Non-habitable rooms</i></p> <p>Up to 12m (4 storeys)</p> <p>Up to 25m (5-8 storeys)</p> <p>6m</p> <p>9m</p> <p>3m</p> <p>4.5m</p> <p>Generally one step in the built form as the height increases due to building separations is desirable. Additional steps should be careful not to cause a 'ziggurat' appearance</p> <p>Apartment buildings should have an increased separation distance of 3m (in addition to the requirements set out in design criteria 1) when adjacent to a different zone that permits lower density residential development to provide for a transition in scale and increased landscaping</p>		
<b>3G – Pedestrian access and entries</b>	<p>Building entries and pedestrian access connects to and addresses the public domain</p> <p>Building access areas including lift lobbies, stairwells and hallways should be clearly visible from public domain</p> <p>Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge</p>	<p>Pedestrian access is located deep into the façade and is not clearly visible from the public domain. This reduces the proposal's legibility and pedestrian safety and wayfinding.</p> <p>Direct access from the street to the ground level units is recommended.</p>	<b>NO</b>
<b>3H – Vehicle access</b>	<p>Vehicle access points designed and located to achieve safety</p> <p>Car park access should be integrated with the building's overall facade.</p> <p>The width and number of vehicle access points should be limited to the minimum</p> <p>Designed to minimise conflict with pedestrians and vehicles</p> <p>Create high quality streetscapes</p>	<p>The length of the proposed driveway ramp is excessive. It results in a long black wall on the eastern edge. Subject to the traffic assessment, the length of ramps is to be minimised.</p>	<b>Further assessment is required.</b>
<p><b>Part 4: Designing the Building</b></p> <p><u><b>Amenity</b></u></p>			
<b>4B – Natural ventilation</b>	<p>In cross through apartments external window and door opening/sizes/areas on one side of an apartment (inlet side) are approximately equal to the external window and door opening sizes/areas on the other side of the apartment (outlet side).</p>	<p>The proposed narrow bedroom windows on the western and eastern sides compromise the quality of the natural ventilation of the proposed units. Better separation distances allow for larger bedroom windows with more efficient cross ventilation.</p>	<b>Further amendment required</b>



<b>4C – Ceiling heights</b>	<p><i>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</i></p> <table><tr><td><i>Apartment</i></td><td><i>Minimum ceiling height</i></td></tr><tr><td><i>Habitable rooms</i></td><td><i>2.7m</i></td></tr><tr><td><i>Non-habitable</i></td><td><i>2.4m</i></td></tr><tr><td><i>Attic spaces</i></td><td><i>1.8m with 30° minimum ceiling slope</i></td></tr></table> <p><i>Minimum floor to floor height 3.1m (4C.5).</i></p>	<i>Apartment</i>	<i>Minimum ceiling height</i>	<i>Habitable rooms</i>	<i>2.7m</i>	<i>Non-habitable</i>	<i>2.4m</i>	<i>Attic spaces</i>	<i>1.8m with 30° minimum ceiling slope</i>	<p>The proposed floor to ceiling height is 3.05m which is less than the minimum 3.1m under the ADG. The applicant is to ensure that the required servicing area does not affect the minimum 2.7m floor to ceiling height.</p>	<b>YES</b>		
<i>Apartment</i>	<i>Minimum ceiling height</i>												
<i>Habitable rooms</i>	<i>2.7m</i>												
<i>Non-habitable</i>	<i>2.4m</i>												
<i>Attic spaces</i>	<i>1.8m with 30° minimum ceiling slope</i>												
<b>4G – Storage</b>	<p><i>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</i></p> <table><tr><td><i>Dwelling type</i></td><td><i>Storage size volume</i></td></tr><tr><td><i>1 bedroom</i></td><td><i>6m3</i></td></tr><tr><td><i>2 bedroom</i></td><td><i>8m3</i></td></tr><tr><td><i>3+ bedrooms</i></td><td><i>10m3</i></td></tr><tr><td><i>Studio</i></td><td><i>4m2</i></td></tr></table> <p><i>Note: At least 50% of the required storage is to be located within the apartment</i></p>	<i>Dwelling type</i>	<i>Storage size volume</i>	<i>1 bedroom</i>	<i>6m3</i>	<i>2 bedroom</i>	<i>8m3</i>	<i>3+ bedrooms</i>	<i>10m3</i>	<i>Studio</i>	<i>4m2</i>	<p>The proposed development has included bedroom storage in the calculation of the total storage (as per the Diagrams DA2.022 – 24) which is not consistent with the ADG definition. Further clarification is required to demonstrate consistency with storage requirement.</p>	<b>Additional information required</b>
<i>Dwelling type</i>	<i>Storage size volume</i>												
<i>1 bedroom</i>	<i>6m3</i>												
<i>2 bedroom</i>	<i>8m3</i>												
<i>3+ bedrooms</i>	<i>10m3</i>												
<i>Studio</i>	<i>4m2</i>												

### Summary and recommendations

The proposed development does not appropriately respond to the existing and the desired future character of its immediate surrounding context mainly with regards to the streetscape and landscape character of NSH Rd. Additionally, the proposed excessive bulk and scale results in negative amenity impacts on the proposed units and adjacent sites mainly with regards to the privacy and overshadowing issues. It is recommended that the proposed concept is amended to address the issues identified including:

- The dominant bulk and scale facing the northern and western boundaries. A three-storey street wall height is recommended.
- Inadequate landscape character mainly along the northern and western boundaries. A greater level of deep soil landscape is recommended to maintain and enhance the continuity of the existing landscape and character.
- Insufficient setbacks and separation distances which compromise the amenity of the proposed units and the adjacent sites.

N. Vandchali  
Strategic Planner

Completion Date: 7 November 2019

## REFERRAL RESPONSE – DEVELOPMENT ENGINEERING

**FILE NO:** Development Applications/ 226/2019/1  
**ADDRESS:** 351 New South Head Road DOUBLE BAY 2028  
**PROPOSAL:** Demolition of existing buildings, construction of a new residential flat building for 18 units with basement parking  
**FROM:** Mr R Lam  
**TO:** Mr W Perdigao

---

### 1. ISSUES

- None

### 2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environment Effects, referenced 2018115, prepared by Hamptons Property Services P/L, dated 3 June 2019.
- Architectural Plans, referenced 18.41-Rev A, prepared by Hill Thalys, dated 20/03/2019.
- Revised Basement and Ground Floor Plan, referenced 18.41-Rev B, prepared by Hill Thalys, dated 04/07/2019.
- Survey, referenced 3545/18, prepared by Eric Scerri & Associates P/L, dated 12 March 2018.
- Stormwater Disposal Concept Plan, referenced P180695-Rev A, prepared by Martens, dated 21/05/2019.
- Flood Assessment, referenced P1806950JC01V02, prepared by Martens Consulting Engineers, dated 4 June 2019.
- Geotechnical Report, referenced P1806950JR02V01, prepared by Martens Consulting Engineers, dated June 2019.
- Traffic Report, referenced 18.671r02v02, prepared by Traffix, dated 9 July 2019.
- Response from RMS, dated 25 July 2019.

### 3. ASSESSMENT

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

#### a. Site Drainage comments

*The submitted concept stormwater plans are considered satisfactory in principle except that the storage volume of the proposed on-site detention (OSD) system shall be increased to 11.2m<sup>3</sup> to comply with Chapter E2.2.4 of Council's DCP. Part of the subject site is situated in an OSD exemption area where the installation of OSD system for the entire site is not required. Hence, the required 11.2m<sup>3</sup> is calculated based on the site area that is subject to the installation of the OSD system requirement. Basement pumpout system shall be installed in accordance with Section 8 of AS3500.3:2018.*

*Stormwater runoff from the site will be collected and discharged to the existing RMS' underground system via the installation of the new kerb inlet pit which is to be located within the frontage of the site. Stormwater treatment system is to be installed to satisfy the water quality targets stipulated in Chapter E2.2.3 of Council's DCP which will be conditioned accordingly.*

*Council's Technical Services Division is satisfied that adequate provision could be made for the disposal of stormwater from the land it is proposed to develop and complies with the objectives of Chapter E2 "Stormwater and Flood Risk Management" DCP subject to the imposition of suitable conditions.*

#### b. Flooding & Overland Flow comments

*Council's Drainage Engineer has determined that the development proposal is generally satisfactory subject to the following conditions:*

- a) A permanent flood risk management plan is to be installed in a frequented area of the basement carpark.*
- b) All fences and walls are to be designed to be structurally stable during all flood events including the PMF.*
- c) The proposed below ground car park is to be protected by a physical threshold set at or above the flood planning level of RL8.7m AHD*
- d) All habitable floors have to be at or above or protected from flooding to the flood planning level RL9.5 m AHD*
- e) Flood compatible materials shall be used for all flood exposed construction below the flood planning level of RL9.5m AHD*
- f) All electrical wiring and fixed electrical equipment shall be located above or waterproofed to the flood planning level of RL9.5m AHD.*
- g) Emergency self-powered lighting, indicating the safe exits is to be installed in the car parking area.*

- h) All flood protection measures are to be inspected and certified as fit for purpose after the construction is complete by an engineer experienced in flood mitigation.*

**c. Impacts on Council Infrastructure comments**

*The applicant seeks to provide basement parking as part of this development. As such, the applicant shall remove all existing vehicular crossing and layback and construct a new 5.5m wide crossing as part of this application. The new crossing shall be constructed at right angle to the street kerb which will be conditioned accordingly.*

*A new kerb inlet pit shall be constructed for the proposed stormwater connection to the RMS' underground system which will be conditioned accordingly.*

**d. Traffic comments**

*Council's Traffic Engineers have no objections to this application subject to suitable conditions. A memo of traffic memo is contained in HPE # 19/134631.*

**e. Vehicle Access & Accommodation comments**

*The proposed car parking layout and vehicular access as indicated in revised architectural basement and ground floor drawings – Rev B, dated 04/07/2019 are considered satisfactory.*

*In order to ensure that there is no queueing to traffic entering the site with the proposed single width driveway, the applicant must provide a traffic signal, giving preference to ingress traffic which will be conditioned accordingly.*

**f. Geotechnical, Hydrogeological and/or Structural comments**

*A Geotechnical Report by Martens Consulting Engineers, Ref: P1806950JR02V01, dated June 2019, has been submitted in support of the application. The proposal involves excavation with a maximum depth of about 6.5 metres below the existing ground levels for the proposed basement.*

*The report identified that the subsurface conditions as:*

- a) Fill comprising silty sand to a depth of 0.6m*
- b) Depth of natural sand with various density from a depth beneath the fill in a range of 1.5m to 8.2m.*
- c) Sandstone bedrock was encountered beneath the natural sand.*
- d) Groundwater was not encountered during the field investigation.*

*The report made comments and recommendations on the following:*

- Shoring and support,*
- Vibration Monitoring,*
- Excavation method,*
- Further Geotechnical input.*

*Council's Technical Services has no objections to the proposed excavation on technical grounds. Notwithstanding this, Council's Planning Officer is also to undertake an assessment of the proposed excavation against the relevant excavation objectives and controls prescribed under the LEP and DCP.*

#### 4. RECOMMENDATION

Council's Development Engineer has determined that the proposal is satisfactory, subject to the following conditions:

##### A. General Conditions

##### A.5 Approved Plans & Supporting documents

Reference	Description	Author/Drawn	Date(s)
P1806950JR02V01	Geotechnical Report	Martens	June 2019
P1806950	Stormwater Management Plan	Martens	
PS01-E100-A			21/05/2019
PS01-E110-A			21/05/2019
PS01-E200-A			21/05/2019
PS01-E600-A			21/05/2019
PS01-E700-A			21/05/2019
P1806950JC01V02	Flood Assessment	Martens	04 June 2019
18.671r02v02	Traffic Report	Traffix	09 July 2019

##### A.8 Ancillary Aspect of the Development (S80A(2) of the Act)

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

##### B.7 Public Road Assets prior to any work/demolition

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

##### C.5 Security Deposits

Property Damage Security Deposit (S138)	\$155,058	No	T115
Infrastructure Works bond (S138)	\$53,400	No	T113
Public Road and Footpath Infrastructure Inspection Fee (S138 Fee)	\$471	No	T45



### **C.13 Road and Public Domain Works**

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

#### **1. Road & Footpath Works**

- a) The removal of all existing vehicular crossing including layback and gutter and reinstated into RMS' Standard kerb and gutter and nature strip in accordance with RMS' Specification.
- b) The construction of a new 5.5 metres wide vehicular in accordance with Council's standard driveway drawing RF2\_D. The new crossing shall be constructed at right angle to the street kerb in plain concrete and the centreline of the new crossing shall be aligned with the centreline of the proposed driveway at the property boundary. Design longitudinal surface profiles along each side/edge for the proposed driveway must be submitted for assessment.
- c) Approval for the design of the proposed layback and gutter shall be obtained from the RMS with a copy submitted to Council with this S138 application.
- d) The reconstruction of the existing full width concrete footpath for the full frontage of the site to Council's Specification. Detailed long section and cross section at every 5m interval shall be prepared by a suitably qualified and experienced civil engineer.

#### **2. Drainage Works**

- a) The construction of a new kerb inlet pit with 2.4m lintel for the proposed stormwater connection in New South Head Road in accordance with the Road and Maritime Services (RMS) Specification.
- b) Approval for the design of the new kerb inlet pit shall be obtained from the RMS with a copy submitted to Council with this S138 application. Detailed longitudinal sections for the new stormwater pipes across the nature strip in New South Head Road shall be provided in the drawings. All stormwater works shall be designed and carried out in accordance with Council's Specifications and standard drawing DR1 and RMS' specification.
- c) The existing RMS' in-ground system shall be extended from by using minimum Class 4, 375mm RRJ reinforced concrete pipes (RCP) with a minimum longitudinal fall of 1% in accordance with RMS' Specification and AS3725. Detailed design including longitudinal section of the proposed 375mm RCP shall be prepared by a suitably qualified civil engineer. Trench details shall be included in the design drawings to comply with Council's Specification and AS3725.
- d) The developer shall be responsible for carrying out all service investigations to allow a gravity connection.

3. Bonds

- a) A bond of \$53,400 will be used as security to ensure the satisfactory completion of the infrastructure works. The security or bank guarantee must be the original unconditional bank guarantee with no expiry date.
- b) Council may use all or part of the Infrastructure Bond as well as the Property Damage Security Deposit to meet the cost of removing or completing the works if they do not meet Council's requirements.
- c) The Deposit/Bond will not be released until Council has inspected the site and is satisfied that the Works have been completed in accordance with Council approved drawings and to Council requirements

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

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

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

**Note:** See condition K24 in *Section K. Advisings* of this Consent titled *Roads Act Application*.  
Standard Condition: C13 (Autotext CC13)

**C.21 Provision for Energy Supplies**

**C.25 Soil and Water Management Plan – Submissions & Approval**

**C.36 Professional Engineering Details**

**C.37 Engineer Certification (Special Condition)**

A certificate from a *professional engineer* (Civil/Traffic Engineer), certifying that the proposed driveway for the first 6m from the property boundary is at a maximum grade of 5% as required by Clause 3.3 of AS2890.1, must be submitted with the *Construction Certificate* application.

In addition, the engineer must certify that a headroom of 2.2m has been provided between the underside of the ground floor slab and the finished level of the driveway to comply with Clause 5.3 of AS2890.1

**C.40 Geotechnical and Hydrogeological Design, Certification & Monitoring**

**C.41 Ground Anchors**

**C.45 Car and Commercial Parking Details**

The *Construction Certificate* plans and specifications required by clause 139 of the Regulation, must include detailed plans and specifications for all bicycle, car and commercial vehicle parking in compliance with AS2890.3:1993 *Parking Facilities - Bicycle Parking Facilities*, AS/NZS 2890.1:2004 : *Parking Facilities - Off-Street Car Parking* and AS 2890.2:2002 – *Off-Street Parking: Commercial Vehicle Facilities* respectively.

The plans must satisfy the following requirements:

- a) A 2m x 2.5m driveway sightline splay is to be provided along the western edge of the driveway, as per *AS/NZS 2890.1:2004 Clause 3.2.4 and Figure 3.3*.
- b) Sight distances from the proposed vehicular crossing to vehicles on New South Head Road are to be provided in accordance with the *Austroads Guide to Road Design: Part 4A: Unsignalised and Signalised Intersections (Section 3 – Sight Distance)* and *AS 2890*. Vegetations and proposed landscaping/fencing must not hinder sight lines to and from the vehicular crossing to motorists, pedestrians and cyclists.

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

The *Certifying Authority* has no discretion to reduce or increase the number and/or area of car parking and/or the model of the car stacker system required to be provided and maintained by this consent.

Standard Condition: C45 (Autotext: CC45)

### **C.51 Stormwater Management Plan**

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

- a) General design in accordance with stormwater plans prepared by Martens, dated 21/05/2019, shall be amended to address the following:
  - Details of pumpout system including supporting calculation shall be provided. The pumpout system must be designed to comply with Section 8 of AS3500.3:2018.
  - The minimum storage capacity of the proposed on-site detention (OSD) system must be increased to 11.2m<sup>3</sup> to comply with Chapter E2.2.4 of Council's DCP.
  - A new kerb inlet pit shall be constructed for the proposed stormwater connection to the RMS' underground drainage system.
- b) Compliance the objectives and performance requirements of the BCA;
- c) The installation of Stormwater360 filters and gross pollutant traps to achieve the water quality targets stipulated in Chapter E2.2.3 of Council's DCP;
- d) General compliance with the Council's Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management.; and
- e) The installation of On-site stormwater detention ("OSD") system.

#### **OSD Requirements**

The minimum (OSD) Site Storage Requirements ("SSR") and the Peak Site Discharge ("PSD") from the site must be 11.2m<sup>3</sup> and 41.4 l/s respectively to comply with Chapter E2.2.4 of Council's DCP.

The *Stormwater Management Plan* must also include the following specific requirements:

**Layout plan**

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

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

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

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

**C.54 Flood protection**

The *Construction Certificate* plans and specifications, required by Clause 139 of the *Regulation*, must include a Flood Risk Management Plan on the basis of the Flood Planning Level (FPL). The flood planning level shall be based 1 in 100 year AEP flood level detailing:

- a) A permanent flood risk management plan is to be installed in a frequented area of the basement carpark.
- b) All fences and walls are to be designed to be structurally stable during all flood events including the PMF.
- c) The proposed below ground car park is to be protected by a physical threshold set at or above the flood planning level of RL8.7m AHD
- d) All habitable floors have to be at or above or protected from flooding to the flood planning level RL9.5 m AHD
- e) Flood compatible materials shall be used for all flood exposed construction below the flood planning level of RL9.5m AHD
- f) All electrical wiring and fixed electrical equipment shall be located above or waterproofed to the flood planning level of RL9.5m AHD.
- g) Emergency self-powered lighting, indicating the safe exits is to be installed in the car parking area.
- h) All flood protection measures are to be inspected and certified as fit for purpose after the construction is complete by an engineer experienced in flood mitigation.

Flood protection is to comply with Woollahra DCP 2015, Part E "General Controls for All Development" Chapter E2 "Stormwater and Flood Risk Management" DCP

**Note:** The revised driveway profile, gradients and transitions must be in accordance with Australian Standard 2890.1 – 2004, Part 1 (Off-street car parking). The driveway profile submitted to Council must contain all relevant details: reduced levels, proposed grades and distances. Council will not allow alteration to existing reduced levels within the road or any other public place to achieve flood protection.  
Standard Condition C.54 (autotext CC54)

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

**D.4 Dilapidation Reports for existing buildings**

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

These properties to be assessed by the Structural Engineer must include (but is not limited to):

No. 355 New South Head Road  
No. 355 New South Head Road  
No. 3A Manning Road  
No. 5 Manning Road

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

Where excavation of the site will extend below the level of any immediately adjoining building the *principal contractor* or *owner builder* must give the adjoining building owner(s) a copy of the dilapidation report for their building(s) and a copy of the *notice of commencement* required by S81A(2) of the *Act* not less than two (2) days prior to the commencement of any work.

**Note:** The reasons for this condition are:

- To provide a record of the condition of buildings prior to development being carried out
- To encourage developers and its contractors to use construction techniques that will minimise the risk of damage to buildings on neighbouring land

Also refer to the Dilapidation Report Advising for more information regarding this condition

Standard Condition: D4 (Autotext DD4)

**D.6 Adjoining buildings founded on loose foundation materials**

**D.7 Piezometers for the monitoring of Ground Water Levels (GWL)**

The *principal contractor* must provide 2 piezometers within the excavation area and a further 2 piezometers around the perimeter of the wall. The piezometers are to be installed to monitor groundwater levels before and during all dewatering works for the construction phase.



The Ground Water Levels monitoring wells and monitoring program must be maintained until the issue of the *Final Occupation Certificate*.

Ground Water Levels are to be regularly monitored during the course of the works as required by the Work Method Statement for the control of Ground Water Levels. Any damaged piezometers are to be replaced to allow uninterrupted monitoring.

Where there are any movements in the Ground Water Levels outside a safe range set by the Work Method Statement for the control of Ground Water Levels corrective action must be undertaken under the direction of the *professional engineer* (hydrological/geotechnical engineer).

Standard Condition: D7 (Autotext DD7)

**D.9 Construction Management Plan**

**D.10 Works (Construction) Zone – Approval & Implementation**

**D.14 Erosion and Sediment Controls – Installation**

**E. Conditions which must be satisfied during any development work**

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

**E.7 Maintenance of Vehicular and Pedestrian Safety and Access**

**E.11 Maintenance of Environmental Controls**

**E.12 Compliance with Geotechnical/Hydrogeological Monitoring Program**

**E.13 Support of Adjoining Land Owners**

**E.14 Vibration Monitoring**

**E.15 Erosion and Sediment Controls – Maintenance**

**E.17 Disposal of Site Water during Construction**

**E.19 Site Cranes**

**E.20 Check Surveys – boundary location, building location, building height, stormwater drainage system and flood protection measures relative to AHD**

**E.24 Compliance with Council's Specification for Roadworks, Drainage and Miscellaneous Works, Road Works and, Work within the Road and Footway**

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

**F.7 Commissioning and Certification of Systems and Works**

The *principal contractor* or *owner builder* must submit to the satisfaction of the *PCA* works-as-executed ("WAE") plans, *Compliance Certificates* and evidence of suitability in accordance with Part A2.2 of the *BCA* confirming that the *works*, as executed and as detailed, comply with the requirement of this consent, the *Act*, the *Regulations*, any relevant *construction certificate*, the *BCA* and relevant *Australian Standards*.

Works-as-executed ("WAE") plans, *Compliance Certificates* and evidence of suitability in accordance with Part A2.2 of the *BCA* must include but may not be limited to:

- a) Certification from the supervising professional engineer that the requirement of the Geotechnical/Hydrogeological conditions and report recommendations were implemented and satisfied during development work.
- b) All flood protection measures.
- c) All basement car park, driveways and access ramps comply with Australian Standard AS 2890.1 – “Off-Street car parking.” In particular, the grade of the driveway for first 6m from the property boundary has been constructed with a maximum grade of 5% in accordance with the approved DA drawings.
- d) All stormwater drainage and storage systems.
- e) All mechanical ventilation systems.
- f) All hydraulic systems.
- g) All structural work.
- h) All acoustic attenuation work.
- i) All waterproofing.
- j) Such further matters as the Principal Certifying Authority may require.

**Note:** This condition has been imposed to ensure that systems and works as completed meet *development standards* as defined by the *Act*, comply with the BCA, comply with this consent and so that a public record of works as executed is maintained.

**Note:** The *PCA* may require any number of WAE plans, certificates, or other evidence of suitability as necessary to confirm compliance with the *Act*, *Regulation*, Development Standards, *BCA*, and relevant *Australia Standards*. As a minimum WAE plans and certification is required for stormwater drainage and detention, mechanical ventilation work, hydraulic services (including but not limited to fire services).

**Note:** The *PCA* must submit to Council, with any *Occupation Certificate*, copies of works-as-executed (“WAE”) plans, *Compliance Certificates* and evidence of suitability in accordance with Part A2.2 of the *BCA* upon which the *PCA* has relied in issuing any *Occupation Certificate*.  
Standard Condition: F7 (Autotext FF7)

## **F.9 Commissioning and Certification of Public Infrastructure Works**

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

#### **G.4 Electricity Substations – Dedication as road and/or easements for access**

### **H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (S109C (1) (c))**

#### **H.13 Road Works (including footpaths)**

#### **H.20 Positive Covenant and Works-As-Executed Certification of Stormwater Systems**

On completion of construction work, stormwater drainage works are to be certified by a professional engineer with works-as-executed drawings supplied to the Principal Certifier detailing:

- a) compliance with conditions of development consent relating to stormwater,
- b) the structural adequacy of the stormwater system,
- c) that the works have been constructed in accordance with the approved design,

- d) pipe invert levels and surface levels to Australian Height Datum, and
- e) contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.

A positive covenant pursuant to section 88E of the *Conveyancing Act 1919* must be created on the title of the subject property, providing for the indemnification of Council from any claims or actions and for the on-going maintenance of the stormwater management system, stormwater filtration system, including any pumps and sumps incorporated in the development. The wording of the Instrument must be in accordance with Council's standard format and the Instrument must be registered with the NSW Land Registry Services.

**Note:** The required wording of the Instrument can be downloaded from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au). The PC must supply a copy of the WAE plans to Council together with the Final Occupation Certificate.

**Note:** The Final Occupation Certificate must not be issued until this condition has been satisfied.  
Standard Condition: H20 (Autotext HH20)

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

### **I.21 Provision of Off-Street Parking**

The owner and occupier, in compliance with AS2890.3:1993 Parking Facilities - Bicycle Parking Facilities, and AS/NZS 2890.1.2004: Parking Facilities - Off-Street Car Parking, must maintain unimpeded public access to off-street parking as follows:, must maintain unimpeded public access to off-street parking as follows:

Use	Number of spaces
Resident car parking	17
Motorbike parking	2
Bicycle parking	18

This condition has been imposed to ensure adequate on-site parking is maintained.  
Standard Condition: I21

### **I.29 Ongoing Maintenance of the On-Site-Detention System**

#### **I.31 Parking Permits (Special Condition)**

Future tenants and residents of the proposed development will not be eligible for resident or visitor parking permits.

## **J. Miscellaneous Conditions**

Nil

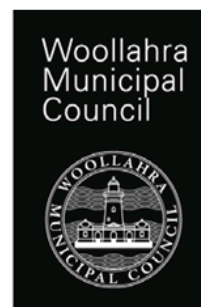
**K. Advising**

**K.23 Dilapidation report**

**K.24 Roads Act Application**

## Memorandum - Traffic

Date 23 August, 2019  
File No. Development Applications: 226/2019/1  
To Mr W Perdigao  
CC Mr R Lam  
From Ms Q Liu  
Address **351 NEW SOUTH HEAD ROAD DOUBLE BAY 2028**



ABN 32 218 483 245

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

Correspondence to  
General Manager  
PO Box 61  
Double Bay NSW 1360  
DX 3607 Double Bay  
records@woollahra.nsw.gov.au  
www.woollahra.nsw.gov.au

Telephone (02) 9391 7000  
Facsimile (02) 9391 7044

I refer to the memo from the Planning Department dated 25 June 2019 requesting comments in relation to the above.

Traffic Engineering has reviewed:

1. Traffic Impact Statement (Ref 18.671r01v04) by the Traffix dated 29 April 2019;
2. Traffic Impact Statement Additional information (Ref 18.671r02v02) by the Traffix dated 9 July 2019;
3. Architectural Plans (Drawing No. 2.001-007, 2.010, 2.021-024, 2.100-2.107, 2.201-203, and 2.301 Rev A) by Hill Thalys Architects dated 20 March 2019;
4. Amended Architectural Plans (Drawing No. 2.101-102 Rev B) by Hill Thalys Architects dated 4 July 2019.

### Proposal

Demolition of existing buildings, construction of a new residential flat building for 18 units with basement parking

### COMMENTS

#### Parking Provision

The car parking provision for the proposed development has been assessed in accordance with Council's DCP Clause E1.4.2.

Component	Maximum parking generation rates (space per dwelling)	Quantity (dwelling)	Maximum parking requirement (spaces)
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Referral Response - Traffic - 2019 226 - 351 New South Head Road DOUBLE BAY - Residential Flat Bldg 4 or more Storeys



Studio apartment	0.5	2	1
1 bedroom	1	2	2
2 bedrooms	1.5	12	18
3 or more bedrooms	2	2	4
Residents		18	25
Visitors	0.25	18	4.5
<b>Total</b>			<b>30</b>

The bicycle parking provision for the proposed development has been assessed in accordance with Council's DCP Clause E1.6.2.					
	Minimum bicycle parking rates		Quantity	Minimum bicycle parking requirement (spaces)	
Land use	Residents	Visitors		Resident	Visitors
<i>Residential</i>					
Residential accommodation	1 per dwelling	1 per 10 dwellings	18 dwellings	18	1.8

The motorbike parking provision for the proposed development has been assessed in accordance with Council's DCP Clause E1.7.1.			
Component	Minimum motorbike parking rate (per car space)	Quantity (car spaces)	Minimum motorbike parking requirement (spaces)
Car spaces	0.1	17	2

The proposed on-site parking provision includes:

- 17 car spaces comprising 17 resident parking spaces and no visitor space
- 18 bicycle racks, and
- 2 motorbike spaces.

The reduced on-site parking provision is considered not to generate unacceptable adverse impact on the surrounding road network as the on-street parking in close vicinity is generally protected by time or paid parking restrictions. Future occupiers who are not allocated with off-street parking would not be able to rely on the nearby on-street parking to meet their long-term parking demand and hence likely reduce the car ownership. A reduced car ownership would also benefit the surrounding road network with reduced car trip generation being expected.

#### Traffic Generation

Traffic generation from the proposed development has been calculated in accordance with <i>RMS Guide to Traffic Generating Developments 2002</i> and <i>RMS Guide to Traffic Generating Developments Updated traffic surveys TDT 2013/04a</i> .					
Component	Quantity	Weekday peak hour vehicle trip rate (per dwelling)	Weekday peak hour vehicle trips	Daily vehicle trip rate (per dwelling)	Daily vehicle trips
Post-development					

Referral Response - Traffic - 2019 226 - 351 New South Head Road DOUBLE BAY - Residential Flat Bldg 4 or more Storeys

Medium density - smaller units and flats (up to two bedrooms)	16	0.4 ~ 0.5	6.4 ~ 8	4 ~ 5	64 ~ 80
Medium density - larger units and town houses (three or more bedrooms)	2	0.5 ~ 0.65	1 ~ 1.3	5 ~ 6.5	10 ~ 13
Total			7.4 ~ 9.3		74 ~ 93
Pre-development					
Low density	2	0.99	1.98	10.7	21.4
<b>Net increase</b>			<b>5 ~ 7</b>		<b>53 ~ 72</b>

The traffic generation associated with the proposed development will have negligible impact on the road network, particularly given the frontage road being New South Head Road.

#### Parking Layout

The Traffic and Parking Impact Assessment has satisfactorily addressed the relevant design requirement stipulated in AS2890 series.

#### **RECOMMENDATION**

Should this development be approved, it is recommended that the following matters be addressed by the conditions of consent:

#### **A. General Conditions**

##### **A.1 Approved Plans and supporting documents**

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

Reference	Description	Author/Drawn	Date(s)
18.671r01v04	Traffic Impact Statement	Traffix	29 April 2019
18.671r02v02	Traffic Impact Statement Additional information	Traffix	9 July 2019

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

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

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

##### **C. 45 Car and Commercial Parking Details**

Referral Response - Traffic - 2019 226 - 351 New South Head Road DOUBLE BAY - Residential Flat Bldg 4 or more Storeys

The *Construction Certificate* plans and specifications required by clause 139 of the Regulation, must include detailed plans and specifications for all bicycle, car and commercial vehicle parking in compliance with AS2890.3:1993 *Parking Facilities - Bicycle Parking Facilities*, AS/NZS 2890.1:2004 : *Parking Facilities - Off-Street Car Parking* and AS 2890.2:2002 – *Off-Street Parking: Commercial Vehicle Facilities* respectively.

The plans must satisfy the following requirements:

- a) A 2m x2.5m driveway sightline splay is to be provided along the western edge of the driveway, as per *AS/NZS 2890.1:2004 Clause 3.2.4 and Figure 3.3*.
- b) Sight distances from the proposed vehicular crossings to vehicles on New South Head Road are to be in accordance with the *Austroads Guide to Road Design: Part 4A: Unsignalised and Signalised Intersections (Section 3 – Sight Distance)* and *AS 2890*. Vegetation and proposed landscaping/fencing must not hinder sight lines to and from the vehicular crossings to motorists, pedestrians and cyclists.

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

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

Standard Condition: C45 (Autotext: CC45)

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

##### **D.9 Construction Management Plan**

#### **E. Conditions which must be satisfied during any development work**

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

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

##### **I.21 Provision of Off-Street Parking**

The owner and occupier, in compliance with AS2890.3:1993 *Parking Facilities - Bicycle Parking Facilities*, and AS/NZS 2890.1:2004 : *Parking Facilities - Off-Street Car Parking*, must maintain unimpeded public access to off-street parking as follows:, must maintain unimpeded public access to off-street parking as follows:

Use	Number of spaces
Resident car parking	17
Motorbike parking	2
Bicycle parking	18

This condition has been imposed to ensure adequate on-site parking is maintained.

Standard Condition: I21

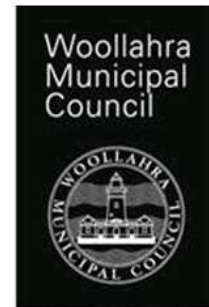
##### **I.xx Resident Parking Permits (special condition)**

Referral Response - Traffic - 2019 226 - 351 New South Head Road DOUBLE BAY - Residential Flat Bldg 4 or more Storeys

Future tenants and residents of the proposed development will not be eligible for resident or visitor parking permits.

Referral Response - Traffic - 2019 226 - 351 New South Head Road DOUBLE BAY - Residential Flat Bldg 4 or more Storeys

## Memorandum - Drainage



ABN 32 218 483 245

Redleaf Council Chambers  
536 New South Head Road  
Double Bay NSW 2028  
Correspondence to  
General Manager  
PO Box 61  
Double Bay NSW 1360  
DX 3607 Double Bay  
records@woollahra.nsw.gov.au  
www.woollahra.nsw.gov.au  
**Telephone (02) 9391 7000**  
**Facsimile (02) 9391 7044**

Date 2/11/2020  
File No. Development Applications: DA2019/226/1  
To Mr Robert Lam  
CC  
From Michael Casteleyn  
**Address** 351-353 New South Head Road DOUBLE BAY

---

I refer to the following documents received for this report:

19/100220 Document - Flood Assessment - DA2019/226/1 - 351-353 New South Head Road  
DOUBLE BAY  
19/100226 Plan - Architectural Drawings - DA2019/226/1 - 351-353 New South Head Road  
DOUBLE BAY

### RECOMMENDATION

Council's drainage Engineer has determined that the development proposal is generally satisfactory, subject to the following conditions;

#### C.54 Flood Protection

The Construction Certificate plans and specifications, required by clause 139 of the *Regulation*, must include a Flood Risk Management Plan on the basis of the Flood Planning Level (FPL) detailing:



- a. A permanent flood risk management plan shall be installed in a prominent area of the basement carpark.
- b. All fences and walls are to be designed to be structurally stable during all flood events up to the probable maximum flood (PMF)
- c. The proposed below ground car park is to be protected by a physical threshold set at or above the flood planning level of 8.7m AHD
- d. All habitable floors have to be at or above or protected from flooding to the flood planning level 9.5 m AHD
- e. Flood compatible materials shall be used for all flood exposed construction below the flood planning level of 9.5m AHD
- f. All electrical wiring and fixed electrical equipment shall be located above or waterproofed to the flood planning level of 9.5m AHD.

5 June 2020

## REFERRAL RESPONSE – TREES & LANDSCAPING

**FILE NO:** DA 226/2019/1

**ADDRESS:** 351 New South Head Road DOUBLE BAY 2028

**PROPOSAL:** Demolition of existing buildings, construction of a new residential flat building including provision of affordable rental housing (SEPP ARH 2009) with basement parking

**FROM:** David Grey - Tree & Landscape Officer

**TO:** Mr W Perdigao

---

### I refer to the following documents received for this report:

- Statement of Environmental Effects, prepared by Hamptons Property Services, dated 3 June 2019
- Survey Plan No. 3545, drafted by Eric Scerri, dated 2 March 2018
- Architectural Drawing No. 2.100 – 2.107, 2.201 – 2.203, 2.301, drawn by Hill Thalys, dated 26 November 2019 (Revised)
- Stormwater Drainage Plan No. PS01-E100, drawn by Martens & Associates, dated 21 May 2019
- Arboricultural Impact Assessment Report, written by Botanics Tree Wise People, dated December 2018
- Arborists Report ( Objection) prepared by Dr Treegood, dated August 2019
- Arborists Report (Objection) prepared by Dr Treegood, dated February 2020
- Landscape Plan No. LS 00 – LS 02, designed by Melissa Wilson, dated 26 March 2019
- Flora and Fauna Assessment, prepared by Eco Logical, dated January 2019

A site inspection was carried out on 3 June 2020

### Relevant Control:

- Woollahra Local Environment Plan 2014
- Woollahra Development Control Plan 2015

- The comments and recommendations within this Referral Response have taken into consideration the guidelines established within Australian Standard AS 4373 – Pruning of amenity trees and Australian Standard AS 4970 – Protection of trees on development sites

#### SUMMARY

- Tree and landscape issues primarily unchanged
- Arborist reports (Objections) – addressing trees on neighbouring properties

#### COMMENTS

##### **Tree and Landscape issues**

This revised proposal appears to be unchanged in terms of tree and landscape issues within the site. I note that no revised Landscape Plan has been submitted. Proposed alterations in building footprints does not appear to have required modifications to proposed landscaping.

The supplied Melissa Wilson Landscape plans are of a very good standard with a generous proportion of new plantings of native trees proposed. I have recommended that these plans form part of any approval as well as acting as a reference for existing trees to be retained.

The originally supplied Arboricultural Impact Assessment Report prepared by Botanics is of such a poor standard that I am not able to recommend it as an approved document.

##### **Arborists Reports (Objection)**

Two Arborists Reports in the form of objections, prepared by Dr Treegood, have been submitted addressing the potential for this proposal to impact on large trees standing on adjoining properties at 337 New South Head Road, 349 New South Head Road and 5 Manning Road. These trees are a Fig tree standing on 337 New South Head Road, an incorrectly identified Pine tree standing on 349 New South Head Road and a Weeping Lilly Pilly tree standing on 5 Manning Road. All three trees have Heritage status within the WLEP 2014.

##### **Fig Tree at 337 New South Head Road**

No further action is required here. Standard Tree Root Protection measures will apply to this tree.

This tree stands to the west of the side boundary of 351 New South Head Road. The driveway to 349 New South Head Road separates the boundaries of 337 and 351 New South Head Road. During my site inspection I estimated the Fig tree to stand approximately 15 metres from the boundary with 351 New South Head Road. This places all the proposed works outside the Tree Protection Zone of the Fig tree. The Arborist has incorrectly calculated the Tree Protection Zone as being 43.2 metres radius. AS 4970 limits this root protection zone to a maximum of 15 metres radius. There are no works proposed within the TPZ.

##### **Norfolk Island Pine at 349 New South Head Road (Tree 30)**

Additional Tree Protection conditions have been recommended for this tree.

I believe that Dr Treegood has incorrectly identified this tree as being a Hoop Pine when it is in fact a Norfolk Island Pine. This error is understandable given the inaccessibility of the tree crown and not of great consequence as the tree would have equal status in either case. This

Norfolk Island Pine is listed as a Heritage Item in the WLEP 2014. Dr Treegood correctly comments that this tree has not been assessed in the Botanics Arborists report supplied with the development application, along with many other shortcomings of that report. The tree was not indicated on the supplied Survey Plan or the Landscape Plans. Dr Treegood is correct in calling attention to this tree and has nominated the identification number Tree 29. I have previously used 29 to identify an unlisted Frangipani tree located at the front of the site, I have nominated this Norfolk Island Pine tree to be identified as Tree 30.

Of the three trees cited by Dr Treegood in his objections, this tree is the only one with any potential to be impacted by the proposed works. The tree stands approximately 5 metres from the south west corner of 351 New South Head Road. With a trunk diameter of 900mm and a root buttress diameter of 1.05m I have calculated the Structural Root Zone of this tree to be 3.3 metres radius. So none of the proposed works will be undertaken in this critical inner root zone. The larger Tree Protection Zone is 10.8 metres radius and does extend into the development site. The supplied Architects Ground Floor Plan Drawing DA 2.102 indicates basement excavations at a point approximately 9 metres from the Tree 29. This represents a minor and acceptable incursion into the TPZ of Tree 30.

#### **Weeping Lilly Pilly at 5 Manning Road**

No further action is required here. Standard Tree Root Protection measures will apply to this tree.

This tree stands approximately 8 metres from the boundary with the development site at 353 New South Head Road. The proposed works are outside the Structural Root Zone of the tree and represent a minor and acceptable incursion into the Tree Protection Zone.

#### **RECOMMENDATIONS**

Council's Tree and Landscape Officer has determined that the development proposal is satisfactory in terms of tree preservation and landscaping, subject to compliance with the following Conditions of Consent.

#### **CONDITIONS OF CONSENT**

*Please note that the standard conditions of consent are generally modified by the Technical Services Department to suit a particular development application. Please ensure all Technical Services conditions of consent are cut and pasted from this document only, and not inserted as standard conditions using the automatically generated (F3) function*

#### **Amended Stormwater Drainage Plan**

An amended Stormwater Drainage Plan shall be prepared in accordance with Council's DA Guide and submitted to Council's tree and landscape Officer for assessment. The amended plan must include the following:

Underground services shall not be positioned within the following radial distances:

<b>Council Ref No.</b>	<b>Species</b>	<b>Tree Location</b>	<b>Radius from centre of trunk (metres)</b>
<b>1</b>	<i>Ficus rubiginosa</i> (Port Jackson Fig)	Front boundary	3m
<b>15</b>	<i>Archontophoenix cunninghamiana</i> (Bangalow palm)	Front – East boundary	1.5m
<b>16</b>	<i>Plumeria acutifolia</i> (Frangipani)	Front – East boundary	2m

Re-Referral Response - Landscaping - DA2019 226 1 - 351 New South Head Road DOUBLE BAY

Page 3

17	<i>Persea americana</i> (Avocado)	Side – East boundary	2.5m
18	<i>Persea americana</i> (Avocado)	Rear – East boundary	3m

## A. General Conditions

### A.1 Tree Preservation & Approved Landscaping Works

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

a) The following trees shall be retained

- Trees on Private Land

Council Ref No.	Species	Location	Dimension (metres)
1	<i>Ficus rubiginosa</i> (Port Jackson Fig)	Front boundary	12 x 8
15	<i>Archontophoenix cunninghamiana</i> (Bangalow palm)	Front – East boundary	9 x 3
16	<i>Plumeria acutifolia</i> (Frangipani)	Front – East boundary	6 x 4
17	<i>Persea americana</i> (Avocado)	Side – East boundary	12 x 8
18	<i>Persea americana</i> (Avocado)	Rear – East boundary	10 x 8
20	<i>Plumeria acutifolia</i> (Frangipani)	Rear – South boundary	6 x 4

b) The following trees may be removed:

Council Ref No.	Species	Location	Dimension (metres)
2*	<i>Olea europea</i> var. <i>africana</i> (African Olive)	Front boundary	6 x 6
3*	<i>Ligustrum lucidum</i> (Large-leaved Privet)	Front – Centre	6 x 6
4	<i>Howea forsteriana</i> (Kentia palm)	Front – Centre	6 x 2
5	<i>Waterhousia floribunda</i> (Weeping Lillypilly)	Rear – Centre	20 x 10
6	<i>Persea americana</i> (Avocado)	Rear – Centre	10 x 4
14*	<i>Ligustrum lucidum</i> (Large-leaved Privet)	Side – West boundary	10 x 4
21 - 28	8 x <i>Syzygium australe</i> (Brush Cherry Lillypilly)	Rear – South boundary	5 x 2
29	<i>Plumeria acutifolia</i> (Frangipani)	Front – North east corner	5 x 5

**Note:** Tree/s to be removed shall appear coloured red on the construction certificate plans.



\*This species is exempt from the WMC DCP Chapter E.3 - Tree Management and can be removed without consent.

- c) The following trees shall be pruned in accordance with *Australian Standard Pruning of Amenity Trees* (AS 4373) and *Workcover NSW Code of Practice Amenity Tree Industry*, to the minimum extent necessary to provide clearance to the new development:

Council Ref No.	Species	Location	Approved pruning (extent of pruning)
17	<i>Persea americana</i> (Avocado)	Side – East boundary	Prune to provide up to 2 metres crown clearance from new building profile
18	<i>Persea americana</i> (Avocado)	Rear – East boundary	

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

## A.2 Approved Plans and supporting documents

Reference	Description	Author/Drawn	Date(s)
LS 00 – LS 02	Landscape Plans	Melissa Wilson	26 March 2019

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

### B.1 Establishment of Tree Protection Zone (TPZ) Fence

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

- a) Tree Protection Zone areas

Council Ref No.	Species	Tree Location	Fence Radius from Centre of Trunk (Metres)
1	<i>Ficus rubiginosa</i> (Port Jackson Fig)	Front boundary	3m
13	<i>Magnolia grandiflora</i> (Bull Bay Magnolia)	Standing on 349 New South Head – Front – East boundary	3m
15	<i>Archontophoenix cunninghamiana</i> (Bangalow palm)	Front – East boundary	1.5m
16	<i>Plumeria acutifolia</i> (Frangipani)	Front – East boundary	2m
17	<i>Persea americana</i> (Avocado)	Side – East boundary	2m
18	<i>Persea americana</i> (Avocado)	Rear – East boundary	3m
20	<i>Plumeria acutifolia</i> (Frangipani)	Rear – South boundary	2m
30	<i>Araucaria heterophylla</i> (Norfolk Island pine)	Standing on 349 New South Head Rd – N boundary - Adj to SW corner of 351 New South Head Rd	7m

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

- b) Tree Protection Zones shall be fenced with a 1.8 metre high chainmesh or weldmesh fence and secured to restrict access. The fence shall be established prior to any materials being brought onto the site and before the commencement of works including demolition. The area within the fence shall be mulched and maintained to a depth of 75mm. The soil within the TPZ shall be kept in a moist condition for the duration of the construction works. Unless approved by the site arborist there shall be no access within the TPZ.
- c) A sign identifying the Tree Protection Zone shall be erected on each side of the protection fence indicating the existence of a TPZ. Signage must be visible from within the development site.
- d) No excavation, construction activity, grade changes, storage of materials, stockpiling, siting of works sheds, preparation of mixes or cleaning of tools is permitted within Tree Protection Zones, unless specified in Condition B.2 of this consent.
- e) Temporary access within the TPZ for pedestrian and machinery movements shall only be permitted with the approval of the site arborist or unless specified in this consent.
- f) The site foreman must be made aware of all tree protection requirements associated with these conditions of consent by the project arborist. Any subsequent site personnel and contractors to the site must be made aware of all tree protection requirements by the site foreman.
- g) The project arborist shall provide written certification of compliance with the above condition.

## B.2 Permissible work within Tree Protection Zones

The following works are permissible within the Tree Protection Zone:

Council Ref No.	Species	Radius from Trunk (metres)	Approved works
1	<i>Ficus rubiginosa</i> (Port Jackson Fig)	3m	Final Landscape Construction
15	<i>Archontophoenix cunninghamiana</i> (Bangalow palm)	2m	
16	<i>Plumeria acutifolia</i> (Frangipani)	2m	
17	<i>Persea americana</i> (Avocado)	3m	
18	<i>Persea americana</i> (Avocado)	3m	
20	<i>Plumeria acutifolia</i> (Frangipani)	2m	
30	<i>Araucaria heterophylla</i> (Norfolk Island pine)	9m	

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

## B.3 Arborists Documentation and Compliance Checklist

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

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

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

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

Stage of arboricultural inspection	Compliance documentation and photos shall be included
Installation of tree protection fencing	Compliance with tree protection measures
Demolition of Existing buildings at 351 & 353 New South Head Rd	Tree protection remains in place. Condition of any exposed roots
Basement excavation adjacent to Tree 15, 16, 17, 18, 20 & 30	Condition of any exposed roots
Landscape Construction in TPZ of retained trees	Condition of roots and soil

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

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

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

**NIL**

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

**NIL**

**E. Conditions which must be satisfied during any development work**

**E.1 Tree Preservation**

All persons must comply with Council's Development Control Plan (DCP) 2015, Chapter E.3 Tree Management other than where varied by this consent. The DCP applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.

General Protection Requirements

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

- b) Excavation must cease where tree roots with a diameter exceeding 50mm are exposed. The *principal contractor* must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.
- c) Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.

**Note:** Trees must be pruned in accordance with *Australian Standard AS 4373 "Pruning of Amenity Trees"* and *WorkCover NSW Code of Practice Amenity Tree Industry*.

## E.2 Replacement/Supplementary trees which must be planted

Any replacement or supplementary tree shall be grown in accordance with Tree stock for landscape use (AS 2303:2015). The replacement tree shall be planted in a *deep soil landscaped area* and maintained in a healthy and vigorous condition. If the replacement tree is found to be faulty, damaged, dying or dead before it attains a size whereby it is protected by Council's Tree Preservation Order, it must be replaced with another of the same species which complies with the criteria outlined below.

Species/Type	Planting/Location	Container Size/Size of Tree (at planting)	Minimum Dimensions at Maturity (metres)
5 x <i>Brachychiton discolor</i> (Lacebark Kurrajong)	As indicated in supplied Melissa Wilson Landscape Plan LS 00	75 litre	10 x 6
24 x <i>Howea forsteriana</i> (Kentia palm)		75 litre	10 x 4
2 x <i>Hymenosporum flavum</i> (Native Frangipani)		75 litre	7 x 5
2 x <i>Randia fitzalanii</i> (Native Gardenia)		75 litre	5 x 3
8 x <i>Tristanopsis laurina</i> 'Lucious' (Tristanopsis Lucious)		75 litre	8 x 5

The project arborist shall document compliance with the above condition.

## E.3 Paving in the vicinity of trees

Paving works within the specified radius from the trunks of the following trees shall be constructed in such a way as to ensure that the existing moisture infiltration and gaseous exchange to the tree root system are maintained. When preparing an area for paving within the specified radius the soil surface shall not be skimmed. The new surface shall be established above the former ground level.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
15	<i>Archontophoenix cunninghamiana</i> (Banalow palm)	Front – East boundary	2m

<b>16</b>	<i>Plumeria acutifolia</i> (Frangipani)	Front – East boundary	3m
<b>17</b>	<i>Persea americana</i> (Avocado)	Side – East boundary	3m

Paving works are to be designed in consultation with a qualified Arborist (minimum qualification of Australian Qualification Framework Level 5 or recognised equivalent) and are to utilise such measures as semiporous material.

The project arborist shall document compliance with the above condition.

#### E.4 Level changes in the vicinity of trees

No level changes shall occur within the specified radius from the trunks of the following trees.

<b>Council Ref No.</b>	<b>Species</b>	<b>Location</b>	<b>Radius from centre of trunk (metres)</b>
<b>1</b>	<i>Ficus rubiginosa</i> (Port Jackson Fig)	Front boundary	3m

The project arborist shall document compliance with the above condition.

#### E.5 Hand excavation within tree root zones

Excavation undertaken within the specified radius from the trunks of the following trees shall be hand dug.

<b>Council Ref No.</b>	<b>Species</b>	<b>Location</b>	<b>Radius from centre of trunk (metres)</b>
<b>15</b>	<i>Archontophoenix cunninghamiana</i> (Bangalow palm)	Front – East boundary	2m
<b>16</b>	<i>Plumeria acutifolia</i> (Frangipani)	Front – East boundary	2m
<b>17</b>	<i>Persea americana</i> (Avocado)	Side – East boundary	3m
<b>18</b>	<i>Persea americana</i> (Avocado)	Rear – East boundary	3m
<b>20</b>	<i>Plumeria acutifolia</i> (Frangipani)	Rear – South boundary	2m

Small hand tools such as mattocks or using compressed air or water jetting only shall be used. Roots with a diameter equal to or in excess of 50mm shall not be severed or damaged unless approved in writing by the project arborist.

Mechanical excavation is permitted beyond this radius when root pruning by hand along the perimeter line is completed. Exposed roots to be retained shall be covered with mulch or a geotextile fabric and kept in a moist condition and prevented from drying out.

All root pruning must be undertaken in accordance with the Australian Standard 4373 “Pruning of Amenity Trees” and carried out by a qualified Arborist (minimum qualification of Australian Qualification Framework Level 5 or recognised equivalent).



The project arborist shall document compliance with the above condition.

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

**F.1 Amenity Landscaping**

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

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



David Grey  
Tree Officer

9 October 2019

## REFERRAL RESPONSE – TREES & LANDSCAPING

**FILE NO:** DA 226/2019/1

**ADDRESS:** 351 New South Head Road DOUBLE BAY 2028

**PROPOSAL:** Demolition of existing buildings, construction of a new residential flat building for 18 units with basement parking

**FROM:** David Grey - Tree & Landscape Officer

**TO:** Mr W Perdigao

---

### I refer to the following documents received for this report:

- Statement of Environmental Effects, prepared by Hamptons Property Services, dated 3 June 2019
- Survey Plan No. 3545, drafted by Eric Scerri, dated 2 March 2018
- Architectural Drawing No. 2.100 – 2.103, 2.201 – 2.203, 2.301, drawn by Hill Thalys, dated 21 March 2019
- Stormwater Drainage Plan No. PS01-E100, drawn by Martens & Associates , dated 21 May 2019
- Arboricultural Impact Assessment Report, written by Botanics Tree Wise People, dated December 2018
- Landscape Plan No. LS 00 – LS 02, designed by Melissa Wilson, dated 26 March 2019
- Flora and Fauna Assessment, prepared by Eco Logical, dated January 2019

A site inspection was carried out on 24 September 2019

### Relevant Control:

- Woollahra Local Environment Plan 2014
- Woollahra Development Control Plan 2015
- The comments and recommendations within this Referral Response have taken into consideration the guidelines established within Australian Standard AS 4373 – Pruning of amenity trees and Australian Standard AS 4970 – Protection of trees on development sites

## SUMMARY

- One significant tree proposed for removal
- Overshadowing of adjacent gardens
- Retention of Tree 15, 16 , 17, 18
- Location of Tree 13 not correctly indicated

## COMMENTS

### **Removal of significant tree**

This proposal call for the removal of a significant specimen of Weeping Lillypilly (Tree 5) from the rear centre of the site. This tree has self-sown from the larger specimen standing on the neighbouring property to the south at 5 Manning Road. Tree 5 is very poorly located against the eastern wall of the existing garage at 351 New South Head Road. Demolition of the garage would possibly result in destabilisation of the tree. The tree is within the footprint of the proposed basement. I do not believe it is practical to develop this site whilst retaining Tree 5.

The supplied Melissa Wilson Landscape Plans are of a good standard with 41 Trees and Palms proposed for replanting. This represents a satisfactory landscape outcome.

The supplied Arborists Assessment is superficial and not commensurate with the scale of this proposal. It is of little assistance in considering this proposal. I have read the report but primarily referred to materials supplied in the Landscape Plan.

### **Overshadowing of adjacent gardens**

Some concerns have been expressed regarding the potential for the proposed building to impact the adjacent heritage listed gardens at 337 New South Head and 5 Manning Road through overshadowing. Both these adjacent gardens are based on rainforest and forest understory species.

I believe that neither of these adjoining gardens would be negatively impacted by the moderate levels of additional shading. Given the current and projected climate conditions, some additional shading may be of benefit to these gardens. Water stress to the heritage listed Weeping Lillypilly at 5 Manning Road has recently been raised as a separate issue with Council through a Tree Works Application.

The reverse would be of concern if a proposed development resulted in increased levels of sunlight to these adjoining gardens. That would certainly represent a negative impact through water stress and sunburn of light sensitive plants.

### **Retention of trees on eastern boundary**

The supplied arborists report states that Tree 15, 16, 17, and 18, will be directly impacted by the proposed building footprint and will require removal. Consequently, the arborist has not provided any information on the retention of these trees.

All the other documentation supplied with this application indicates the retention of these trees. The supplied Landscape Plan is designed around the retention of these trees. I believe that it is achievable to retain the trees. They provide valuable screening amenity with the neighbouring RFB at 355 New South Head Road.

The major potential impact is the proposed basement excavations. There will be encroachments into the larger theoretical Tree Protection Zones but not the more important and smaller Structural Root Zones. Much of the existing Tree Protection Zones is already developed with structures and impervious surfaces. I have recommended conditions for the retention and protection of these trees.

### Location of Tree 13

Tree 13 is identified on the supplied Landscape Plan as a *Magnolia grandiflora* (Bull Bay Magnolia). The tree is shown as standing on 351 New South Head Road, on the western side boundary. The tree is not indicated on the supplied Survey Plan.

From my site inspection I have concluded that Tree 13 stands on 349 New South Head Road, on the eastern side of the entry driveway. Consequently, I have not recommended a condition requiring the retention of this tree as a neighbours tree. I have recommended conditions to protect the root system of the tree. The tree is sufficiently spaced from the proposed works as to be retained.

### RECOMMENDATIONS

Council's Tree and Landscape Officer has determined that the development proposal is satisfactory in terms of tree preservation and landscaping, subject to compliance with the following Conditions of Consent.

### CONDITIONS OF CONSENT

*Please note that the standard conditions of consent are generally modified by the Technical Services Department to suit a particular development application. Please ensure all Technical Services conditions of consent are cut and pasted from this document only, and not inserted as standard conditions using the automatically generated (F3) function*

### Amended Stormwater Drainage Plan

An amended Stormwater Drainage Plan shall be prepared in accordance with Council's DA Guide and submitted to Council's tree and landscape Officer for assessment. The amended plan must include the following:

Underground services shall not be positioned within the following radial distances:

Council Ref No.	Species	Tree Location	Radius from centre of trunk (metres)
1	<i>Ficus rubiginosa</i> (Port Jackson Fig)	Front boundary	3m
15	<i>Archontophoenix cunninghamiana</i> (Bangalow palm)	Front – East boundary	1.5m
16	<i>Plumeria acutifolia</i> (Frangipani)	Front – East boundary	2m
17	<i>Persea americana</i> (Avocado)	Side – East boundary	2.5m
18	<i>Persea americana</i> (Avocado)	Rear – East boundary	3m

### A. General Conditions

## A.1 Tree Preservation & Approved Landscaping Works

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

a) The following trees shall be retained

- Trees on Private Land

Council Ref No.	Species	Location	Dimension (metres)
1	<i>Ficus rubiginosa</i> (Port Jackson Fig)	Front boundary	12 x 8
15	<i>Archontophoenix cunninghamiana</i> (Bangalow palm)	Front – East boundary	9 x 3
16	<i>Plumeria acutifolia</i> (Frangipani)	Front – East boundary	6 x 4
17	<i>Persea americana</i> (Avocado)	Side – East boundary	12 x 8
18	<i>Persea americana</i> (Avocado)	Rear – East boundary	10 x 8
20	<i>Plumeria acutifolia</i> (Frangipani)	Rear – South boundary	6 x 4

b) The following trees may be removed:

Council Ref No.	Species	Location	Dimension (metres)
2*	<i>Olea europea</i> var. <i>africana</i> (African Olive)	Front boundary	6 x 6
3*	<i>Ligustrum lucidum</i> (Large-leaved Privet)	Front – Centre	6 x 6
4	<i>Howea forsteriana</i> (Kentia palm)	Front – Centre	6 x 2
5	<i>Waterhousia floribunda</i> (Weeping Lillypilly)	Rear – Centre	20 x 10
6	<i>Persea americana</i> (Avocado)	Rear – Centre	10 x 4
14*	<i>Ligustrum lucidum</i> (Large-leaved Privet)	Side – West boundary	10 x 4
21 - 28	8 x <i>Syzygium australe</i> (Brush Cherry Lillypilly)	Rear – South boundary	5 x 2
29	<i>Plumeria acutifolia</i> (Frangipani)	Front – North east corner	5 x 5

**Note:** Tree/s to be removed shall appear coloured red on the construction certificate plans.

\*This species is exempt from the WMC DCP Chapter E.3 - Tree Management and can be removed without consent.

c) The following trees shall be pruned in accordance with *Australian Standard Pruning of Amenity Trees* (AS 4373) and *Workcover NSW Code of Practice Amenity Tree Industry*, to the minimum extent necessary to provide clearance to the new development:

Council Ref No.	Species	Location	Approved pruning (extent of pruning)
17	<i>Persea americana</i> (Avocado)	Side – East boundary	Prune to provide up to 2 metres crown clearance from new building profile
18	<i>Persea americana</i> (Avocado)	Rear – East boundary	



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

## A.2 Approved Plans and supporting documents

Reference	Description	Author/Drawn	Date(s)
LS 00 – LS 02	Landscape Plans	Melissa Wilson	26 March 2019

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

### B.1 Establishment of Tree Protection Zone (TPZ) Fence

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

#### a) Tree Protection Zone areas

Council Ref No.	Species	Tree Location	Fence Radius from Centre of Trunk (Metres)
1	<i>Ficus rubiginosa</i> (Port Jackson Fig)	Front boundary	3m
13	<i>Magnolia grandiflora</i> (Bull Bay Magnolia)	Standing on 349 New South Head – Front – East boundary	3m
15	<i>Archontophoenix cunninghamiana</i> (Bangalow palm)	Front – East boundary	1.5m
16	<i>Plumeria acutifolia</i> (Frangipani)	Front – East boundary	2m
17	<i>Persea americana</i> (Avocado)	Side – East boundary	2m
18	<i>Persea americana</i> (Avocado)	Rear – East boundary	3m
20	<i>Plumeria acutifolia</i> (Frangipani)	Rear – South boundary	2m

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

- b) Tree Protection Zones shall be fenced with a 1.8 metre high chainmesh or weldmesh fence and secured to restrict access. The fence shall be established prior to any materials being brought onto the site and before the commencement of works including demolition. The area within the fence shall be mulched and maintained to a depth of 75mm. The soil within the TPZ shall be kept in a moist condition for the duration of the construction works. Unless approved by the site arborist there shall be no access within the TPZ.
- c) A sign identifying the Tree Protection Zone shall be erected on each side of the protection fence indicating the existence of a TPZ. Signage must be visible from within the development site.
- d) No excavation, construction activity, grade changes, storage of materials, stockpiling, siting of works sheds, preparation of mixes or cleaning of tools is

permitted within Tree Protection Zones, unless specified in Condition B.2 of this consent.

- e) Temporary access within the TPZ for pedestrian and machinery movements shall only be permitted with the approval of the site arborist or unless specified in this consent.
- f) The site foreman must be made aware of all tree protection requirements associated with these conditions of consent by the project arborist. Any subsequent site personnel and contractors to the site must be made aware of all tree protection requirements by the site foreman.
- g) The project arborist shall provide written certification of compliance with the above condition.

## B.2 Permissible work within Tree Protection Zones

The following works are permissible within the Tree Protection Zone:

Council Ref No.	Species	Radius from Trunk (metres)	Approved works
1	<i>Ficus rubiginosa</i> (Port Jackson Fig)	3m	Final Landscape Construction
15	<i>Archontophoenix cunninghamiana</i> (Bangalow palm)	2m	
16	<i>Plumeria acutifolia</i> (Frangipani)	2m	
17	<i>Persea americana</i> (Avocado)	3m	
18	<i>Persea americana</i> (Avocado)	3m	
20	<i>Plumeria acutifolia</i> (Frangipani)	2m	

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

## B.3 Arborists Documentation and Compliance Checklist

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

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

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

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

Stage of arboricultural inspection	Compliance documentation and photos shall be included
Installation of tree protection fencing	Compliance with tree protection measures
Demolition of Existing buildings at 351 & 353 New South Head Rd	Tree protection remains in place. Condition of any exposed roots
Basement excavation adjacent to Tree 15, 16, 17, 18 & 20	Condition of any exposed roots
Landscape Construction in TPZ of retained trees	Condition of roots and soil

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

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

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

NIL

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

NIL

**E. Conditions which must be satisfied during any development work**

**E.1 Tree Preservation**

All persons must comply with Council's Development Control Plan (DCP) 2015, Chapter E.3 Tree Management other than where varied by this consent. The DCP applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.

General Protection Requirements

- The TPZ must be maintained during all development work unless otherwise specified within these conditions of consent.
- 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.
- Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.

**Note:** Trees must be pruned in accordance with *Australian Standard AS 4373 "Pruning of Amenity Trees"* and *WorkCover NSW Code of Practice Amenity Tree Industry*.

**E.2 Replacement/Supplementary trees which must be planted**

Any replacement or supplementary tree shall be grown in accordance with Tree stock for landscape use (AS 2303:2015). The replacement tree shall be planted in a *deep soil landscaped area* and maintained in a healthy and vigorous condition. If the replacement tree is found to be faulty, damaged, dying or dead before it attains a size whereby it is protected by Council's Tree Preservation Order, it must be replaced with another of the same species which complies with the criteria outlined below.

Species/Type	Planting/Location	Container Size/Size of Tree (at planting)	Minimum Dimensions at Maturity (metres)
5 x <i>Brachychiton discolor</i> (Lacebark Kurrajong)	As indicated in supplied Melissa Wilson Landscape Plan LS 00	75 litre	10 x 6
24 x <i>Howea forsteriana</i> (Kentia palm)		75 litre	10 x 4
2 x <i>Hymenosporum flavum</i> (Native Frangipani)		75 litre	7 x 5
2 x <i>Randia fitzalanii</i> (Native Gardenia)		75 litre	5 x 3
8 x <i>Tristanopsis laurina</i> 'Lucious' (Tristanopsis Luscious)		75 litre	8 x 5

The project arborist shall document compliance with the above condition.

### E.3 Paving in the vicinity of trees

Paving works within the specified radius from the trunks of the following trees shall be constructed in such a way as to ensure that the existing moisture infiltration and gaseous exchange to the tree root system are maintained. When preparing an area for paving within the specified radius the soil surface shall not be skimmed. The new surface shall be established above the former ground level.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
15	<i>Archontophoenix cunninghamiana</i> (Bangalow palm)	Front – East boundary	2m
16	<i>Plumeria acutifolia</i> (Frangipani)	Front – East boundary	3m
17	<i>Persea americana</i> (Avocado)	Side – East boundary	3m

Paving works are to be designed in consultation with a qualified Arborist (minimum qualification of Australian Qualification Framework Level 5 or recognised equivalent) and are to utilise such measures as semiporous material.

The project arborist shall document compliance with the above condition.

### E.4 Level changes in the vicinity of trees

No level changes shall occur within the specified radius from the trunks of the following trees.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
1	<i>Ficus rubiginosa</i> (Port Jackson Fig)	Front boundary	3m

The project arborist shall document compliance with the above condition.

#### E.5 Hand excavation within tree root zones

Excavation undertaken within the specified radius from the trunks of the following trees shall be hand dug.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
15	<i>Archontophoenix cunninghamiana</i> (Bangalow palm)	Front – East boundary	2m
16	<i>Plumeria acutifolia</i> (Frangipani)	Front – East boundary	2m
17	<i>Persea americana</i> (Avocado)	Side – East boundary	3m
18	<i>Persea americana</i> (Avocado)	Rear – East boundary	3m
20	<i>Plumeria acutifolia</i> (Frangipani)	Rear – South boundary	2m

Small hand tools such as mattocks or using compressed air or water jetting only shall be used. Roots with a diameter equal to or in excess of 50mm shall not be severed or damaged unless approved in writing by the project arborist.

Mechanical excavation is permitted beyond this radius when root pruning by hand along the perimeter line is completed. Exposed roots to be retained shall be covered with mulch or a geotextile fabric and kept in a moist condition and prevented from drying out.

All root pruning must be undertaken in accordance with the Australian Standard 4373 “Pruning of Amenity Trees” and carried out by a qualified Arborist (minimum qualification of Australian Qualification Framework Level 5 or recognised equivalent).

The project arborist shall document compliance with the above condition.

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

##### F.1 Amenity Landscaping

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

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



A handwritten signature in black ink, appearing to read 'D. Grey'.

David Grey  
Tree Officer

29 July 2019

## REFERRAL RESPONSE - HERITAGE

**FILE NO:** Development Applications/ 226/2019/1  
**ADDRESS:** 351 New South Head Road DOUBLE BAY 2028  
**PROPOSAL:** Demolition of existing buildings, construction of a new residential flat building for 18 units with basement parking  
**FROM:** Shona Lindsay - Heritage Officer  
**TO:** Mr W Perdigao

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### ISSUES

- *There are no heritage concerns.*
- 

### DOCUMENTATION

The following documentation provided by the applicant has been examined for this referral response:

- Drawing set by Hill Thalys, dated 20 March 2019, and numbered DA 2.001-2.301
- Heritage Impact Statement by Weir Philips, dated May 2019
- Statement of Environmental Effects by Hamptons Property Services, dated 3 June 2019
- Survey plan by Eric Scerri & Associates, ref 3545/18, dated 1-2 March 2018
- Demolition report by Weir Philips, dated May 2019

### SITE INSPECTION / RESEARCH

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

- The site was inspected on the 25 July 2019, including the interior and the general locality.

Review of the following documents and photographic evidence:

- Council's property system, to establish dates of earlier building and development applications for the subject and surrounding properties.
- Pre application consultation response for 1/2018 – Planning Proposal, dated 20 July 2018
- Council's photography files relevant to the immediate area
- Council's heritage inventory sheets
- Council's aerial photography and mapping database
- Google Maps – street view

### STATUTORY AND POLICY DOCUMENTS

The following statutory and policy documents are relevant to the application:

- National Parks & Wildlife Act 1974
- Woollahra LEP 2014
- Woollahra DCP 2015

Referral Response - Heritage - DA2019 226 1 - 351 New South Head Road DOUBLE BAY

## HERITAGE FRAMEWORK

- The subject building is not a heritage item in Woollahra Local Environment Plan 2014 'the LEP'.
- The subject building is not listed on the State Heritage Register.
- The subject building is not in a heritage conservation area.
- The subject building is within the Wallaroy precinct.

## SIGNIFICANCE OF SUBJECT PROPERTY

The Demolition Report prepared by Weir Philips provides the following statement of significance for the properties:

*Nos. 351 and 353 New South Head Road, Double Bay are not considered to be innovative in terms of layout, form, siting on the lot or architectural detailing. The current buildings do not contribute to the understanding of the neighbouring heritage listed gardens nor are they connected to the establishment of Hay's garden or of 'Overthorpe' (demolished) and its grounds. Furthermore, no trees predating the construction phase of either No. 351 New South Head Road, Double Bay or No. 353 New South Head Road, Double Bay have been found on the site.*

*Nos. 351 and 353 New South Head Road, Double Bay are not landmark sites. Similarly, the buildings are not considered to be architecturally or stylistically rare and is similar to many Sydney buildings dating from the Federation and Inter-War eras.*

*The association of No. 351 New South Head Road, Double Bay with Ernest A. Green has not been proven. However, this potential connection is not considered to meet the threshold for associated significance as the building has been substantially altered and is not considered to be indicative of his work. The association of No. 351 New South Head Road, Double Bay with Tom Raine is not considered to meet the threshold for associated significance.*

*Neither building meets the threshold for listing on the Woollahra LEP 2014. The character of the surrounding area is not such that it is likely to be listed as a Heritage Conservation Area.*

Detailed research into the properties has found some of the findings Weir Philips discusses of No. 351 to be incorrect. No. 351 was not constructed by Ernest A. Green or lived in by Tom Raine. This history relates to the house 'Guyong', which originally stood at No. 349 (previously recorded as No. 325 on Sands Directory). Tom Raine moved to 'Guyong' in 1899. Unfortunately the original plans do not survive, but reports note 'Guyong' was designed by architect Ernest A. Scott (Australian Dictionary of Biography). A later DA in 1924 states Ernest A. Scott & Green as the architect for the addition of a garage, tool house and car wash to the property when the owner was Murray Willcox Esq. Tom Raine was known to have continued to maintain and expand the trees and plants that Sir John Hay had planted in the area (The Sydney Mail and NSW Advertiser, Wed 11 Jan 1905, pg. 940). Guyong was well known for its garden setting and tree plantings, and held many parties at the premises.

Tom Raine subdivided a portion of his land, which was known as the Guyong Gardens subdivision. This was advertised between 1918 and 1927. No. 351 was constructed on Lot 1, and No. 353 on Lot 2 of the Guyong Gardens subdivision. The Land Title of 1918 of No. 351 makes explicit that the new owner of the land, Philip Thornton Thane, was to construct a single residential dwelling and it was not to have any windows or doors overlooking the house of Tom Raine to the south east. Tom Raine is last listed in the Sands Directory as living at Guyong in 1919.

Philip Thornton Thane is listed in the Sands Directory as living at No. 351 in 1920, therefore suggesting the house at No. 351 was constructed between 1919-1920. The property was originally constructed in the Federation style but has been substantially altered and an addition added to the front façade. Therefore, No. 351 does not retain its Federation style and is not a good example of this type of architecture. The original plans of the house are not retained therefore the original architect is unknown.

Although the land of No. 351 and 353 was originally part of the Guyong estate, which was formally part of Sir John Hay's land, it does not provide evidence of the original estate of Sir John Hay's experimental nursery. The Landscape Management plan has found the trees on the subject property to not pre-date the construction of the current buildings, and have been developed through seedlings crossing between the properties or modern plantings. Therefore the association with the Guyong estate or Sir John Hay is not retained on the subject properties and the associative significance would not reach the threshold for local significance.

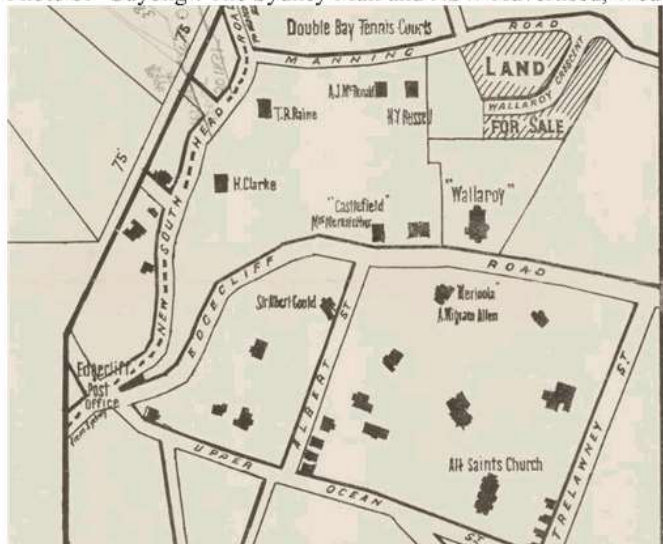
### Historical plans and images



*Portion of the municipal map of Woollahra, showing Sir John Hay's garden in Edgecliff, 1889*



Photo of 'Guyong'. The Sydney Mail and NSW Advertiser, Wed 11 Jan 1905, pg. 93



Detail of subdivision plan of Z/SP/D9/20 - Wallaroy Road, Wallaroy Crescent, [1914]

4 Aaronson Frederick  
313 Campbell Mrs. Ronald, "Linton"  
315 Coe Miss G. H., "Shandon"  
317 Emanuel Mrs. S.  
319 Goldschmidt Julius, "Holebrook"  
321 Taylor John, "Haycroft"  
323 Anderson William, "Overthorpe"  
325 Raine Tom R., "Guyong"  
*Manning road*

Sands Directory 1919



313 Campbell Mrs. Ronald, "Linton"  
315 Coe Miss G. H., "Shandon"  
317 Emanuel Mrs. S.  
319 Goldschmidt Julius, "Holebrook"  
321 Markell Alex.  
323 Anderson William, "Overthorpe"  
327 Thane P. T., physician and surgeon  
Manning road

Sands Directory 1920

which an offer of £1550 was refused.  
The auction by Messrs. Raine and Horne in their rooms on Thursday met with a little more success. Here again there was a large attendance and a fairly attractive catalogue. An allotment at the corner of Manning-road, Double Bay, being one of a small subdivision of the **Guyong Garden**, was sold at £16 per foot. The three other allotments still remain unsold. For a residence at Musgrave-street, Mosman, £2300 was refused. A cottage at Artarmon was passed in at £540, and for a block of land at St. Mark's-road, Randwick, £710 was refused.

Guyong Garden Estate – advertised in The Sydney Morning Herald 8 Dec 1917 pg 7

No. 21,701. APPLICANT:—Philip Thornton Thane, Double Bay. LAND:—Municipality Woollahra, 26½ perches,—lot 1, **Guyong Garden Estate**, fronting southern side New South Head road, about 146 feet westerly from Manning-road.

No. 21,775. APPLICANT:—George Washington Cleveland, Gore Hill. LAND:—Municipality Lane Cove, 8 acres 3 roods 29 perches, fronting south side Mowbray-road, about 15 chains west of Centennial-avenue.

Guyong Garden Estate – advertised in the Government Gazette of the State of NSW. Fri 15 Aug 1919 pg 4530

**Messrs. Raine and Horne report sales:—**  
City Council subdivision, in Parramatta-road, in conjunction with Messrs. Richardson and Wrench, £480; block of land at Alexandria, £2000; freehold reversion, Waterloo, £480; freehold reversion, Waterloo, £600; **Guyong Garden Estate**, Double Bay (residential site), £700; two lots, Northbridge Estate, No. 10, 37/6 and 47/6 per ft; two lots, Bennett's Estate, Bay View, £2/10/; property, York and

Guyong Garden Estate – advertised in The Sydney Morning Herald 10 January 1920 pg 9.

(c) Lots 3 and 4 of the **Guyong Garden Estate** subdivision at the north-western intersection of Manning-road and New South Head road. Area, 29½ perches. [3452]

Guyong Garden Estate – advertised in the Government Gazette of the State of NSW. Fri 21 Dec 1923, pg. 5885

## SIGNIFICANCE OF ITEMS IN THE VICINITY

The subject property is in the vicinity of the following listed heritage items:

### *State significance*

- 'Overthorpe', 337-347 New South Head Road, SHR Item No. 246.
- 'Gardens to former "Overthorpe", including 3 Small-Leaved Figs, Coolamon or Watermelon Tree, Silver Quandong, 2 Moreton Bay Figs, Bunya Pine, Queen Palm, Cabbage Palms, 9 Canary Island Date Palms, service driveway, front retaining wall and fence, gates', 337-347 New South Head Road, LEP Item No. 206.

### *Local significance*

- 'Weeping Lilli Pilli, all Bangalow Palms (approx. 30), Washingtonia Palm, Queens Palms, Cabbage Palms' 5 Manning Road, Double Bay, LEP Item No. 205.
- 'Vegetation associated with the gardens of the former house "Overthorpe", including Silver Quandong, Norfolk Island Pine, Bunya Pine, rainforest specimen, Bangalow Palms, Queen Palms, Cabbage palms', 349 New South Head Road, Double Bay, LEP Item No. 207.

## DESCRIPTION OF PROPOSAL

The following works are proposed:

- Demolition of existing buildings
- Excavation for basement parking and associated building services
- Construction of a residential flat building comprising 18 apartments

## ASSESSMENT OF HERITAGE IMPACT

### Compliance with the relevant legislative framework and planning controls

#### National Parks and Wildlife Act 1974

A basic search conducted on AHIMS (Aboriginal Heritage Information Management System) from the Office of Environment & Heritage NSW (OEH) website has revealed that there are 0 recorded Aboriginal sites within 200m of the subject site.

#### Woollahra LEP 2014 Part 5.10 Clauses 1(a), 1(b), 4

- Clause 1(a) The development does conserve the heritage of Woollahra.
- Clause 1(b) The impact upon the heritage significance of the heritage items in the vicinity of the subject property will be neutral.
- Clause 4 This referral constitutes an assessment under this clause.

#### Woollahra DCP 2015

### Consideration

#### ***Existing Buildings***

The existing buildings have no heritage significance and do not make any contribution to the heritage significance of Double Bay. The properties are not heritage listed and are not located within a heritage conservation area.

The construction of the buildings is not associated with any known prominent architect and have no distinctive landmark qualities or other features that would make them potentially significant or rare. The report by Weir Philips has assessed the potential heritage significance of the existing buildings

and has concluded that the properties do not meet the criteria for identification as a place of local significance. The report by Weir Philips, together with further research, has determined the properties to not be of local significance. Accordingly, the properties are not of heritage value and therefore no objection is raised to the proposed demolition of the existing buildings.

Given that the buildings still retain some of the Federation and Inter War style, it is considered that the buildings and setting should be archivally recorded prior to being demolished.

### **Trees**

The analysis contained within the Construction Impact Assessment and Management Plan prepared by Botanics Tree Wise People Pty Ltd has determined that there are no trees remaining on the site that predate construction phase of either No. 351 New South Head Road, Double Bay or No. 353 New South Head Road, Double Bay.

The HIS states:

*No. 351 New South Head Road contains limited landscaping mostly located to the perimeter of the site. In December 2018, a Construction Impact Assessment and Management Plan was prepared by Botanics Tree Wise People Pty Ltd. This assessment identified an African Olive (Olea europea) to the northern boundary. Several other environmental weed species, or trees dating from the modern phase of occupation, such as: Privet (Ligustrum); Frangipani (Plumeria acutifolia); and Avocado (Persea Americana) were identified along the eastern site boundary. A mature Bull Bay Magnolia (Magnolia grandiflora), and an established Kentia Palm (Howea forsteriana). were identified along the western boundary. The rear yard to the south of the lot is a small concrete and tiled space which contains limited perimeter planting.*

*No. 353 New South Head Road is set back to the rear of the block. The front boundary is defined by sandstone wall with sandstone columns and timber infill panels. Behind this fence is a mature Port Jackson Fig Tree (Ficus Rubiginosa). Vehicular access is achieved to the eastern boundary of the site and a timber pedestrian gate. The former front yard has been paved and repurposed as a parking area. The eastern boundary is defined by a timber fence near to which is a small single garage, a Bangalow Palm (Archontophoenix cunninghamiana) and three Frangipani (Plumeria acutifolia). The small rear yard is bound to the south by a metal hurricane style fence and to the west by the neighbouring brick garage. The garden contains a Weeping Lilly Pilly, identified in the 2018 Construction Impact Assessment and Management Plan as being self-seeded, (see Figure 34) a Kentia Palm (Howea forsteriana) two Frangipani (Plumeria acutifolia) to the northern boundary and a mix of modern planting such as ferns, yuccas and jasmine.*

The proposed works include extensive landscaping including the removal of privet (Ligustrum) and African olive (Olea europea). The plans include the retention of several mature trees including Port Jackson Fig (Ficus Rubiginosa), Bull bay Magnolia (Magnolia Grandiflora) and Kentia Palm (Howea forsteriana). Supplementary planting will be added to the property which is in keeping with the landscape of the area.

Therefore, the proposed removal of trees on the subject property will not have a heritage impact as the trees post-date the construction of the existing buildings and were not part of the original trees planted by Sir John Hay.

### **Heritage items in the vicinity**

#### **Views**

The proposed development has been set back to retain the Port Jackson Fig on the northern boundary. This HIS notes that this tree is not belonging to the former gardeners however its location to the street boundary does form part of the heritage items setting. Therefore the retention of the tree is in keeping with the setting of the heritage item and maintaining the views of this area which are

predominately landscaped with large, mature trees.

Impacts to views of Overthorpe from the western section of the subject property are minimised by the lower storey of the rear section of the proposal than of the frontage, which is supported.

Significant views of Overthorpe will be retained, which are predominately from across the street looking south to Overthorpe, or whilst directly in front of the property. Views of the area whilst travelling up New South Head Road from the east will be retained, which is of a highly dense tree canopy with buildings intermixed and setback from the street boundary. Views of Overthorpe from the west are retained.

The proposed development is in keeping with the existing development along New South Head Road and will not impede the setting or views of the heritage item.

*Direct and indirect impacts*

The proposed development will not directly impact the heritage items in the vicinity or their curtilages.

The proposed building is to be set back from the southern corner to minimise potential impacts to the significant Weeping Lilly Pilly (*Waterhousea floribunda*) located on the neighbouring site.

The Flora & Fauna Assessment concludes that:

*Presently, the understorey and ground cover within the Overthorpe Gardens receive sunlight during the late afternoon. However, the Gardens are in shade for the majority of the day due to the dense canopy of mature trees. It is evident that the Gardens are tolerant of dense shade and have persisted due to the current low light conditions. The shadow diagrams prepared by Hill Thalys (Appendix E) indicate minimal shade will be cast over the east frontage of the Gardens. Thus, any future development within the study area is unlikely to result in any adverse impact on the vegetation within the Overthorpe Gardens.*

Therefore, the proposal will not cause indirect impacts through overshadowing to Overthorpe.

**Woollahra DCP 2015**

**Chapter B1 Residential Precincts**

**B 1.4 Wallaroy Precinct**

**Desired Future Character**

The proposal is consistent with the Desired Future Character of the area from a heritage perspective. The proposal responds to the sloping topography of the site and has been setback to retain the significant Weeping Lilly Pilly (*Waterhousea floribunda*) located on the neighbouring site and the Port Jackson Fig on the northern boundary, which contributes to the setting of the heritage listed Overthorpe. The use of a flat roof retains views of the green canopy of the area. The proposal retains significant vegetation on the property and has a landscape design that is compatible with the neighbouring heritage items of significance. The proposal retains and rebuilds the existing sandstone garden wall to the street.

**Archaeology**

The existing buildings were the first known structures to be built on the subject properties. Prior to this the land was used as the grounds for Guyong Estate, and prior to this as Sir John Hay's experimental nursery. It is likely that the existing buildings disturbed any previous remains when they were constructed. Therefore it is unlikely that potential historical archaeology to remain.

The AHIMS basic search revealed 0 recorded Aboriginal sites within 200m of the subject site. As the site has been previously disturbed when the existing structures and landscaping were constructed, it is unlikely that any archaeological evidence will remain, therefore no further actions under the Due Diligence Code of Practice were required.

Although, it is noted that the geotechnical report specifies that the site is underlain with natural Aeolian sand located beneath topsoil/fill. Therefore, the construction/demolition team are to be made

aware of potential unexpected archaeological finds on the site during excavation works and the appropriate procedures for dealing with unexpected archaeological finds.

## RECOMMENDATION

The application is generally acceptable as it complies with the relevant statutory and policy documents and would have a satisfactory impact.

Consent, subject to conditions.

### 1. Recording of Buildings with Little or No Heritage Significance that are to be Demolished

A photographic archival record of the building and landscape elements to be demolished is to be submitted prior to the commencement of demolition work and prior to the issue of a Construction Certificate.

The photographic archival recording is to be submitted in a digital format and is to include the following:

- a) Site plan at a scale of 1:200 (or 1:500 if appropriate) of all structures and major landscape elements including their relationship to the street and adjoining properties and directional details of photographs taken.
- b) Coloured photographs of:
  - each elevation,
  - each structure and landscape feature, and
  - views to the subject property from each street and laneway or public space.

Photographic archival records must be taken of the building, landscape or item in accordance with 'The Heritage Information Series: Photographic Recording of Heritage Items Using Film or Digital Capture 2006' published by the former NSW Department of Planning Heritage Branch.

One digital set is to be submitted to the satisfaction of Council prior to the commencement of demolition work and prior to the issue of a Construction Certificate.

**Note:** Refer to the NSW Office of Environment and Heritage website for the free publication 'Photographic Recording of Heritage Items using Film or Digital Capture' available at [www.environment.nsw.gov.au/resources/heritagebranch/heritage/infophotographicrecording2006.pdf](http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/infophotographicrecording2006.pdf)  
Standard Condition: B3 (Autotext BB3)

### 2. Unexpected archaeological finds

If unexpected archaeological deposits or Aboriginal objects are found during the works covered by this approval, work must cease in the affected area(s) and the Office of Environment & Heritage must be notified. Additional assessment and approval pursuant to the National Parks and Wildlife Act 1974 may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

Shona Lindsay - Heritage Officer



Completion Date: 11<sup>th</sup> July 2019

## **REFERRAL RESPONSE - ENVIRONMENTAL HEALTH**

**FILE NO:** Development Applications/ 226/2019/1  
**ADDRESS:** 351 New South Head Road DOUBLE BAY 2028  
**PROPOSAL:** Demolition of existing buildings, construction of a new residential flat building for 18 units with basement parking  
**FROM:** Graeme Reilly Environmental Health Officer  
**TO:** Mr W Perdigao

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### **1. ISSUES**

- Potentially Contaminated Land

### **2. DOCUMENTATION**

I refer to the following documents received for this report:

- Statement of Environment Effects, referenced Project 2018115, 351-353 New South Head Road Double Bay, prepared by Hamptons Property Services, dated 3<sup>rd</sup> June 2019.
- Architectural Plans, referenced Dwgs 2.001 – 2.301, prepared by Hill Thalys, dated March 2019,
- Acoustic Report, referenced Rep-18-7160-A2, prepared by Envirotech, dated 29<sup>th</sup> April 2019.
- Acid Sulphate Soil Report, referenced P1806950JR02V01, prepared by Martens Consulting Engineers dated June 2019.
- Land Contamination Report, referenced P1806950JR01V01, prepared by Martens Consulting Engineers, dated June 2019.

### **3. RESEARCH**

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

- A site inspection was carried out on the following date: 3<sup>rd</sup> July 2019

### **4. SUMMARY OF PROPOSAL**

Demolition of existing buildings, construction of a new residential flat building for 18 units with basement parking

The development application is for demolition of the existing buildings across the site, excavation for basement parking and associated building services and construction of a residential flat building comprising 18 apartments, as set out in the table below.

Photomontage 1: View of proposed development, looking west, along New South Head Road



Table 1: Apartment Summary

Bed Type	No of Apartments
Studio	2
1-Bedroom	2
2-Bedroom	12
3-Bedroom	2
<b>Total</b>	<b>18 apartments</b>

### The Proposed Works

As detailed previously, the proposal will generally comprise the following:

- demolition of the existing buildings;
- excavation of the site for one basement level to allow for 17 car parking spaces (including two accessible spaces), two motorcycle spaces and associated storage for each apartment
- vehicular access to the basement *via* New South Head Road, at the eastern end of the site, to the car parking
- construction of a four and five-storey residential building comprising of 18 residential apartments
- construction of significant landscape improvements at the ground floor level and a communal roof terrace at the south-western corner of the site.

## 5. ASSESSMENT

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

### a) Acoustics

#### 1. INTRODUCTION

EnviroTech has been requested by Hill Thalys Architecture + Urban Projects to undertake an acoustic assessment of the proposed residential flat building, at 351 – 353 New South Head Road, Double Bay NSW 2028 (hereafter referred to as the site).

The purpose of this assessment is to accurately predict potential noise levels generated by the proposal and to assess the impact of these noise levels on the nearest receptors in accordance with the NSW Government's relevant noise criteria. The noise assessment will also measure surrounding noise levels generated near the proposal from the adjacent road and to assess the impact of these noise levels on the proposed residential flat building, in accordance with the relevant noise criteria.

This assessment has been prepared in accordance with:

- NSW Protection of the Environment Operations Act 1997 (POEO Act)
- Environmental Planning and Assessment Act (1979)
- The Noise Policy for Industry NSW EPA (2017)
- The Noise Guide for Local Government (DECCW, 2009)
- NSW Department of Planning "Development near rail corridors and busy roads" 2008
- Assessing Vibration: a technical guideline (DECC 2006)
- State Environmental Planning Policy (Infrastructure) 2007
- Building Code of Australia

#### **Proposal**

The site to be developed is located at 351 – 353 New South Head Road, Double Bay NSW 2028 (LOT 2 DP 1081202) (Figure 1), and covers a total area of approximately 1,240m<sup>2</sup>. A site layout is provided in Figure 2 showing the closest residential receivers to the proposal. The proposed development is for the construction of a residential flat building and associated facilities.

In accordance with the EPAs Industrial Noise Policy (INP), the surrounding noise amenity of the site is classified as Urban.

**Surrounding Closest Residential and Commercial Noise Receptors Potentially Impacted by the Proposed Development and the Construction Phase of the Proposed Development.**

There are a number of residential/commercial properties located within the vicinity of the site on all aspects, and the closest boundaries of these properties on the differing aspects of the site are:

- 355 New South Head Road, Double Bay. Three storey residential flat building located to the east of site. 1m from eastern boundary.
- 3 Manning Road, Double Bay. Three storey residential flat building located to the south-east of site. 1m from site boundary.
- 3A Manning Road, Double Bay. Two storey residential house located directly south of site. 1m from southern boundary.
- 337 New South Head Road, Double Bay. Block of residential units located to the west of site. 7m from western boundary.
- 306 - 310 New South Head Road, Double Bay. Two Storey Commercial building for a real estate agency called Centurion Property Group located to the north of site. 20m from northern boundary.

The recorded LA90 levels determine the Rating Background Level (RBL). The RBL is defined as the median value of the tenth percentile value for the recorded LA90 levels for the complete monitoring period. The tenth percentile is also referred to as the Assessment Background Level (ABL). The resultant RBL (LA90) and ambient (LAeq) levels for each period are summarised below in Table 3 and 4. Appendix A contains a geographical presentation of the background noise levels generated from the monitoring period.

TABLE 4 – Summary of existing noise levels.

<i>Time of Day</i>	<i>Rating Background Noise Level (L90) dBA</i>	<i>Log Average Existing Ambient Noise Levels (LAeq) dBA</i>
Day (7am – 6pm)	56.45	64.90
Evening (6pm – 10pm)	55.19	63.38
Night (10pm – 7am)	45.56	54.66

Table 5: Summary of existing LAeq dBA levels.

<i>Time of Day</i>	<i>Log Average Existing Ambient Noise Levels (LAeq) dBA</i>
Day (7am – 10pm)	62.74
Night (10pm – 7am)	54.66

Day and night criterion was adopted as this is the structure the NSW Department of Planning "Development near rail corridors and busy roads" 2008 policy



#### 4. NOISE GOALS

As discussed above the assessment procedure given in the Noise Policy for Industry (2017) has two components: Controlling intrusive noise impacts and maintaining noise level amenity. Based on existing ambient noise levels, site specific noise goals from this proposal should not exceed a LAeq level of 61.45 dBA (56.45 + 5 – intrusive noise criterion) for the daytime. Site specific noise goals from this proposal should not exceed a LAeq levels of 55 dBA for the evening and 50 dBA for the night. These are shown in the table below:

TABLE 6 – Noise goal for the proposed multi storey building on neighboring receivers

<i>Time Of Day</i>	<i>Intrusiveness Criterion</i>	<i>Amenity Criteria</i>
Day Time	61.45dBA (LAeq,15min)	60 dBA LAeq,
Evening	60.19dBA (LAeq,15min)	50 dBA LAeq,
Night	50.56dBA (LAeq,15min)	45 dBA LAeq,

Notes:

- The criteria in **BOLD** apply being the lower of either the Intrusiveness Criterion or the Amenity Criterion;

#### 7. RECOMMENDATIONS

##### **Mechanical Plant (Air Conditioners)**

Maximum noise emission levels for mechanical plant noise must not exceed 61.45 dBA. Plant equipment with a higher dBA can be used in a sound booth which has the capacity to lower the Rw by a desired dBA.

Electrical, mechanical, hydraulic and air conditioning equipment is to be housed so that it does not create an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997, either within, or at the boundaries of, any neighboring property at any time of the day.

Differing models of air conditioners will provide differing noise emitting values. Acoustic Enclosures typically achieve performance between 15dB (A) to 25dB (A) with higher performance systems readily available.

It is recommended for the proposed building that external air conditioning units emit a noise level of 70 dBA or less. Providing an acoustic enclosure on a unit with a noise level of 70 dBA with a 25 dBA reduction, relevant noise goals at the relevant property boundaries will be achieved.

##### **Communal Roof Terrace Area**

Limited access during the hours of 10pm – 7am. A notice should be clearly displayed to remind persons to inhabit the area in a quiet manner to avoid disturbing the neighbours. No amplified music shall be played during evening and night time hours. These aspects should also be contained within any future conditions of development consent and strata by-laws pertaining to the property.



e) Acid Sulphate Soils

### Acid Sulfate Soil (ASS) Assessment

#### Guidelines

This Assessment was undertaken in general accordance with the following guidelines:

- o Acid Sulfate Soil Management Advisory Committee (1998), Acid Sulfate Soil Manual, referred to as ASSMAC (1998).
- o Qld Natural Resources, Mines and Energy (2004) Acid Sulfate Soil Laboratory Methods Guidelines.

#### Acid Sulfate Soil Risk Map Classification

The Woollahra LEP (1995) ASS planning map indicates that the site is Class 5 land, as shown in Figure 2, Attachment A. ASSMAC (1998) indicates that development on Class 5 land has the potential to pose an environmental risk, if works are within 500 metres of adjacent Class 1, 2, 3, or 4 land and are likely to lower the water table below 1 m AHD on the adjacent land. As the proposed development works are within 500 m of Class 2 and 3 land and the impacts on groundwater is unknown, a preliminary geomorphic ASS assessment was undertaken.

#### Geomorphic Setting

The likelihood of ASS occurrence at a site is a function of various geomorphic parameters, in particular those listed in Table 5 as derived from ASSMAC (1998). Each is an indicator that ASS may be present onsite.

Table 5: Site geomorphic features indicative of ASS.

Geomorphic Feature	Present On Site?
Holocene sediments	Yes
Soil horizons less than 5 m AHD	No
Marine / estuarine sediments or tidal lakes	No
Coastal wetland; backwater swamps; waterlogged or scalded areas; inter-dune swales or coastal sand dunes (i.e. deep excavation is required)	No
Dominant vegetation is mangroves, reeds, rushes and other swamp or marine tolerant species.	No
Geologies containing sulfide bearing material / coal deposits or former marine shales/sediments	Yes
Deep older (Holocene or Pleistocene) estuarine sediments > 10 mBGL (if deep excavation or drainage is proposed)	No

Two of the geomorphic features listed are present on-site. Therefore, the geomorphic setting of the site indicates that ASS may be present and intrusive investigation, with laboratory testing of soils, should be carried out.

#### **Discussion / Conclusion**

Laboratory chromium suite analytical results indicate that only one of the tested soil samples, i.e. sample taken from 4 m depth in BH103, has exceeded the action criteria for acid trail. Sample taken from 5.5 m depth in BH103 is ASS. Considering that these sample are located in the northern portion of the site and they are below the proposed excavation depth, no ASSMP is required.

Should materials be identified during construction works, which do not resemble materials identified in this report, or in case of any change in bulk excavation level, Martens and Associates should be contacted to inspect the material and assess the need for further testing / advice.

#### **f) Land Contamination (SEPP 55)**

##### **Introduction**

This report, prepared by Martens and Associates (MA), documents a preliminary site contamination investigation (PSI) to support a development application (DA) to Woollahra Council (Council) for construction of a proposed residential flat building with a single storey basement level at 351 - 353 New South Head Road, Double Bay, NSW

Preliminary development plans are provided in Attachment A.

##### **Objectives**

Investigation objectives include:

- o Identification of historic and current potentially contaminating site activities.
- o Evaluation of areas of environmental concern (AEC) and associated contaminants of potential concern (COPC) within investigation area.
- o Assess identified AEC and associated COPC.
- o Provide comment on the suitability of the investigation area for the future development use, and where required, provide recommendations for additional investigations and/or remediation.

### Conclusions

The review of the site history indicated that a residential development was constructed on each of the lots respectively prior to 1930. The site has been used for residential purposes since.

Potential contamination sources are summarised as:

- o Dwelling construction and maintenance have the potential to have introduced contaminants in the form of asbestos (fibrous cement sheets as a construction material), pesticides (pest control) and heavy metals (paints, pest control, use of galvanised materials).
- o Past shed construction, storage and maintenance could have introduced asbestos (possible construction material), pesticides (pest control) and heavy metals (paints, galvanised metals, pest control).
- o Localised filling may have introduced contaminants in the form of asbestos, heavy metals, pesticides and hydrocarbons (volatile and semi-volatile).

Overall, the site is considered to generally have a risk of contamination of localised hot spots in the vicinity of the dwellings and sheds, and in areas of localised fill. To determine potential risk of harm to human health and environment under proposed development conditions, assessment of the identified AEC should be undertaken prior to any future development.

### **Recommendations**

Prior to the proposed development, assessment of the AEC and COPC as noted in this PSI should be undertaken.

To address potential identified AEC and COPC, a detailed site investigation (DSI) including intrusive soil sampling and testing is recommended. Following demolition of site structures and pavement, testing under dwelling and shed footprints (plus 1 m curtilage) is recommended to determine any residual impacts from previous use.

The DSI plan is to be developed in accordance with NSW EPA (1995) *Sampling Design Guidelines* and a risk-based assessment. Assessment shall address each of the identified AEC and associated COPC identified in Table 7. Results of the site testing shall be assessed against site acceptance criteria (SAC) developed with reference to ASC NEPM (2013).

Provided the above recommendations are adhered to, we consider that the site shall be able to be made suitable for the proposed development.

Where material is excavated and removed offsite, it is to be classified in accordance with the NSW EPA Waste Classification Guidelines (2014).

## 6. RECOMMENDATION

Council's Environmental Health Officer has determined that the proposal is satisfactory, subject to the following conditions:

### A. General Conditions

#### A.1 Approved Plans and supporting documents

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

Reference	Description	Author/Drawn	Date(s)
	Acid Sulphate Soil Management Plan		
REP-18-7160-A2	Acoustic Report	Envirotech	29 <sup>th</sup> April 2019
	Noise Management Plan		
	Plan of Management		
P1806950JR01V01	Contaminated Land - Initial Site Investigation Report (Stage 1)	Martens Consulting Engineers	June 2019
	Contaminated Land - Detailed Site Investigation Report (Stage 2)		
	Contaminated Land - Remedial Action Plan (Stage 3)		

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

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

Standard Condition: A5

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

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

#### C.1 Land Contamination

- Given the limited nature of the Preliminary Investigation due to site constraints, confirmation of the contamination status of the site in the form of



a Detailed Investigation will need to be undertaken *post –demolition of the existing buildings*. The Detailed Investigation shall be undertaken in accordance with the *NSW EPA Sampling Guidelines (1995)*, the *DECCW's Guidelines for the NSW Site Auditor Scheme, 2<sup>nd</sup> Edition, 2006*.

- If the land is contaminated then a remedial action plan sufficient for compatibility with the proposed use, supported by a Site Audit Statement must be provided to the Council's satisfaction, and
- After completion of any remedial works required by the *remedial action plan*, that the applicant provide a copy of a validation report, supported by a Site Audit Statement to Council's satisfaction before the issuing of any occupation certificate.

## C.2 Light & Ventilation

The *Construction Certificate* plans and specifications, required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation*, must detail all a lighting, mechanical ventilation or air-conditioning systems complying with Part F.4 of the *BCA* or clause 3.8.4 and 3.8.5 of the *BCA* Housing Provisions, inclusive of [AS 1668.1](#), [AS 1668.2](#) and [AS/NZS 3666.1](#). If an alternate solution is proposed then the *Construction Certificate* application must include a statement as to how the performance requirements of the *BCA* are to be complied with and support the performance based solution by expert *evidence of suitability*. This condition does not set aside the mandatory requirements of the *Public Health (Microbial Control) Regulation 2000* in relation to *regulated systems*. This condition does not set aside the effect of the *Protection of the Environment Operations Act 1997* in relation to offensive noise or odour.

**Note:** Clause 98 of the *Regulation* requires compliance with the *BCA*. Clause 145 of the *Regulation* prevents the issue of a *Construction Certificate* unless the *Accredited Certifier/Council* is satisfied that compliance has been achieved. Schedule 1, Part 3 of the *Regulation* details what information must be submitted with any *Construction Certificate*. It is the Applicant's responsibility to demonstrate compliance through the *Construction Certificate* application process. Applicants must also consider possible noise and odour nuisances that may arise. The provisions of the *Protection of the Environment Operations Act 1997* have overriding effect if offensive noise or odour arises from the use. Applicant's must pay attention to the location of air intakes and air exhausts relative to sources of potentially contaminated air and neighbouring windows and air intakes respectively, see section 2 and 3 of [AS 1668.2](#).

Standard Condition C59

## C.3 Acoustic Certification of Mechanical Plant & Equipment

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

measured from the nearest strata, stratum or community title land and must not exceed *background noise level*, at any time.

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

Where sound attenuation is required this must be detailed.

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

**1. Australian Acoustical Society**—professional society of noise-related professionals ([www.acoustics.asn.au/index.php](http://www.acoustics.asn.au/index.php)).

**2. Association of Australian Acoustical Consultants**—professional society of noise related professionals ([www.aaac.org.au](http://www.aaac.org.au)).

Standard Condition: C62

#### C.4 Design sound levels for building interiors

The *Construction Certificate* plans and specifications required by clause 139 of the *Regulation*, must provide details showing how the recommendations of the Environmental Noise Impact Assessment, prepared by ENVIROTECH will be implemented.

Design sound levels for building interiors should not exceed those recommended maximum design sound levels,  $L_{Aeq}$ , dB(A) specified by AS 2107-2000, *Acoustics - Recommended design sound levels and reverberation times for building interiors*.

**Note:** The design sound levels given in AS 2107-2000 are not necessarily appropriate in all circumstances. In particular, lower noise levels may be appropriate in quiet environments or where expectations of quality are high. For example, lower design sound levels than those given as satisfactory in AS 2107-2000 may be preferred for luxury hotels and apartments. However, additional costs will be incurred in achieving sufficient sound attenuation between spaces for acoustic privacy requirements. For each 5 dB reduction in the ambient sound level, 5 dB must be added to the overall sound isolation performance of the dividing elements to maintain the same level of acoustic privacy. There could also be additional costs associated with the provision of quieter building services. As a minimum compliance with the *BCA* is mandatory.

Standard Condition: C63

#### C.5 Ventilation - Enclosures used by Vehicles (Car parks, automotive service, enclosed driveways, loading docks and the like)

The (*UNDERGROUND CARPARK*) in which vehicles powered by internal combustion engines are parked, serviced or operated are required to comply with Section 4 'Ventilation of Enclosures used by Vehicles with Internal Combustion Engines' of Australian Standard 1668.2-1991. In general air distribution must achieve uniform dilution of contaminants in the garage and maintain contaminant concentrations below recommended exposure standards.

The (*UNDERGROUND CARPARK*) must be naturally ventilated or provided with a combination of both supply and exhaust mechanical ventilation. The

applicant is to determine the method of ventilation of the (*UNDERGROUND CARPARK*) and provide details to the Certifying Authority accordingly. Except as varied in accordance with Clause 4.4.1 (a), (b) or (c), the (*UNDERGROUND CARPARK*) shall be mechanically ventilated by a combination of general exhaust and supply flow rates in accordance with Australian Standard 1668.2-1991.

#### **C.6 Ventilation - Internal Sanitary Rooms**

All internal sanitary rooms and laundry facilities not provided with natural ventilation must be provided with a system of mechanical exhaust ventilation in accordance with *Table B1 Minimum Exhaust Ventilation Flow Rates of AS 1668.2-1991*. Details of any proposed mechanical ventilation system(s) being submitted with the Construction Certificate plans and specifications, required to be submitted to the Certifying Authority demonstrating compliance with AS 1668 Parts 1 & 2.

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

#### **E. Conditions which must be satisfied during any development work**

##### **E.1 Hours of Work –Amenity of the neighbourhood**

- a) No *work* must take place on any Sunday or public holiday,
- b) No *work* must take place before 7am or after 5pm any weekday,
- c) No *work* must take place before 7am or after 1pm any Saturday,
- d) The following *work* **must not** take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday;
  - (i) Piling;
  - (ii) Piering;
  - (iii) Rock or concrete cutting, boring or drilling;
  - (iv) Rock breaking;
  - (v) Rock sawing;
  - (vi) Jack hammering; or
  - (vii) Machine excavation,
- e) No loading or unloading of material or equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.
- f) No operation of any equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday
- g) No rock excavation being cutting, boring, drilling, breaking, sawing , jack hammering or bulk excavation of rock, must occur without a 15 minute break every hour.

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

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

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

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

**Note:** Compliance with these hours of work does not affect the rights of any person to seek a remedy to offensive noise as defined by the *Protection of the Environment Operations Act 1997*, the *Protection of the Environment Operations (Noise Control) Regulation 2000*.

**Note:** EPA Guidelines can be downloaded from  
<http://www.epa.nsw.gov.au/noise/nglg.htm>.

**Note:** see [http://www.epa.nsw.gov.au/resources/ci\\_build\\_sheet7.pdf](http://www.epa.nsw.gov.au/resources/ci_build_sheet7.pdf)  
Standard Condition: E6

## E.2 Dust Mitigation

Dust mitigation must be implemented in accordance with “*Dust Control - Do it right on site*” published by the Southern Sydney Regional Organisation of Councils.

This generally requires:

- a) Dust screens to all hoardings and site fences.
- b) All stockpiles or loose materials to be covered when not being used.
- c) All equipment, where capable, being fitted with dust catchers.
- d) All loose materials being placed in bags before placing into waste or skip bins.
- e) All waste and skip bins being kept covered when not being filled or emptied.
- f) The surface of excavation work being kept wet to minimise dust.
- g) Landscaping incorporating trees, dense shrubs and grass being implemented as soon as practically possible to minimise dust.

**Note:** “*Dust Control - Do it right on site*” can be downloaded free of charge from Council’s web site [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or obtained from Council’s office.

**Note:** Special precautions must be taken when removing asbestos or lead materials from development sites. Additional information can be obtained from [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au) and [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au). Other specific condition and advice may apply.

**Note:** Demolition and construction activities may affect local air quality and contribute to urban air pollution. The causes are dust, smoke and fumes coming from equipment or activities, and airborne chemicals when spraying for pest management. Precautions must be taken to prevent air pollution.

Standard Condition: E23

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

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

Nil.

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

Nil.

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

**I.1 Outdoor lighting – Roof Terraces**

Outdoor lighting must comply with AS 4282-1997: *Control of the obtrusive effects of outdoor lighting*. The maximum luminous intensity from each luminaire must not exceed the level 1 control relevant under table 2.2 of AS 4282. The maximum illuminance and the threshold limits must be in accordance with Table 2.1 of AS 4282.

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 600 mm above the finished floor level of the roof terrace.

This condition has been imposed to protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting.

**Note:** Council may consider, subject to an appropriate section 96 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.  
Standard Condition: 151

**I.2 Noise Control**

The use of the premises must not give rise to the transmission of *offensive noise* to any place of different occupancy. *Offensive noise* is defined in the *Protection of the Environment Operations Act 1997*.

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

**Note:** Council will generally enforce this condition in accordance with the *Noise Guide for Local Government* (<http://www.environment.nsw.gov.au/noise/nglg.htm>) and the *Industrial Noise Guidelines* (<http://www.environment.nsw.gov.au/noise/industrial.htm>) publish by the Department of Environment and Conservation. Other state government authorities also regulate the *Protection of the Environment Operations Act 1997*.

**Useful links:**



**Community Justice Centres**—free mediation service provided by the NSW Government ([www.cjc.nsw.gov.au](http://www.cjc.nsw.gov.au)).

**Department of Environment and Conservation NSW**, Noise Policy Section web page ([www.environment.nsw.gov.au/noise](http://www.environment.nsw.gov.au/noise)).

**New South Wales Government Legislation** home page for access to all NSW legislation, including the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Noise Control Regulation 2000* ([www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)).

**Australian Acoustical Society**—professional society of noise-related professionals ([www.acoustics.asn.au/index.php](http://www.acoustics.asn.au/index.php)).

**Association of Australian Acoustical Consultants**—professional society of noise related professionals ([www.aaac.org.au](http://www.aaac.org.au)).

**Department of Gaming and Racing** - ([www.dgr.nsw.gov.au](http://www.dgr.nsw.gov.au)).  
Standard Condition: 156

### I.3 Maintenance of Sound Attenuation

Sound attenuation must be maintained in accordance with the *Acoustic Report*.  
Standard Condition: 157

### I.4 Noise from mechanical plant and equipment

The noise level measured at any boundary of the site at any time while the mechanical plant and equipment is operating must not exceed the *background noise level*. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed *background noise level* at any time.

The *background noise level* is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the L<sub>A90</sub>, 15 minute level measured by a sound level meter.

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

**Note:** Words in this condition have the same meaning as in the:

*NSW Industrial Noise Policy*

([http://www.environment.nsw.gov.au/resources/ind\\_noise.pdf](http://www.environment.nsw.gov.au/resources/ind_noise.pdf))

ISBN 0 7313 2715 2, dated January 2000, and

*Noise Guide for Local Government*

(<http://www.environment.nsw.gov.au/noise/nglg.htm>)

ISBN 1741370671, dated December 2004.

Standard Condition: 159

### J. Miscellaneous Conditions

Nil.

### K. Advisings

Nil

**Graeme Reilly**  
**Environmental Health Officer**

**Date: 11<sup>TH</sup> July 2019**

Completion Date: 9 August 2019

## REFERRAL RESPONSE – FIRE SAFETY

**FILE NO:** DA 226/2019/1  
**ADDRESS:** 351 New South Head Road DOUBLE BAY 2028  
**PROPOSAL:** Demolition of existing buildings, construction of a new residential flat building for 18 units with basement parking  
**FROM:** Richard Smith - Fire Safety Officer  
**TO:** Mr W Perdigao

---

### 1. ISSUES

- The proposal is for the demolition of the existing structures on the site and the erection of a new residential flat building that entails basement carparking. As the building is new it cannot be conditioned in relation to the BCA and will have to comply at the construction certificate stage and is the responsibility of the principal certifier.*

### 2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environment Effects, referenced demolition of the existing buildings across the site, excavation for basement parking & associated building services & construction of an RFB prepared by hampton property services, dated 3 June 2019.
- Architectural Plans, referenced 2.021-2.024, 2.100-2.107, 2.201-2.203 & 2.301, prepared by hill thalis, dated 21 March 2019.

### 3. RESEARCH

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

- A site inspection was carried out on the following date: 9 August 2019
  - be sufficiently firm and level to sustain the structure while in use.

### 4. BUILDING DESCRIPTION

Type of Construction: A  
Class: 2 & 7a  
Number of Storeys: 6  
Rise in Storeys: 5  
Effective Height: 13 metres

## 5. ASSESSMENT

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

## 6. RECOMMENDATION

Council's Fire Safety Officer has determined that the proposal is satisfactory, subject to the following conditions:

- A. General Conditions
- B. Conditions which must be satisfied prior to the demolition of any building or construction
- C. Conditions which must be satisfied prior to the issue of any construction certificate
- D. Conditions which must be satisfied prior to the commencement of any development work
- E. Conditions which must be satisfied during any development work
- F. Conditions which must be satisfied prior to any occupation or use of the building (Part 4A of the Act and Part 8 Division 3 of the Regulation)

### F.1 Fire Safety Certificates

In the case of a *final occupation certificate* to authorise a person:

- a) to commence occupation or use of a new building, or
- b) to commence a change of building use for an existing building,

a *certifying authority* must be satisfied that a final fire safety certificate has been issued for the building.

In the case of an *interim occupation certificate* to authorise a person:

- a) to commence occupation or use of a partially completed *new building*, or
- b) to commence a change of building use for part of an existing building,

a *certifying authority* must be satisfied that a final fire safety certificate or an interim fire safety certificate has been issued for the relevant part of the building.

**Note:** This condition does not apply to a class 1a or class 10 building within the meaning of clause 167 of the Regulation.

**Note:** In this condition:

*interim fire safety certificate* has the same meaning as it has in Part 9 of the Regulation.

*final fire safety certificate* has the same meaning as it has in Part 9 of the Regulation.  
*new building* has the same meaning as it has in section 109H of the Act.  
Standard Condition: F4

- G. Conditions which must be satisfied prior to the issue of any Subdivision Certificate**
- H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (s109C(1)(c))**
- I. Conditions which must be satisfied during the ongoing use of the development**
- I.1 Annual Fire Safety Statements (Class 1b to 9c buildings inclusive)**

Each year, the owner of a building to which an *essential fire safety measure* is applicable must provide an *annual fire safety statement* to Council and the Commissioner of the NSW Fire Brigades. The *annual fire safety statement* must be prominently displayed in the building.

**Note:** *Essential fire safety measure* has the same meaning as in clause 165 of the Regulation.  
*Annual fire safety statement* has the same meaning as in clause 175 of the Regulation.  
Part 9 Division 5 of the Regulation applies in addition to this condition at the date of this consent. Visit Council's web site for additional information in relation to fire safety  
[www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au).  
Standard Condition: I22

- J. Miscellaneous Conditions**
  - K. Advisings**
- 

Richard Smith  
Fire Safety Officer

**Date: 9 August 2019**



25 July 2019

Our Reference: SYD19/00854  
Council Ref: DA226/2019/1

The General Manager  
Woollahra Municipal Council  
PO Box 61  
Double Bay NSW 1360

Attention: Mr W Perdigao

Dear Mr James

**CONSTRUCTION OF RESIDENTIAL FLAT BUILDING  
351-353 NEW SOUTH HEAD ROAD, DOUBLE BAY**

Reference is made to Council's correspondence dated 3 July 2019, regarding the abovementioned application which was referred to Roads and Maritime Services (Roads and Maritime) for concurrence in accordance with Section 138 of the *Roads Act, 1993*.

Roads and Maritime has reviewed the submitted application and provides concurrence under Section 138 of the *Roads Act 1993* subject to the following conditions being included in any consent issued by Council:

1. All buildings and structures, together with any improvements integral to the future use of the site are to be wholly within the freehold property (unlimited in height or depth), along the New South Head Road boundary.
2. The redundant driveway on the New South Head Road boundary shall be removed and replaced with kerb and gutter to match existing. The design and construction of the kerb and gutter on New South Head Road shall be in accordance with Roads and Maritime requirements. The design and construction of the gutter crossing on New South Head Road shall be in accordance with Roads and Maritime requirements. Details of these requirements should be obtained by email to [DeveloperWorks.Sydney@rms.nsw.gov.au](mailto:DeveloperWorks.Sydney@rms.nsw.gov.au).

Detailed design plans of the proposed kerb and gutter are to be submitted to Roads and Maritime for approval prior to the issue of a Construction Certificate and commencement of any road works. Please send all documentation to [development.sydney@rms.nsw.gov.au](mailto:development.sydney@rms.nsw.gov.au)

A plan checking fee and lodgement of a performance bond is required from the applicant prior to the release of the approved road design plans by Roads and Maritime.

**Roads and Maritime Services**

27-31 Argyle Street, Parramatta NSW 2150 |  
PO Box 973 Parramatta NSW 2150 |

[www.rms.nsw.gov.au](http://www.rms.nsw.gov.au) | 13 22 13



3. The design, modification, and construction of the gutter crossing on New South Head Road shall be in accordance with Roads and Maritime requirements. Details of these requirements should be obtained by email to [DeveloperWorks.Sydney@rms.nsw.gov.au](mailto:DeveloperWorks.Sydney@rms.nsw.gov.au).

Detailed design plans of the proposed gutter crossing are to be submitted to Roads and Maritime for approval prior to the issue of a Construction Certificate and commencement of any road works. Please send all documentation to [development.sydney@rms.nsw.gov.au](mailto:development.sydney@rms.nsw.gov.au)

A plan checking fee and lodgement of a performance bond is required from the applicant prior to the release of the approved road design plans by Roads and Maritime.

4. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to Roads and Maritime for approval, prior to the commencement of any works. Please send all documentation to [development.sydney@rms.nsw.gov.au](mailto:development.sydney@rms.nsw.gov.au)

A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued.

5. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001. These shall include shoring design drawings (plan, typical cross sections, longitudinal sections), design calculations of the shoring system, drawings showing the minimum distance from the road kerb to the face of excavation and any geotechnical monitoring plan.

The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime. Please send all documentation to [development.sydney@rms.nsw.gov.au](mailto:development.sydney@rms.nsw.gov.au)

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

6. The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1-2004, AS2890.6-2009 and AS 2890.2-2018 for heavy vehicle usage. Parking Restrictions may be required to maintain the required sight distances at the driveway.
7. Sight distances from the proposed vehicular crossings to vehicles on New South Head Road are to be in accordance with the Austroads Guide to Road Design: Part 4A: Unsignalised and Signalised Intersections (Section 3 – Sight Distance) and AS 2890. Vegetation and proposed landscaping/fencing must not hinder sight lines to and from the vehicular crossings to motorists, pedestrians and cyclists.
8. The proposed development should be designed such that road traffic noise from New South Head Road is mitigated by durable materials in order to satisfy the requirements for habitable rooms under Clause 102 (3) of *State Environmental Planning Policy (Infrastructure) 2007*.
9. Roads and Maritime is currently undertaking a program to implement "Clearways" on State roads within Sydney. If not already in place, "Clearway" restrictions will be implemented along the full New South Head Road frontage of the development site.

All works and signposting associated with the subject development shall be at no cost to Roads and Maritime.

10. All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on New South Head Road.
11. A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Construction Certificate.
12. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on New South Head Road during construction activities. A ROL can be obtained through  
<https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>

If you have any further inquiries in relation to the subject application, please contact Kerry Ryan, Development Assessment Officer, on 8849 2008 or by email at [Development.Sydney@rms.nsw.gov.au](mailto:Development.Sydney@rms.nsw.gov.au).

Yours sincerely



**Brendan Pegg**  
**Senior Land Use Planner**  
**South East Precinct, Greater Sydney Division**



## LOCAL PLANNING PANEL DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>ITEM No.</b>	D4
<b>FILE No.</b>	DA143/2020/1
<b>ADDRESS</b>	40 Glendon Road DOUBLE BAY
<b>COUNCIL WARD</b>	Double Bay
<b>SITE AREA</b>	779m <sup>2</sup>
<b>ZONING</b>	R3 Medium Density Residential
<b>PROPOSAL</b>	Demolition of the existing dwelling & the construction of a new two storey multi-dwelling housing development with basement car parking, a swimming pool and associated landscaping works
<b>TYPE OF CONSENT</b>	Local development – as submitted <i>The proposed development is considered to be integrated development (dewatering of the site - referral to Water NSW)</i>
<b>COST OF WORKS</b>	\$2,605,900
<b>DATE LODGED</b>	15/05/2020
<b>APPLICANT</b>	Group Architects
<b>OWNER</b>	Prominent Ventures Pty Ltd
<b>AUTHOR</b>	Mrs L Holbert
<b>TEAM LEADER</b>	Mr G Fotis
<b>SUBMISSIONS</b>	19 (3 submissions from the same property)
<b>RECOMMENDATION</b>	Refusal

### 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:

- Contentious development  
Development that:  
(a) is the subject of 10 or more unique submissions by way of objection

### 2. REASONS FOR RECOMMENDATION

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

- It is considered to be unsatisfactory with planning provisions contained in WLEP 2014 and WDCP 2015
- It will have adverse effects on the amenity of adjoining properties and the local built and natural environment such that refusal is justified

- It is considered to be unsatisfactory with planning provisions contained in WLEP 2014 and WDCP 2015
- It will have adverse impacts on the visual amenity of the streetscape and desired future character of the Manning Road Precinct
- The applicant has not submitted sufficient and accurate plans/information to allow for adequate assessment of the proposed development
- The site is not suitable for the proposed development
- The proposal is not in the public interest

### 3. LOCALITY PLAN



### 4. PROPOSAL

The proposed development is for demolition of the existing dwelling and the construction of a new two storey multi-dwelling housing development with basement car parking, swimming pool and associated landscaping works. The proposal involves the following works:

#### Basement:

- Excavation works to provide 6 car parking spaces, storage and rainwater tanks, internal staircases and lift to each dwelling, vehicular turntable, garbage storage, services, laundry to House 3, and ingress and egress stair;
- New driveway accessed from Glendon Road;
- Stormwater detention tank to the rear of the site.



Ground level:

- The lower level of the three attached dwellings consists of a kitchen, dining area, living room, fireplace, WC, laundry (to House 1 and 2), staircase and lift;
- New decking to the rear of each dwelling and operable pergolas above the decks to House 1 and 2;
- New swimming pool to the side yard of House 3;
- New planting and landscape works;
- New pedestrian gate to the northern side passageway;
- Removal of the existing Viburnum tree to the rear yard;

First floor:

- The upper level of the three attached dwellings consists of three bedrooms, bathroom, ensuite, WIR and lift;
- Four skylights above the staircases of each dwelling;
- New front balconies to Houses 1 and 2 and side balcony to House 3;
- Solar panels to the rear roof slope of each dwelling.

## 5. ISSUES

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

Clause	Development Standard	Departure from Control	Conclusion
Part 4.3	Height of Buildings	10.35m or 8.9% departure from the 9.5m control	Unsatisfactory
Part 4.4	FSR	Based on Council calculation, there is a 25.02m <sup>2</sup> or 4.9% departure from the 0.65:1 control.	Unsatisfactory (Cl.4.6 not provided)

### 5.2. Primary Issues

Issue	Conclusion	Section
Height	The proposed development does not comply with the maximum height requirements. It has not been demonstrated that there are sufficient environmental grounds to justify this non-compliance with the maximum height requirement. The proposed development has therefore not been supported.	14.4
Deep soil landscaping (front setback)	The proposed development does not comply with the minimum deep soil landscaping requirement to the front setback. This does not allow for trees and planting to be provided, to balance and soften the substantial scale of the proposed works. This detracts from the landscape character of the locality.	15
Driveway Access	The proposed vehicular access off Glendon Road, which involves the shared use of the existing driveway crossing at No.42 Glendon Road will result in unsatisfactory traffic and parking impacts.	15, 15.3
Onsite Parking	The proposed onsite parking is to be accessed via a narrow 6m wide frontage to Glendon Road. The proposed entrance to the basement car park is considered to be disproportionately high and is the dominate element to the Glendon Road elevation. This detracts from the character and appearance of the streetscape and is considered unacceptable in this regard.	15, 15.3
Dewatering	The proposed development involves dewatering of the site to accommodate the basement car parking. This triggers an integrated development referral to Water NSW and the re-notification of the application. This was not carried out as the proposal has not been supported.	8, 9.1
Acid Sulphate Soils	No Acid Sulphate Soil Management Plan was provided, contrary to Clause 6.1(3) of the WLEP, 2014. Therefore the proposal was not supported.	14.7

Issue	Conclusion	Section
Excavation	The proposed excavation works for the new basement car park are considered to be excessive and are insufficiently set back from the site boundaries. The extent of this excavation is considered to be inappropriate, given the environmental constraints of the site including Acid Sulphate Soils, flooding, high water table, potential land contamination and the sandy soil conditions. The proposal is considered unacceptable in this regard.	14.8, 15
FSR	The proposed development does not comply with the maximum FSR development standard. A Cl.4.6 variation has not been provided to justify this non-compliance.	14.5
Desired Future Character	The proposed development represents an overdevelopment of the site and relies on a 6m wide frontage to Glendon Road to provide vehicular access to the basement car park. This does not allow for sufficient deep soil landscaping and planting to the frontage of the site, which detracts from the quality of the streetscape, the key elements of the precinct and the landscape character the locality.	15
Streetscape	The proposed height of the proposed development is out of scale with the general pattern of development within Glendon Road and includes visually intrusive roof structures (lift over-runs), which detract from the quality of the streetscape and is unacceptable in this regard.	15
Visual Privacy	The proposed first floor front balconies to House 1 and 2 will result in adverse visual privacy impacts on the northern private open space at No.42 Glendon Road. The proposal is therefore unacceptable in this regard.	15
Fencing	The proposed rear fencing to Kiaora Road and the fencing in between the private open spaces within the development are excessively high. This detracts from the visual quality of the streetscape and the residential amenity of the occupants of the development.	15
Site Suitability	The site is considered to be unsuitable for the proposed multi-dwelling development with basement parking, given the site has a very narrow frontage, is of an irregular shape, contains potential acid sulphate soils, a high water table, is flood prone, potential contamination and sandy soil conditions.	18
Insufficient and inadequate information	The submitted application has not provided sufficient or acceptable information to allow for an adequate assessment of the proposed development.	21

### 5.3. Summary of Submissions

Issue	Conclusion	Section
Desired Future Character	The proposed development represents an overdevelopment of the site and relies on a 6m wide frontage to Glendon Road to provide vehicular access to the basement car park. This does not allow for sufficient deep soil landscaping and planting to the frontage of the site. This detracts from the quality of the streetscape, the key elements of the precinct and the landscape character the locality.	9.1, 15
Streetscape	The proposed height of the proposed development is out of scale with the general pattern of development within Glendon Road and includes visually intrusive (lift over-runs), which detract from the quality of the streetscape and is unacceptable in this regard.	9.1, 15
Height	The proposed development does not comply with the maximum height requirements. It has not been demonstrated that there are sufficient environmental grounds to justify this non-compliance, with the maximum height requirement. The proposed development has therefore not been supported.	9.1, 14.4
Deep soil landscaping (front setback)	The proposed development does not comply with the minimum deep soil landscaping requirement to the front setback. This does not allow for trees and planting to be provided, to balance and soften the substantial scale of the proposed works. This detracts from the landscape character of the locality.	9.1, 15
Driveway Access	The proposed vehicular access off Glendon Road, which involves the shared use of the existing driveway crossing at No.42 Glendon Road will result in unsatisfactory traffic and parking impacts.	9.1, 15, 15.3
Onsite Parking	The proposed onsite parking is to be accessed via a narrow 6m wide frontage to Glendon Road. The proposed entrance to the basement car park is considered to be disproportionately high and is the dominate element to the Glendon Road elevation.	9.1, 15, 15.3

Issue	Conclusion	Section
	This detracts from the character and appearance of the streetscape and is considered unacceptable in this regard.	
Dewatering	The proposed development involves dewatering of the site to accommodate the basement car parking. This triggers an integrated development referral to Water NSW and the re-notification of the application. This was not carried out as the proposal has not been supported.	8, 9.1
Visual Privacy	The proposed first floor front balconies to House 1 and 2 will result in adverse visual privacy impacts on the northern private open space at No.42 Glendon Road. The applicant has not provided sufficient information to determine if the proposed screens to the first floor window sufficiently protect the visual privacy of surrounding properties. The proposed development was therefore not considered acceptable.	9.1, 15
Acid Sulphate Soils	No Acid Sulphate Soil Management Plan was provided, contrary to Clause 6.1(3) of the WLEP, 2014. Therefore the proposal was not supported.	9.1, 14.7
Excavation	The proposed excavation works for the new basement car park are considered to be excessive and are insufficiently setback from the site boundaries. The extent of this excavation is considered to be inappropriate, given the environmental constraints of the site including Acid Sulphate Soils, flooding, high water table, potential land contamination and the sandy soil conditions. The proposal is considered unacceptable in this regard.	9.1, 14.8, 15
FSR	The proposed development does not comply with the maximum FSR development standard. No Cl.4.6 variation has been provided to justify this non-compliance and is therefore unacceptable in this regard.	14.5
Site Suitability	The site is considered to be unsuitable for the proposed multi-dwelling development with basement parking, given the site has a very narrow frontage, has an irregular shape, contains potential acid sulphate soils, a high water table, is flood prone, potential contamination and sandy soil conditions.	18
Insufficient and inadequate information	The submitted application has not provided sufficient or acceptable information to allow for an adequate assessment of the proposed development.	21

## PROPERTY DETAILS AND REFERRALS

### 6. SITE AND LOCALITY

<b>Physical features</b>
The subject site is located on the western side of Glendon Road, Double Bay. The site comprises of two lots known as Lot 8 DP32788 and Lot 34 DP792126. The larger lot (Lot 8) has an irregular shape, is 691.7m <sup>2</sup> in size and fronts Glendon Road. The smaller lot (Lot 34) has a rectangular shape, is 87.3m <sup>2</sup> in size and fronts Kiaora Road. This lot is burdened by a stormwater easement at the rear and a right of way (which is connected to the existing vehicular bridge over the stormwater channel). The total area of the site is 779m <sup>2</sup> .
<b>Topography</b>
The subject site is relatively flat and slopes from the front of the site to the rear (from Glendon Road towards Kiaora Road).
<b>Existing buildings and structures</b>
The subject site is occupied by a single storey rendered dwelling house with a pitched roof, refer to <b>Photo 1</b> . A single storey detached fibro garage facing Kiaora Road, refer to <b>Photo 2</b> and a single storey fibro outbuilding located in the south-western part of the site are also situated on the site. <b>Note:</b> It was identified whilst undertaking a site visit that the fibro outbuilding was being used as a separate dwelling and was tenanted. A search of Council's Authority database did not identify consent for the use of the structure as a separate dwelling. It would therefore appear that this use is unauthorised. There is a Viburnum tree located on the rear boundary.
<b>Surrounding Environment</b>
The surrounding locality is characterised by a mixture of single storey and double storey dwelling houses with a variety of traditional and contemporary architectural styles. Adjoining the northern boundary of the site is a single storey dwelling at No.38 Glendon Road, refer to <b>Photo 4</b> . To the east of the site is a two storey attached dual occupancy development, currently under construction at No.42 Glendon Road, refer to <b>Photo 5</b> . Adjoining the southern boundary is the Double Bay Bowling Club, refer <b>Photo 6</b> . To west of the site is the stormwater channel, refer to <b>Photo 3</b> .



**Photo 1:** Front elevation of the existing dwelling on the site (Glendon Road)



**Photo 2:** Existing vehicular access bridge and existing detached garage (Kioara Road)



**Photo 3:** Existing stormwater channel adjoining the rear of the site



**Photo 4:** Existing dwelling to the north No.38 Glendon Road.



**Photo 5:** Adjoining dual occupancy development (under construction) to the east, No.38 Glendon Road



**Photo 6:** Adjoining development to the south (Double Bay Bolwing Club)





## 7. RELEVANT PROPERTY HISTORY

<b>Current use</b>
Dwelling House
<b>Relevant Application History</b>
N/A
<b>Relevant Compliance History</b>
N/A
<b>Pre-DA</b>
N/A
<b>Requests for Additional Information and Replacement Applications</b>
<ul style="list-style-type: none"> <li>A Flood Management Study was requested on 27/05/2020 and was provided on 09/06/2020;</li> <li>Changes to the vehicular access arrangements was requested on 27/05/2020. An additional Traffic Report was provided to justify the originally proposed vehicle access arrangement on 16/06/2020;</li> <li>Subdivision details (whether the proposal is to be strata tilted) were requested on 27/05/2020 and were provided on 01/06/2020.</li> </ul>
<b>Land and Environment Court Appeal(s)</b>
N/A



## 8. REFERRALS

Referral	Summary of Referral Response	Annexure
Technical Services	<p><b>Unsatisfactory:</b></p> <p><b>Stormwater:</b></p> <p><i>The submitted stormwater plans has identified the following issues which shall be addressed by the applicant prior to further assessment:</i></p> <ul style="list-style-type: none"> <li>a) Pursuant to Chapter E2.2.3 of Council's DCP, stormwater treatment system shall be provided to the proposed development. In this regard, details of the proposed proprietary stormwater treatment system and demonstrate how it complies with Council's water quality targets must be provided. Results from the pollution modelling program such as MUSIC shall be submitted with the revised stormwater plans.</li> <li>b) Notation shall be depicted on the stormwater drawings that the proposed below ground structures are fully tanked and no subsoil drainage is permitted to be discharged to the Sydney Water channel.</li> <li>c) Stormwater runoff from the site must be directed to a min. 450mm x 450mm junction pit prior discharging to the Sydney Water channel.</li> </ul> <p><b>Dewatering:</b></p> <p><i>It is noted from the geotechnical report the proposed excavation will extend below the water table and dewatering will be necessary, which requires the referral to Water NSW.</i></p> <p><i>Note: The proposal was not referred to Water NSW as the application was not supported.</i></p>	4
Traffic	<p><b>Unsatisfactory:</b></p> <p><i>The proposal fails to demonstrate that impacts of traffic and parking have been minimised, and it arouses concerns for potential conflicts from vehicles accessing/exiting the subject site and neighbouring site, therefore the proposed new access driveway with a shared crossing arrangement cannot be supported and is considered undesirable given there is an existing access point via Kiaora Road. These issue should be addressed prior to any further assessment.</i></p>	5
Drainage Engineer	<b>Satisfactory</b> , subject to Conditions.	6
Trees and Landscaping	<b>Satisfactory</b> , subject to Conditions.	7
Environmental Health	<p><b>Unsatisfactory:</b></p> <p>The submitted Acid Sulphate Report identified PASS conditions are present at the site and are likely to be disturbed by the proposed development. An Acid Sulphate Soil Management Plan is required to address this issue.</p> <p><b>Note:</b> An ASSMP was not requested as the application has not been supported.</p>	8
Heritage	<b>Satisfactory</b> , subject to Conditions.	9
Sydney Water	<b>Satisfactory</b> , subject to Conditions.	10
Water NSW	The proposed development required an integrated development referral to Water NSW, as the proposed involves dewatering of the site. This referral was not forwarded to Water NSW as the proposal has not been supported.	---

## 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 03/06/2020 to 17/06/2020 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. 19 Submissions (including 3 submissions from No.38 Glendon Road) were received from:

**Note:** It was identified that the application was integrated development after the notification period. The application was not re-notified and advertised as integrated development, as the application has not been supported.

1. Richard Eskell & Amanda L'Estrange, 19 Glendon Road, Double Bay
2. Tony Moody on behalf of No.38 Glendon Road, Double Bay
3. Carmel Niland, 38 Glendon Road, Double Bay
4. John Niland, 38 Glendon Road, Double Bay
5. David Taylor, 15 Glendon Road, Double Bay
6. Daniel Mendoza-Jones and Jessica Roth, 10 Glendon Road, Double Bay
7. J & B Kelly, 36 Glendon Road, Double Bay
8. Jen Hendriksen, 4 Glendon Road, Double Bay
9. Julie Parker, 29 Glendon Road, Double Bay
10. Marc & Rachel Jaku, 34 Glendon Road, Double Bay
11. Mark Wainwright, 8B Court Road, Double Bay
12. Michael Ryan & Sarah Ryan, 25 Glendon Road, Double Bay
13. Michael Lowy, 9 Glendon Road, Double Bay
14. Philip Sallick, 23 Glendon Road, Double Bay
15. Tom Hargreaves, 27 Glendon Road, Double Bay
16. Tony Gregory, 26 Glendon Road, Double Bay
17. Vikki Sellar-Jones, 42 Epping Road, Double Bay
18. W Naderi & N Naderi, 40 Epping Road, Double Bay
19. Wilk & Partners Pty Ltd, on behalf of Double Bay Bowling Club

The submissions raised the following issues:

- **The bulk of the proposal is excessive and is not in-keeping with the streetscape. This may result in an undesirable precedent for the locality.**

**Comment:** The proposed bulk of the proposal was not considered acceptable, thus the proposal has not been supported.

- **The proposed development exceeds the maximum height and the submitted Cl.4.6 Variation does not adequately justify this non-compliance.**

**Comment:** The proposed development is considered to be excessively high and therefore has not been supported.

- **The proposed shared driveway crossing and new driveway would be detrimental to pedestrian safety.**

**Comment:** Council's Traffic Department has not supported the proposed shared driveway crossing arrangement. The proposal therefore has not been supported.

- **Insufficient parking has been proposed, including no visitor parking, which is of concern as parking in the street is often used by workers in Double Bay.**

**Comment:** Council's Traffic Department did not raised any concern in relation to the provision of parking, however the proposal has not been supported.

- **The car park entry and exit should be via Kiaora Road.**

**Comment:** The proposed driveway access of Glendon Road was not supported and is unacceptable in this regard.

- **The proposed garage entry dominates the narrow Glendon Road frontage.**

**Comment:** The proposed garage entry is considered to dominate the narrow frontage to Glendon Road and is considered unacceptable in this regard.

- **The proposed development is not suitable for the site and is not in the public interest.**

**Comment:** The proposal was considered to be unsuitable for the site and is not in the public interest and therefore was not supported.

- **The proposed basement car park creates an unacceptable risk to the stability of surrounding properties, due to the soil conditions. There was subsidence when the basement car park for No.42 Glendon Road was constructed, which caused damage to surrounding buildings.**

**Comment:** The proposed development has not been supported.

- **The applicant has failed to include in their application that the site (adjoining the stormwater canal) is contaminated and how it is proposed to remediate this contamination.**

**Comment:** The subject site including the land previously owned by Sydney Water is not identified in Council's records as potentially contaminated. However this issue should be further investigated, prior to any consent of this nature being granted.

- **The proposed development adversely impacts the streetscape and is inconsistent with the Manning Road residential precinct controls.**

**Comment:** The proposed development is considered unacceptable within the streetscape and therefore has not been supported.

- **The proposed width of the garage structure does not comply the maximum requirements.**

**Comment:** The proposed development is considered unacceptable in this regard and has not been supported.

- **The proposed excessive excavation is likely to interfere with the high water table, ground water flows and is located in a flood prone area.**

**Comment:** The proposed extent of excavation is considered to be excessive, particularly due to the environmental constraints of the site, including the high water table. The proposed development is therefore considered unacceptable in this regard.

- **Replacing one existing car space with six resident car spaces, three bicycles and multiple motorcycles substantially increases traffic flow in Glendon Road.**

**Comment:** The proposed development has not been supported.

- **Insufficient planting at the front of the development.**

**Comment:** The proposed planting to the front of the development is considered to be inadequate. The proposal is therefore unacceptable in this regard.

- **The basement level exceeds the buildable area.**

**Comment:** The proposed basement level is considered to be excessive and is considered unacceptable in this regard.

- **The proposed parking structure is not orientated perpendicular to the street.**

**Comment:** The proposed driveway access has not been supported by Council's Traffic Department and is considered unacceptable in this regard.

- **The proposed plans suggests that the proposed entry/exit pathway for the proposed garage encroaches onto No.38 Glendon Road.**

**Comment:** It does not appear the proposed development encroaches onto the site at No.38 Glendon Road. Notwithstanding this, the proposal has not been supported.

- **The proposal does not ‘contribute to leafy character, local biodiversity and the natural habitat’.**

**Comment:** The proposal has not been supported.

- **The proposed development does not comply with the aims and objectives of the WLEP, 2014 and the objectives of the R3 Medium Density Zone.**

**Comment:** The proposed development does not comply with aims and objectives of the WLEP, 2014 and the R3 Medium Density Zone and therefore has not been supported.

- **The proposed development represents and overdevelopment of the site.**

**Comment:** The proposed development is considered to be overdevelopment of the site and therefore has not been supported.

- **It is not clear whether the FSR complies with the minimum requirements and no Cl.4.6 variation has been submitted.**

**Comment:** The proposed FSR does not appear to comply with the minimum requirements and a Cl.4.6 variation has not been provided. The proposal has therefore not been supported.

- **The proposed development does not comply with a number of controls including internal amenity, deep soil to the front setback, rear fence heights, swimming pool setbacks, minimum lot width and bicycle and motorcycle provision.**

**Comment:** The proposed development is considered to be unsatisfactory and has not been supported.

- **The proposed non-compliance with the excavation setbacks controls is particularly concerning, as subsidence issues have arisen at the adjoining development at No.42 currently under construction.**

**Comment:** The proposed excavation setbacks are considered to be unsatisfactory, thus the proposal has not been supported.

- **The submitted Acid Sulphate Report states Potential Acid Sulphate Soil conditions are present at the site and are likely to be disturbed during the proposed development works. This is an environmental concern relating to the subject site.**

**Comment:** The proposed development has been considered to be unsatisfactory in this regard.

- **The proposed development appears to exceed the excavation volume control.**

**Comment:** The proposed development exceeds the excavation control and is considered to be unsatisfactory in this regard.



- **The proposed dwellings do comply with the minimum solar access requirements to new habitable rooms resulting in poor internal amenity.**

**Comment:** The proposed development has not been supported.

- **What effect will the excavation works and the construction of basement parking have on the flow of underground water in this area and to surrounding houses?**

**Comment:** The proposed development is considered unacceptable, the matter is required to be referred to Water NSW as dewatering of the site is proposed. This referral was not undertaken as the proposal has not been supported.

- **Increased traffic flows within Glendon Road within a tight cul-de-sac.**

**Comment:** Council's Traffic Department has not raised any concern in relation to additional traffic generation, however the proposal has not be supported.

- **The 6m frontage at No.40 cannot be accessed directly from Glendon Road and requires a tight 90 degree turn, which is not possible for cars and would be totally inadequate for heavy construction equipment. Concrete trucks and cement pumps that are required to be stationary for long periods of time cannot access the site without blocking the 4 other cul-de-sac entrances. There is no street space available for siting skip bins.**

**Comment:** Construction Management impacts could conditioned to mitigate potential impacts should consent be granted, however the proposal has not been supported.

- **The development needs to use non-reflective colours and materials, especially for the proposed metal sheet roof.**

**Comment:** The proposed development has not been supported, however should consent be granted, a condition to this effect could be imposed.

- **The Jacaranda tree at the rear of the property on Kiaora Road must be retained to ensure that the landscape setting of the site is not compromised.**

**Comment:** Given the location of the proposed works Council's Landscape Officer has not recommended that a tree protection zone be provided around this Jacaranda tree located on Kiaora Road. Notwithstanding this, the proposed development has not been supported and a condition requiring a tree protection zone could be imposed, should the application be approved.

- **The proposed Juliette balconies on the western side of the proposed property could overlook the rear of No.40 Epping Road.**

**Comment:** The balconies on the western side of the building are Juliette balconies and are considered to be sufficiently separated from No.40 Epping Road. Notwithstanding this, the proposed development has not been supported.

- **There is concern that the first floor windows on the western elevation of the property will impact the visual privacy of properties on Epping Road. There is insufficient detail relating to the proposed screens to these first floor windows.**

**Comment:** The proposed first floor windows are considered to be sufficiently separated from the properties in Epping Road. However a condition of consent could be imposed to ensure that the screening to the first floor windows adequately protects the visual privacy of surrounding properties. Notwithstanding this, the proposal has not been supported.

- **A 3D model should be provided.**

**Comment:** A physical model has been provided.

- **The proposed development appears to involve considerable piling and excavation works. It is not clear how long will this take and what mitigation measures will be made. Council should carefully consider noise and dust mitigation measures, as part of its assessment.**

**Comment:** The applicant is not required to provide details regarding the length of time for the excavation work. Conditions of consent could be imposed to mitigate construction and dust impacts, should the application be approved.

- **How will the contractors access the site during construction? Objection is raised to any heavy machinery and trucks accessing the site via Kiaora Road.**

**Comment:** The proposed development has not been supported. However should consent be granted a condition requiring a Construction Management Plan to be approved by Council, could be imposed to minimise construction impacts on surrounding properties.

- **The proposed shared crossing arrangement would likely result in the queuing of vehicles in Glendon Road.**

**Comment:** The proposed shared driveway crossing arrangement has not been supported.

- **The proposed driveway arrangement will eliminate a large section of deep soil landscaping to Council's verge, which is to be reinstated once the construction works at No.42 Glendon Road is completed.**

**Comment:** The proposed shared driveway is not supported. This loss of deep soil to Council's verge is considered to be detrimental the streetscape quality. The proposed development is therefore considered unsatisfactory.

- **The proposed first floor balconies located on the eastern side of House 1 and 2 will adversely affect the visual privacy of the northern private open space at No.42 Glendon Street.**

**Comment:** These proposed balconies will overlook this northern private open space at No.42 and is considered unacceptable in this regard.

- **There is inconsistency on the survey, SEE and architectural plans relating to the site area.**

**Comment:** The subject site is made up of two sites, which has as combined site area of 779m<sup>2</sup>, as per the submitted survey.

- **The consequence of reducing groundwater flow rates under basement car parks (due to construction below the water table plus permeability reduction due to compaction) means that some of the water flow will take an alternate path often via a rising water table under adjacent sites. No. 42, which is already under construction may have already triggered this risk but the flow path through the thickest part of the aquifer below No. 40 is still unimpeded and can provides a high permeability alternative flow path shared with the aquifer below No. 31. However, if both No. 42 and No. 40 car basement parks are built, the combined effect will be impedance over the thickest half of the flow corridor which because of the expected channel geometry affects 75% of the cross-sectional area (assuming a V shaped valley). The possible flow consequences are a build-up of groundwater upstream of the car parks i.e. under the bowling club and below the likely alternative eastern high permeability pathway under No.29 and No. 31 Glendon Road. With measured water table depths of 0.5 to 1.0 meters on Glendon Road and an apparent steady state aquifer, there is very little tolerance for aquifer flow disturbance and there is an apparent risk of water table elevation which could adversely affect several properties.**

**Comment:** There is concern relating to the dewatering of the site. The proposed development is required to be referred to Water NSW. However, this referral was carried out as the application has not been supported.

- **Council and the developer need to be sure that sufficiently rigorous study is undertaken to assess these risks and ensure they are mitigated and managed to avoid further damage to surrounding properties. The fact that considerable damage has already been caused to houses adjacent to No. 42 Glendon Road highlights the need for much greater scrutiny of the DA for No. 40.**

**Comment:** The proposed development has not been supported.

## **9.2. Statutory Declaration**

The applicant has completed the statutory declaration dated 24/06/2020 declaring that the site notice for DA143/2020/1 was erected and maintained during the notification period in accordance with o

## **10. STATE ENVIRONMENTAL PLANNING POLICY 55: REMEDIATION OF LAND**

The aims of SEPP 55 are to *promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment:*

- By specifying when consent is required, and when it is not required, for a remediation work*
- By specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular*

- c) *By requiring that a remediation work meet certain standards and notification requirements*

Under Clause 7(1)(a) of SEPP 55 – Remediation of Land, consideration has been given as to whether the subject site on which the development is occurring is contaminated.

Council has no record that the site is contaminated, however there is some anecdotal evidence that the smaller site adjacent to the stormwater channel is contaminated. This has not been investigated further, as the application has not been supported. Should the application be supported, this should be explored to ensure that the land is suitable for the intended residential use, in accordance with Clause 7 (1) (b) and (c) of SEPP 55.

## **11. STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004**

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

The development application was accompanied by BASIX Certificate 1089435M demonstrating compliance with the SEPP. These requirements could be imposed via conditions should the application be approved.

## **12. SEPP (COASTAL MANAGEMENT) 2018**

The provisions of this planning instrument that are relevant to the subject application involve managing development in the coastal zone and protecting the environmental assets of the coast.

It is considered that the proposal, as conditioned, will not have any significant adverse environmental impact upon the harbour coastal locality and therefore satisfactory with regard to the relevant provisions of the planning instrument.

## **13. SYDNEY REGIONAL ENVIRONMENTAL PLAN (SYDNEY HARBOUR CATCHMENT) 2005**

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

## **14. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014**

### **14.1. Part 1.2: Aims of Plan**

The proposal is inconsistent with the following aims in Part 1.2(2) of the Woollahra LEP 2014:

- Part 1, Clause 1.2(2)(g) - The proposal does not protect the amenity and the natural environment.
- Part 1, Clause 1.2(2)(h) – The proposal does not minimise stormwater and flooding impacts.
- Part 1, Clause 1.2(2)(j) - The proposal does not promote a high standard of design in the private and public domain.
- Part 1, Clause 1.2(2)(l) - The proposal does not achieve the desired future character of the Manning Road Precinct.

- Part 1, Clause 1.2(2)(m) - The proposal does not minimise excavation and manage the associated impacts, given the environmental hazards present on the site.

Refer to **Reason for Refusal 1**.

#### 14.2. Land Use Table

The proposal is defined as the multi-dwelling housing. The proposal is permissible, but is not consistent with the objectives of the R3 Medium Density Residential zone for the following reasons:

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

**Comment:** The proposed height and scale of the development is considered to be excessive and is highly visible from the streetscape, representing an overdevelopment of the site. The height and scale of the proposal is therefore considered to be incompatible with the desired future character of the Manning Road Precinct.

Refer to reason for **Refusal 2**.

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

Part 4.1A(2) specifies a minimum lot size of 700m<sup>2</sup>

Site 779m <sup>2</sup>	Proposed	Control	Complies
Minimum Lot Size – Multi-dwelling housing	779m <sup>2</sup>	700m <sup>2</sup>	YES

The proposal complies with 4.1A(2) of Woollahra LEP 2014.

The proposal is acceptable with regard to the minimum lot size objectives in Part 4.1A(1) of Woollahra LEP 2014.

#### 14.4. Part 4.3: Height of Buildings

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

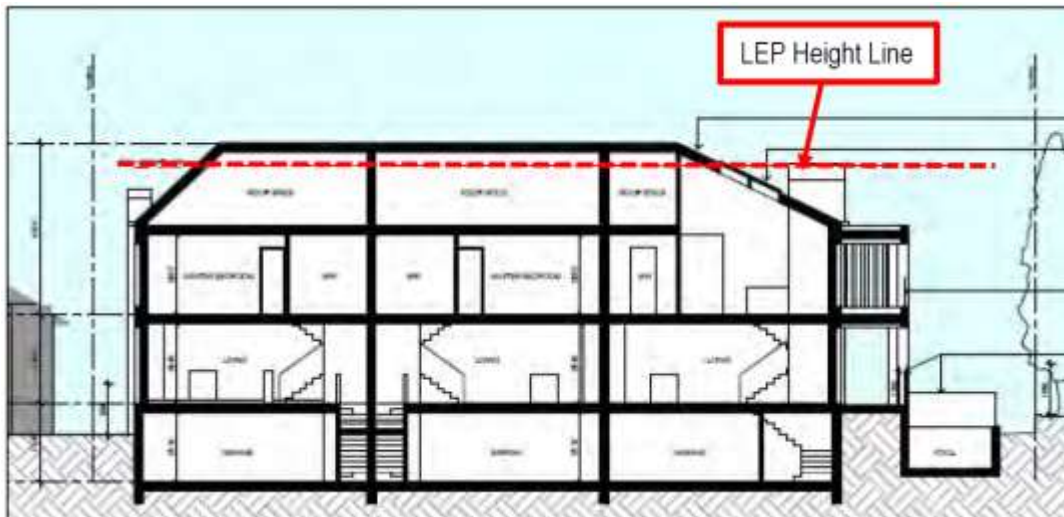
	Existing	Proposed	Control	Complies
Maximum Building Height	<9.5m	10.35m	9.5m	NO*

\* *Clause 4.6 written request has been submitted*

The proposal does not comply with the maximum building height prescribed by Part 4.3 of Woollahra LEP 2014, refer to **Figure 1** below. A Cl.4.6 variation has been submitted to justify this non-compliance. This is discussed below in Section 14.6 of this report.

Refer to reason for **Refusal 3**.





**Figure 1:** Section of the proposal development showing the extent of non-compliance with the building height development standard.

#### 14.5. Part 4.4: Floor Space Ratio

Part 11 limits development to a maximum floor space ratio of 0.65:1 for a multi-dwelling housing.

Site Area: 779.2m <sup>2</sup>	Existing	Proposed	Control	Complies
Floor Space Ratio (Applicant's calculation)	<0.65:1	0.63:1 (496m <sup>2</sup> )	0.65:1 (506.48m <sup>2</sup> )	YES
(Council's calculation)	<0.65:1	0.68:1 (531.5m <sup>2</sup> )	0.65:1 (506.48m <sup>2</sup> )	NO

The calculation provided by the applicant indicated that the proposed FSR would comply with the development standard prescribed in Part 4.4 of Woollahra LEP 2014. However, based on Council's calculation, it appears that 35.5m<sup>2</sup> of gross floor area has not been included in the applicant's FSR calculation. This gross floor area relates to the proposed front balconies to Houses 1 and 2. These covered balconies appear to have outer walls that are greater than 1.4m. These are unclear on the architectural plans and have not been clarified by the applicant. It should be noted that these balconies are highly visible from Glendon Road, adversely affecting the visual privacy of No.42 Glendon Road and significantly adding to the overall bulk to the building. No Cl.4.6 Variation has been provided to support this potential variation and is unacceptable in this regard.

Refer to reason for **Refusal 4**.

#### 14.6. Part 4.6: Exceptions to Development Standards

The proposal involves a non-compliance with the height of buildings development standard under Part 4.3 of the Woollahra LEP 2014, as detailed above.

#### Purpose

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

## Written Request

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

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 is unreasonable or unnecessary and there are sufficient environmental planning grounds to justify the contravention.

The applicant has provided a written request in relation to the departure, refer to **Annexure 3**.

## Clause 4.6(4) Assessment

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

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

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

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

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

### **Assessment:**

The written request has not demonstrated that the objectives of the height of buildings development standard are achieved, particularly given that the site is relatively flat and the proposal is for an entirely new building.

In doing so, the applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a). The objectives of the development standard are discussed further in the assessment of Clause 4.6(4)(a)(ii).

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

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

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

S1.3 of the EPA Act reads as follows:

*1.3 Objects of Act*

*(cf previous s 5)*

*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:

The applicant's written request has not supported the proposed non-compliance with the height of buildings development standard, in relation to achieving a building that is consistent and compatible with the height and scale of adjoining properties, and that is in-keeping with the desired future character of the Manning Road precinct.

In this regard, the applicant's written request has not adequately demonstrated that the proposed development promotes the orderly and economic use and development of the land, as it does not allow for development that conforms with the controls of Chapter C1 of the Woollahra DCP 2015.

The applicant's written request has therefore not demonstrated sufficient environmental planning grounds to justify the contravention of the development standard as required by Clause 4.6(3)(b) and the consent authority cannot be satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

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

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

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

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the height of buildings development standard, and the R3 Medium Density Residential zone. These objectives are assessed below.

**Clause 4.3 – Height of Buildings**

The proposal is assessed against the *Objective of the Development Standard* prescribed by Clause 4.3 which states:

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

**Assessment:** The part of the building that contravenes the height of buildings development standard relates to the roof, which is a hipped roof form covering all three dwellings. This consolidated roof does not provide regular separation and rhythm of spaces between buildings and is contrary to one of the key elements identified in the desired future character in the Manning Road Precinct (refer to detailed assessment in Section 15.1 below). The proposal is therefore inconsistent with objective (a).

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

**Assessment:** The subject site is within the R3 Medium Density Residential zone and does not adjoin any other zone. This objective is irrelevant for assessment.

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

**Assessment:** This has been discussed in Section 15. The part of the proposal that contravenes the height limit would not result in adverse impacts on the solar access to adjoining properties and is acceptable in regard to B3.5.2 of the WDCP 2015. The proposal therefore achieves consistency with objective (c).

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

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

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

**Assessment:** The part of the proposed development that contravenes the height control will not result in any adverse amenity impacts to the public domain or views from public areas and therefore will achieve consistency with objective (e).

**Objectives of the R3 Zone**

The development is also inconsistent with the objectives applying to the R3 zone as follows:

- *To provide for the housing needs of the community within a medium density residential environment, and*

**Assessment:** The proposed multi-dwelling development will provide for the housing needs of the by providing additional housing to the locality.

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

**Assessment:** The proposed multi-dwelling development will add to the housing mix in the locality and is acceptable in this regard.

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

**Assessment:** This objective is not relevant as the application is for residential development.

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

**Assessment:** The part of the building that contravenes the height of buildings development standard relates to the roof, which is a hipped roof form covering all three dwellings. This consolidated roof does not provide regular separation and rhythm of spaces between buildings and is contrary to one of the key elements identified in the desired future character in the Manning Road Precinct (refer to detailed assessment in Section 15.1 below). The proposal is therefore inconsistent with objective (a).

**Conclusion:**

The proposal does not satisfies the objectives of Zone R3 Medium Density Residential.

**Clause 4.6(4)(a)(b)**

The Department issued Planning Circular No.PS18-003 (dated 21 February 2018) which notified Councils of arrangements “...where the Director General’s concurrence may be assumed for exceptions to development standards under environmental planning instruments which adopt clause 4.6 ...of the Standard Instrument...” Clause 64 of the EPA Regulations provides that Council may assume the Director-General’s [Secretary’s] concurrence for exceptions to development standards, thus satisfying the terms of this Clause.



In relation to this Part, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* (2018) establishes *Planning Principles* which are summarised and assessed as follows:

- i. *Does the applicant's written request demonstrate non-compliance with the development standard is unreasonable or unnecessary?*

No.

The proposed development is for an entirely new building, which exceeds the height and scale of surrounding development on a relatively flat site. Therefore it has not been adequately demonstrated that the height control is unreasonable and unnecessary.

- ii. *Are there sufficient environmental planning grounds to justify contravening the development standard?*

No.

The non-compliant building height is a result of high floor to ceiling heights and a high roof pitch to the proposed new building. Therefore it has not been adequately demonstrated that there are sufficient environmental grounds to justify this non-compliance.

- iii. *The public interest and whether the proposal is consistent with the objectives of the development standard.*

For reasons outlined above, this part of the proposal is not considered to be in the public interest and is inconsistent with the objectives of the development standard.

## Conclusion

The written submission from the applicant has not adequately demonstrated that the variation of the development standard prescribed by Clause 4.3 (height of buildings) is justified pursuant to the relevant matters for consideration prescribed by Clause 4.6.

The consent authority is not satisfied that the applicant's written request has demonstrated that compliance with the development standards is unreasonable or unnecessary in the circumstances of the case, and that sufficient environmental planning grounds have been demonstrated to justify the contravention of the standard.

The consent authority is not satisfied that the proposal is in the public interest as it is consistent with the objective of the development standard and those applicable to development within the zone.

## 14.7. Part 6.1: Acid Sulfate Soils

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

The subject site is within a Class 3 area, as identified in the Acid Sulfate Soils Map. The submitted Acid Sulphate Soil Report identified that Potential Acid Sulphate Soil (PASS) conditions were present and are likely to be disturbed by the proposal development. Council's Environmental Health Officer has stated that the disturbed PASS will require management and an Acid Sulphate Soil Management Plan is considered **necessary** for the proposed development, in accordance with Clause 6.1(3). This information was not requested, as the application has not been supported.

Refer to reason for **Refusal 5**.

#### **14.8. Part 6.2: Earthworks**

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

The proposal involves excavation to accommodate a basement car park and a swimming pool to a depth of approximately 2.5m. The Geotechnical Report indicates that silty sand fill was encountered from the surface in all of the boreholes to a maximum depth of 1m (BH3). Marine Sands were encountered from beneath the silty sand fill in all boreholes with BH2 and BH3 being terminated at depths of 8.1m and 1.9m respectively. Sandstone bedrock was encountered from a depth of 12.1m in BH1. Groundwater seepage was encountered during the drilling of all three boreholes at a depth of 0.9m.

In terms of ESD principles, the extent of soil being removed from the site is considered to be unacceptable, particularly given there is insufficient information in relation to stormwater drainage, dewatering, Acid Sulphate Soils, potential contamination and the sandy soil conditions.

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

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

The submitted Geotechnical Report has identified that the proposed excavation works for the new basement carpark will require dewatering of the site. An integrated development referral is therefore required and the application would need to be re-notified. This was not carried out as the application in its current form was not supported.

It should also be noted that the sandy soil conditions (see above) would make the construction of a large over-scaled basement risky in terms of the potential impacts to the adjoining properties. Therefore proposed excavation works are not considered acceptable in this regard.

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

The proposed development involves the redevelopment of the subject site and therefore acceptable in this regard.

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

Should the application be approved, a condition could be recommended to ensure high quality fill is used onsite. However as discussed in Section 14.7 the proposed development will disturb Potential Acid Sulphate Soils (PASS). The applicant has not provided sufficient information to demonstrate how the PASS will be managed. In addition there is some anecdotal evidence that the subject site (the site directly adjoining the stormwater channel) is potentially contaminated. The applicant has not provided sufficient information to demonstrate that this land is suitable for the proposed residential development. The proposal is therefore considered unsatisfactory in this regard.

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

The proposed excavation works are considered to be insufficiently setback from surrounding properties, as the excavation extends to the northern site boundary. This is of particular concern given the high water table and the sandy soil conditions. However there may be some conditions that could be imposed that potentially minimise impacts of these works, should consent be granted.

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

Conditions of consent could be imposed to ensure any fill used on the site is appropriate, that excavated material is disposed according to the appropriate classification and finally that material that is classified as solid or to be contaminated is to be disposed of at a licensed facility, should the application be approved.

*(f) The likelihood of disturbing relics*

Council's Heritage Officer undertook a basic system search of the Aboriginal Heritage Information Management System. This search did not reveal any recorded Aboriginal sites within 200m of the subject site. Council's Heritage Officer has stated that the site has been previously disturbed when the existing structures and landscaping were constructed, and therefore it is unlikely that any archaeological evidence will remain. Notwithstanding this, a condition could be imposed should the application be approved, that if unexpected Aboriginal Objects are encountered during the construction, that work is to cease and appropriate assessment and approvals are sought.

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

The proposed development directly adjoins a stormwater channel located to the rear of the site. The submitted Stormwater Plan was not considered to be insufficient, as it did not provide a stormwater treatment system to demonstrate compliance with Council's water quality targets. The proposed development is therefore unacceptable in this regard.

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

The applicant has submitted a Geotechnical Report. Conditions could be imposed to reduce potential impacts of the excavation works, should consent be granted. However, given the excessive nature of the excavation works and the environmental risks present at the site including the high water table, acid sulphate soils, flooding, potential land contamination and sandy soil conditions. The proposed excavation works are considered unacceptable.

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

Refer to reason for **Refusal 6**.

#### **14.9. Part 6.3: Flood Planning**

Part 6.3 seeks to minimise the flood risk to life and property development, allow development on land that is compatible, consider projected changes as a result of climate change and avoid significant adverse impacts on flood behaviour and the environment in flood prone areas.

The applicant has submitted a Flood Study Assessment of the proposed development. Council's Drainage Engineer has supported the proposal, subject to conditions of consent. These conditions could be applied should the application be supported.

The proposal is acceptable with regard to Part 6.3 of Woollahra LEP 2014.

## **15. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015**

### **15.1. Chapter B1.5: Manning Road Residential Precinct**

In Part B1.5.2 – *Desired future character*, it states:

*The precinct's exceptional characteristic is its landscape quality provided by its location at the base of the valley, the highly visible private gardens and the prominent street tree plantings and grassed verges. Development is to reinforce the landscape character by maintaining a landscape setting.*

... ..

*Development is to recognise the character of the existing built fabric and other prevailing characteristics in the street, such as front gardens, side setbacks and roof forms. Contemporary designs should respond to the streetscape character or adjoining period housing.*

... ..

*Streetscape character and key elements of the precinct*

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

- a) the period housing, including modest Federation and Inter-War bungalows in landscape settings;*
- b) buildings and roof forms sited beneath the highly visible tree canopy;*
- c) regular separation and rhythm of spaces between buildings;*
- d) uniform street and rear setbacks incorporating highly visible soft landscaping;*
- e) mature street trees and grassed verges; and*
- f) the highly visible tree canopy as it appears from the surrounding lands.*

The proposed is assessed against the relevant desired future character objectives as follows:

*O1 To respect and enhance the streetscape character and key elements of the precinct.*

The proposed development represents an overdevelopment of the site and relies on a 6m wide frontage to Glendon Road to provide vehicular access to the basement car park. This does not allow for sufficient deep soil landscaping to the frontage of the site. This detracts from the quality of the streetscape, the key elements of the precinct and the landscape character the locality.

*O2 To establish a transition between the urban quality of the Double Bay centre and the landscape setting and built form character of the residential precinct.*

The proposal does not demonstrate appropriate transition between the Double Bay Centre and the built form character of the residential precinct. The proposed multi-dwelling development presented as attached row do not provide regular separation and rhythm of spaces between buildings. It will not enhance the key elements of the precinct identified in c) above. It also fails to achieve a balanced landscape setting within the residential precinct. This is due to the lack of deep soil and substantial landscaping in the front setback area which will be largely occupied by the proposed driveway leading to the basement parking. This driveway arrangement is contrary to the streetscape character identified in d) above.

*O3 To reinforce the landscape character and low scale residential character of the Double Bay valley floor.*

The lack of deep soil landscaping to the front of the site does not allow for trees and planting to be provided to soften and balance the substantial scale of the proposed works. This detracts from the streetscape quality, in particular the landscape character, and is unacceptable in this regard.

*O4 To retain and reinforce the green setting of mature street trees, private trees and garden plantings*

The lack of deep soil landscaping to the frontage of the site, is exacerbated by the loss of the deep soil to the verge of the adjoining property that is required to accommodate the proposed driveway. The proposal is therefore considered unacceptable in this regard.



**Figure 2:** Photomontage of the proposed development as viewed from Glendon Road (Source: Group Architects)

*O5 To ensure on-site parking does not dominate the streetscape*

The onsite parking is proposed to be accessed via a narrow 6m wide frontage to Glendon Road, which has not been supported by Council's Traffic Department, refer to Section 15.3. Further to this, the proposed garage door to the basement parking is disproportionately high becoming a dominating feature of the Glendon Road elevation, refer to **Figure 2**. The proposed development therefore is considered unacceptable in terms of Objective O5.

The proposal is therefore not acceptable in terms of the streetscape/landscape character, the key elements of the precinct and the desired future character objectives of the Manning Road precinct, as noted in Part B1.5.2 of the Woollahra DCP 2015.



Refer to reason for **Refusal 7**.

## 15.2. Chapter B3: General Development Controls

### Part B3.2: Building Envelope

Site Area: 779m <sup>2</sup>	Existing	Proposed	Control	Complies
Front Setback	5.41m	6.26m	5.16m	YES
Rear Setback	-	5.64m-8.95m	3m-8.34m	YES
Side Boundary Setbacks (North)	-	1.5m	1.5m	YES
Side Boundary Setbacks (South)	-	4.5m	1.5m	YES
Side Boundary Setbacks (South-East)	-	1.5m	1.5m	YES

#### Part 3.2.2: Front Setback

*C1 states that the front setback is the average of the three most typical setbacks of the four closest residential properties.*

Complies.

#### Part 3.2.3: Side Setbacks

*With a lot width of <18m, C3 requires a minimum side setback of 1.5m.*

Complies.

#### Part 3.2.4: Rear Setback

*The required rear setback in C1 and C3 is 3m-8.34m.*

Complies.

#### Conclusion

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

### Part B3.4: Excavation

Site Area: 779m <sup>2</sup>	Existing	Proposed	Control	Complies
Maximum Volume of Excavation	-	875.6m <sup>3</sup>	779m <sup>3</sup>	NO
Excavation, Piling and Subsurface Wall Setback North All other boundaries	-	0.2m >1.5m	1.5m	NO YES
Geotechnical Report	N/A	Provided	Required Where > 2.0m	YES

*C1/C2 limits the volume of excavation to 779m<sup>3</sup>. Exceptions applied in C4 and C5 are for the compliant amount of parking and storage at 8m<sup>2</sup> per dwelling and swimming pools and tennis courts outside the buildable area.*

An excavation volume of 875.6m<sup>3</sup> has been proposed by the development. This non-compliance is considered unacceptable for the following reasons:

- The proposed basement level includes additional elements including a laundry to House 3 (if this was provided at ground level this will further add to FSR of the building, which is appears to exceed the maximum requirements);
- The proposed storage areas to each dwelling far exceeds the minimum requirements of 8m<sup>3</sup> (ie 33m<sup>3</sup> to House 1 and 40m<sup>3</sup> to House 3);
- The excessive amount of excavation contributes to the overdevelopment of the site and contributes to the non-compliance with the minimum deep soil landscaping requirements (front setback, new driveway access);
- The proposed excavation works is considered excessive and unacceptable given the environmental risks on the site, including the high water table (the proposal involves the dewatering of the site), potential acid sulphate soils, potential land contamination, flooding and the sandy soil conditions.

*C6 requires a minimum setback of excavation of 1.5m.*

The proposed excavation works complies with the minimum setback requirements, with the exception of the northern setback (to accommodate the egress stair). Whilst, this is a minor non-compliance it is considered unacceptable for the following reasons:

- It contributes to the overdevelopment of the site and to the non-compliance with the overall excavation volume requirements;
- Given the environmental risks present on the site and the sandy soil conditions, this non-compliance would not be considered appropriate in this instance.

Refer to reason for **Refusal 6**.

### Conclusion

The proposal is therefore unacceptable with regard to the excavation controls in Part B3.4 of the Woollahra DCP 2015.

### **Part B3.5: Built Form and Context**

Site Area: 779m <sup>2</sup>	Existing	Proposed	Control	Complies
Significant Trees	-	Removed	Retained	NO
Colour Scheme	-	Consistent	Consistent	YES
Casual Surveillance – Windows Facing Street/Public Area	-	>1	One	YES
Solar Access to Open Space of Adjacent Properties	<50% for 2 hours on 21 June	<50% for 2 hours on 21 June	50% for 2 hours on 21 June	NO*

*\*Existing non-compliance*

#### Part B3.5.1: Streetscape and Local Character

*C1 The building is consistent with the desired future character of the area set out in the precinct controls in Parts B1 and B2 of this DCP. Note: Chapters B1 and B2 in this part of the DCP define the desired future character for each precinct or HCA, and identify special streetscape character, heritage and key elements within each precinct.*

The proposed development is inconsistent with the desired future character of the Manning Road Precinct, as discussed above.

*C2 Development retains vegetation of landscape value.*

Council's Landscape Officer has not raised any objection to the removal of the existing vegetation located on the site. This is discussed below.

*C4 External building materials and colours do not detract from the streetscape. Bright or obtrusive colour schemes are avoided.*

The proposed black and white colour scheme and the proposed use of contemporary materials, is considered appropriate within the streetscape context and to the architectural character of the proposed building, in accordance with Control C4.

*C5 Roof forms and roof structures (including roof terraces, lifts, lift overruns, stairwells, access hatches, and other like structures) are well-designed, contribute positively to the streetscape, and are well-integrated with the architecture of the building.*

The proposed lift over-run to the southern roof slope of House 3 is poorly integrated into the design of the building, contrary to Control C5. Further to this, it would appear that the lift over-run for the proposed lifts to House 1 and 2 have been omitted from the plans. If the same over lift over-run was proposed for these lifts, these elements would be detrimental to the streetscape quality, given the prominent location of the lifts. The proposal is therefore considered unacceptable in this regard.

Refer to reason for **Refusal 9**.

*C9 The building addresses the street and provides opportunities for casual surveillance. At least one habitable room window overlooks the street*

The proposed new building presents to the street and provides for sufficient casual surveillance of both street frontages.

#### Part B3.5.2: Overshadowing

*C1 The development is designed so that:*

- a) sunlight is provided to at least 50% (or 35m<sup>2</sup> with a minimum dimension of 2.5m, whichever is the lesser) of the main ground level private open space of adjacent properties for a minimum of 2 hours between 9am and 3pm on 21 June.*
- b) Where existing overshadowing is greater than this, sunlight is not further reduced;*

The proposed development does not comply with the minimum solar access requirements to adjoining private open space. This non-compliance is considered acceptable for the following reasons:

- The majority of the additional overshadowing created by the new development falls over Kiaora Road and the Bowling Club;
- The only additional overshadowing to adjoining private open space is a minor amount of overshadowing to No.42 Glendon Road at 3pm, during the winter solstice.

*b) north facing windows to upper level habitable rooms of adjacent dwellings receive at least 3 hours of sun between 9am and 3pm on 21 June over a portion of their surface.*

It appears that the proposed development could comply with the solar access requirements to the north-facing windows at No.42 Glendon Road, however the applicant has not provided elevational shadow diagrams to demonstrate compliance with the Control C1(b). This proposal is therefore considered unacceptable in this regard due to lack of information.

Refer to reason for **Refusal 17**.

Part B3.5.3: Public and Private Views

*C1 Development is sited and designed so that the following public views are maintained or enhanced:*

No public views will be obstructed by the proposed development.

*C5 Development is sited and designed to enable a sharing of views with surrounding private properties, particularly from the habitable rooms*

The proposed development will not result in the loss of any significant views from surrounding properties and is acceptable in this regard.

Part B3.5.4: Acoustic and Visual Privacy

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

Complies.

*C3 Electrical, mechanical, hydraulic and air conditioning equipment is housed so that it does not create an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 either within or at the boundaries of any property at any time of the day.*

The submitted application does not provide any detail regarding the location of plant equipment such as, the pool equipment, lift plant and air conditioning. This equipment could be housed in the basement, however no details have been provided.

Refer to reason for **Refusal 17**.

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

- The proposed development has proposed fixed screens to all first floor windows/doors in order to protect the visual privacy of adjoining private open space and habitable room windows at Nos. 42 and 38 Glendon Road. However, there is insufficient detail provided on the plans to demonstrate whether these screens would adequately protect visual privacy. A condition of consent could be recommended to ensure these screens adequately protect visual privacy, should the application be approved;
- The remainder of the fenestration is at ground floor level and is acceptable in this regard.

- C5 Windows to bathrooms and toilet areas have translucent glazing where these have a direct view to, and from, habitable rooms and private open space on adjoining and adjacent properties.*
- Fixed screens to all first floor bathrooms windows have been proposed in order to protect the visual privacy of adjoining private open space and habitable room windows at Nos. 42 and 38 Glendon Road. However, there is insufficient details provided on the plans to demonstrate whether these screens would adequately protect visual privacy. A condition of consent could be recommended to ensure these screens adequately protect visual privacy, should the application be approved.
  - The remaining WC windows are at ground floor level and are acceptable in this regard.
- C6 Architectural design solutions and screening devices referred to in C4 (c) above are integrated with the overall design and contribute to the architectural merit of the building, having particular regard to:*
- a) aesthetics of the building including impacts on visual bulk;*
  - b) compliance with minimum boundary setback controls;*
  - c) appearance from adjoining properties; and*
  - d) views from adjoining or adjacent properties.*

The full height screens to the front balcony to House 1 and the side balcony to House 3, add unnecessary bulk to the building (particularly the highly visible screen to House 1) and are not supported. However, a condition of consent could be imposed to reduce the height of these screens, should the application be approved.

- C7 Private open spaces and the trafficable area of roof terraces (at or below the second storey) (refer to Figure 19) are to be suitably located and screened to prevent direct views to neighbouring:*
- a) habitable rooms (including bedrooms) within 9m; and*
  - b) private open space within 9m.*
- The proposed front first floor balconies to House 1 and 2 overlook the northern private space at No.42 Glendon Road. This overlooking is considered unacceptable, particularly given the separation distance (5m) and as these balconies have substantial trafficable areas. It is considered inappropriate to screen these balconies, as these screens would extend across the front of the balconies, which would significantly add to the bulk of the building, in a highly visible location;
  - The front first floor balcony to House 1 is sufficiently screened on the northern side to protect the visual privacy of No.38 Glendon Road;
  - The proposed first floor balcony to House 3 is sufficiently screened to protect the visual privacy of No.42 Glendon Road. The front of this balcony does not adversely affect the visual privacy of any surrounding private open space or habitable room windows, as this side of the balcony is adjoined by the Double Bay Bowling Club.

- C9 Windows and balconies of an upper-level dwelling are designed to prevent overlooking of the private open space of a dwelling below within the same development.*

Refer to reasons for **Refusal 9** and **17**.



Part B3.5.5: Internal Amenity

*C1 All habitable rooms in a dwelling must have at least one external wall primarily above the existing ground level which provides an unobstructed window opening*

Complies.

*C2 All habitable rooms and sanitary compartments in a dwelling must have direct natural light and direct natural ventilation,*

Complies, with the exception of the ensuites to House 2 and 3. This is considered acceptable subject to compliance with the relevant building codes.

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

Complies.

Conclusion

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

**Part B3.6: On-Site Parking**

Site Frontage: 779m	Existing	Proposed	Control	Complies
Location of Parking	-	Outside	Within the Buildable Area	NO
Width of Parking Structure	-	4.27m	40% of Frontage	NO
Location of Parking Access	Rear	Front	From the Rear	NO
Basement Parking	-	Basement Parking	Required for 3 or More Dwellings	YES
Width of Driveway	-	3m	3m	YES

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

*a) does not dominate the street frontage;*

The onsite parking is proposed to be accessed via a narrow 6m wide frontage to Glendon Road, which has not been supported by Council's Traffic Department, refer to Section 15.3. The proposed entrance to the basement car park is considered to be disproportionately high and is the dominate feature of the Glendon Road elevation, which detracts from the character and appearance of the streetscape.

*b) preserves trees and vegetation of landscape value; and*

The proposed car parking does not require the removal of any significant trees or landscaping and is acceptable in this regard.

*c) is located within the building envelope.*

The proposed car parking encroaches beyond the building envelope, as the basement is excessively sized and is unacceptable in this regard.

*C2 For car parking structures facing the street frontage— the maximum car parking structures width is no greater than 40% of the site frontage width or 6m, whichever is the lesser.*

The onsite parking is proposed to be accessed via a narrow 6m wide frontage to Glendon Road, which has not been supported by Council's Traffic Department, refer to Section 15.3. Further to this, the proposed entrance to the basement car park is considered to be disproportionately high and is the dominate feature of the Glendon Road elevation, this detracts from the character and appearance of the streetscape. The proposal is therefore considered unacceptable in this regard.

*C3 Where possible on-site parking is to be accessed from the rear.*

The proposed development involves the creation of a new vehicular access off Glendon Road. Due to the narrow frontage and it corner position within a cul-de-sac, it has been proposed to share the existing driveway crossing at No.42 Glendon Road. Council's Traffic Department has not supported this arrangement, as this arrangement is considered to create unsatisfactory traffic and parking impacts, particularly in relation to potential conflicts from vehicles entering/exiting the subject site and the neighbouring site (No.42 Glendon Road).

The proposed shared driveway crossing arrangement is therefore considered to unsatisfactory, particularly given there is an existing vehicular access to the rear of the site via Kiaora Road. The proposal is therefore unacceptable in this regard.

*C5 Development involving three or more dwellings provides basement parking.*

Basement parking has been provided.

*C10 Garage doors are designed to complement the building design and any important character elements within the street.*

The proposed material to the garage door is considered to complement the building design, however the height of the garage door is considered to be disproportionately high.

*C11 The width of driveways is minimised. Generally the width is no more than the minimum width required to comply with the relevant Australian Standards (see Section E1).*

Complies.

*C12 Only one driveway entrance is provided. For example, development involving more than one dwelling shares the driveway access.*

Complies. A new driveway has been proposed off Glendon Road. The existing driveway off Kiaora Road is proposed to be used for pedestrian access.

Refer to reasons for **Refusal 10** and **11**.

### Conclusion

The proposal is therefore unacceptable with regard to the onsite parking controls in Part B3.7 of the Woollahra DCP 2015.

### Part B3.7: External Areas

Site Area: 779m <sup>2</sup>	Existing	Proposed	Control	Complies
Deep Soil Landscaping	>50%	59% (191.2m <sup>2</sup> )	50% of Buildable Area (163.04m <sup>2</sup> )	YES
Deep Soil Landscaping – Front Setback	>40%	5% (1.67m <sup>2</sup> )	40% (12.62m <sup>2</sup> )	NO
Deep Soil Landscaping – Front Setback (Consolidated Area)	20m <sup>2</sup>	1.67m <sup>2</sup>	20m <sup>2</sup>	NO
Deep Soil Landscaping – Rear Setback	>50%	74% (139.98m <sup>2</sup> )	50% or Rear Setback (93.5m <sup>2</sup> )	YES
Minimum Area of Private Open Space at Ground Level	>35m <sup>2</sup>	>35m <sup>2</sup>	35m <sup>2</sup>	YES
Private Open Space at Ground Level – Maximum Gradient	<1:10	<1:10	1:10	YES
Gate Swing	-	Inward	Opens Inwards	YES
Side and Rear Fence Height	-	1.8m-3m 2.4-3m	1.8m	NO
Lockable Mailboxes	-	Street entrance	Provided at Street Entrance	YES
Lockable Storage Spaces –	-	>8m <sup>3</sup>	8m <sup>3</sup> per Dwelling	YES
Clothes Drying Facilities	-	Provided	At Least One per Dwelling	YES
Television Aerial	-	Not specified	One per Dwelling	NO*
Fire Places	-	Unspecified	Non Solid Fuel Burning Only	NO*
Swimming Pool Excavation, Piling and Subsurface Wall Setback	-	1.5m	1.5m	YES
Level of Swimming Pool Above or Below Ground Level	-	0.65m	Maximum 1.2m Change	YES
Maximum Depth of Swimming Pool	-	1.7m	2.0m	YES

\*Could be conditioned to comply

#### Part 3.7.1: Landscaped Areas and Private Open Space

*C1 requires that 50% of the site area outside of the buildable area is to comprise deep soil landscaping.*

Complies.

*C2 requires that 40% of the front setback area is to comprise deep soil landscaping. 20m<sup>2</sup> is to be in a consolidated area.*

The proposed development does not comply with the minimum deep soil landscaping requirements to the front setback. This non-compliance is considered unacceptable for the following reasons:

- The lack of deep soil landscaping to the front of the site, does not allow for trees and planting to be provided to soften and balance the substantial scale of the proposed works. This detracts from the streetscape quality and landscape character of the locality;
- The lack of deep soil landscaping is exacerbated by the loss of the deep soil to the verge of the adjoining property that is required to accommodate the proposed driveway.

*C4 requires that 50% of the rear setback area comprises deep soil landscaping.*

Complies.

*C6-C8 requires that each dwelling must have private open space with a minimum area of 35<sup>m2</sup> with a maximum gradient of 1:10.*

Complies.

*C13 requires that private open space is defined through planting, fencing or landscape features.*

Complies.

*C14 notes that the location of private open space should take advantage of the outlook and natural features of the site and maintain privacy and solar access and address surveillance.*

Complies.

*C16 seeks to incorporate existing vegetation into the landscape treatment.*

The development proposes to remove the existing Viburnum tree located to the rear of the site. Council's Landscape Officer has stated that the crown of this tree has a good appearance, whereas, the structure of the tree was found to be moderate to poorly formed. The Landscape Officer has recommended that this tree be removed, given the extent of the proposed excavations within the root zone of the tree and the overall extent of the development. The Landscape Officer has recommended that this tree be replaced with an advanced specimen, close to the completion of the development. A condition requiring this replacement tree could be imposed should this application be approved.

*C18 requires vertical layering at various levels which provides for greater canopy cover. C19 seeks to link open space areas to achieve wildlife corridors.*

The proposed development does not provide for a greater canopy cover. A condition of consent could be recommended requiring additional replacement tree planting to address this non-compliance, should consent be granted.

Refer to reason for **Refusal 12**.

#### Part 3.7.2: Fences

*C1 requires fencing that protects occupants but with surveillance of the street.*

Complies.

*C2 requires delineation of the public, common and private spaces and C3 requires fences to define the front entrance.*

Complies.

*C4 limits fencing to 1.2m, or 1.5m if 50% transparent or open. On the high side of the street, C6 allows fences to a height of 1.2m above the high side.*

The proposed new gates and fencing to the front of the site are 1.5m in height and are to be constructed from vertically proportioned metal fencing, which complies with Control C4.

*C7 requires gates to open inwards.*

Complies.

*C8 stipulates that where a vehicular entrance is proposed, a 45° splay or its equivalent is provided either side with minimum dimensions of 2m by 2m.*

The proposed development results in a minor incursion of the proposed fencing into the pedestrian splays, however no objection to this was raised by Council's Technical Services Department.

*C9 stipulates that side and rear boundary fences are no higher than 1.8m, as measured from the low side (if applicable).*

The submitted plans have not provided sufficient information to allow for an adequate assessment of the fencing to the side and rear boundaries. This new fencing is only shown by a dotted line on the elevations and is not shown on the floor plans. No elevations of these fences or material details have been provided. This is of particular concern for the rear fence that fronts Kiaora Road. This fence is over-scaled being up to 3m in height, which is inconsistent with the general pattern of development in this part of Kiaora Road.

The height of the new eastern boundary fence (up to 3m) is also considered to be excessive.

Further to this, the proposed diving fences between the dwellings also seem to be over-scaled, being approximately 3m in height. The height of this fencing is considered to create unnecessary bulk and overshadowing to the private open spaces within the development, particularly to House 2. The proposed fencing is therefore considered unacceptable in this regard.

*C15 states that fences should be compatible within the streetscape.*

Complies.

Refer to reason for **Refusal 13**

#### Part 3.7.3: Site Facilities

*C1 requires lockable mailboxes at the street front and integrated within the front fence or entry.*

Complies.

*C2 requires lockable storage space of 8m<sup>3</sup> per dwelling.*

Complies.

*C3 and C4 require at least one clothes drying facility that is secure, has access to sunlight and away from public view.*

Complies.

*C5 states that there is to be a common television aerial where there are three or more dwellings. It is not to be visually intrusive, impact on neighbouring amenity or affect the character of the building.*



Not shown on the proposed plans. A condition of consent could be recommended to address this non-compliance, should consent be granted.

*C7 states that air conditioning units are not to be visible from the public domain and C8 and C9 seek to maintain the acoustic and visual amenity of adjoining properties.*

No details of air conditioning has been provided on the proposed plans. Air conditioning could be sited in the basement to address Control C7.

*C10 allows non-solid fuel burning fire places only.*

The development proposes a new fireplace to each dwelling. It has not been specified whether these fire places are solid fuel burning. This could be addressed by way of condition should the application be supported.

#### Part 3.7.4: Ancillary Development – Swimming Pools, Tennis Courts and Outbuildings

*C3 requires excavation for swimming pools to be setback 1.5m from property boundaries.*

Complies.

*C4 states that swimming pool surrounds are to be no more than 1.2m above or below ground level.*

Complies.

*C5 limits the depth of a swimming pool to 2.0m.*

Complies.

#### Conclusion

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

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

Site Area: 779m <sup>2</sup>	Existing	Proposed	Control	Complies
Minimum Lot Width	6m	6m	15m	NO

#### Minimum Lot Width

*C1 requires a minimum lot width of 15m.*

The subject site is only 6m in width at the street frontage, which represents a significant non-compliance with these requirements. This non-compliance is considered unacceptable for the following reasons:

- The proposed use of the Glendon Road frontage for access to a basement carpark relies on an unsatisfactory shared crossing arrangement, this shared access was not supported by Council's Traffic Department;

- The resulting vehicular entrance dominates the frontage of the building, which detracts from the streetscape quality of Glendon Road;
- The narrow frontage does not allow for sufficient landscaping and trees to the front of the site, thus detracting from the landscape character of Glendon Road.

#### Residential Flat Buildings and Multi Dwelling Housing

*C1 requires window and room layout to ensure good natural ventilation.*

Complies.

*C5 Where practical, habitable rooms excluding bedrooms are oriented to the north for maximum solar access.*

The proposed design and orientation of the living and kitchen areas to House 2 and 3 do not allow for sufficient solar access to these areas, resulting in poor internal amenity. The proposed development is considered unacceptable in this regard.

*C6 does not permit lightwells to be used as the main source of light and ventilation.*

Complies.

*C7 requires that each dwelling has access to its own private open space.*

Complies.

*C8 states that private open space must not be overlooked by adjoining dwellings.*

Complies.

#### Conclusion

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

### **15.3. Chapter E1: Parking and Access**

#### **Part E1.4: Residential parking**

Table 1: Car parking Provision

Residential Component	Quantity	DCP Maximum Requirement per Dwelling	DCP Maximum Allowed Parking
3 bedrooms	3	2	6
Visitor	3	0.25	0.75 (1)
Total allowed			7

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

In this instance, the development results in a parking generation rate of 7 spaces and makes provision for 6 spaces. Council's Traffic Department has supported the proposal in terms of car parking provision.

*Table 2: Bicycle and Motorbike Parking Provision*

<b>BICYCLE</b>			
	<b>Quantity</b>	<b>DCP Minimum Requirement</b>	<b>DCP Minimum Required Parking</b>
Residential Residents	3 dwellings	1 per dwelling	3
Residential Visitors	3 dwellings	1 per 10 dwellings	0.3 (0)
Total			3
<b>MOTORBIKE</b>			
	<b>Quantity</b>	<b>DCP Minimum Requirement</b>	<b>DCP Minimum Required Parking</b>
Car Spaces	6	1 per 10 car spaces	0.6 (1)
Total			1

Council's Traffic Department has made the following comments in relation to bicycle and motorcycle parking:

*The proposal includes one secure storage room for each dwelling that can accommodate a Class 1 bike locker under AS2890.3 Part 3: Bicycle Parking, which is deemed acceptable. The non-provision of motorcycle parking will result in a shortfall of one (1) parking space than DCP's minimum requirement. It is however acknowledged that given the nature and scale of the proposal, motorcycle parking demand will be minimal, and the provision can be readily made, thus the marginal shortfall is considered acceptable.*

#### Traffic Generation

Traffic generation from the proposed development has been calculated in accordance with *RMS Guide to Traffic Generating Developments 2002*, and *RMS Guide to Traffic Generating Developments Updated traffic surveys TDT 2013/04a*.

#### **Existing Development**

##### *Low Density Residential*

- Weekday peak hour vehicle trips: 1 dwelling x 0.95-0.99 per dwelling = 0.95-0.99 trips
- Daily vehicle trips: 1 dwelling x 10.7 per dwelling = 10.7 trips

#### **Proposed Development**

##### *Medium Density Residential – Larger unit*

- Weekday peak hour vehicle trips: 3 dwellings x 0.5-0.65 per dwelling = 1.5-1.95 trips
- Daily vehicle trips: 3 dwellings x 5.0-6.5 per unit = 15-19.5 trips

#### **Net Increase**

- Weekday peak hour vehicle trips = 0.51-1 trips
- Daily vehicle trips = 4.3-8.8 trips

Council's Traffic Officer has made the following comment in relation to traffic generation:

*Based on the above calculation, the proposed development will not generate unacceptable adverse impacts on the surrounding road network in terms of traffic flow efficiency and road safety considerations.*

#### **Part E1.8: Parking and Access Design Standards**

	Existing	Proposed	Control	Complies
Dimension of Car Parking Space	-	Compliant	3.0m x 5.4m	YES
Access To and From the Site	-	Forward	Forward Movement	YES
Location of Driveway	Rear	Front	From the Rear	NO
Loss of Street Parking to Accommodate Off Street Parking	-	0	Maximum One Space	YES

*E1.8.2-E1.8.5 require compliance with the respective Australian Standard in AS2890 in terms of width, length, ramps and aisles, scraping and turning paths.*

Council's Technical Services Department did not raise any objection in relation to these matters and is acceptable in this regard.

*E1.8.5 notes that the removal of an on street parking space for access to a private parking space will only be considered where no more than 5.4m of parking is removed.*

The proposed development will not result in the loss of any on-street car parking and is acceptable in this regard.

*E1.8.6 requires the following:*

a) *Forward movement to and from the site*

Complies.

b) *A vehicular splay at 45° for a distance of 2m x 2m where the fence adjoining the driveway exceeds 1.2m*

Generally complies.

c) *Driveway width in accordance with Section 3 of AS2890.1*

Satisfactory.

d) *Driveway access from the rear*

Council's Traffic Department has not supported the proposed driveway access from Glendon Road and has provided the following comments in relation to this issue:

*Pursuant to Clause 1.2 (2) of Council's LEP, it is one of the aims that impacts of traffic and parking be minimised. It is evident that the proposal to relocate the existing public utilities along Glendon Road to accommodate a new access driveway does not comply with such aims.*

*It should also be noted that the proposed shared crossing arrangement would result in conflict of traffic from vehicles entering/leaving the subject site and the neighbouring site of 42 Glendon Road. Given the current design adopts a combined access driveway, and that the aisle for garage of house 3 is relatively narrow, for which a turning table is proposed to allow vehicle movements, Traffic Section queries the conclusion made in traffic report stating that opposing vehicles would be a rare occurrence, and that chances of vehicles waiting on the street will be minimal.*

*As such, the proposal fails to demonstrate that impacts of traffic and parking have been minimised, and it arouses concerns for potential conflicts from vehicles accessing/exiting the subject site and neighbouring site, therefore the proposed new access driveway with a shared crossing arrangement cannot be supported and is considered undesirable given there is an existing access point via Kiaora Road. These issue should be addressed prior to any further assessment.*

*e) Safe manoeuvrability*

Unacceptable see comments above.

*f) Consistency in the streetscape*

Satisfactory.

*g) Preservation of trees*

Satisfactory.

*h) Vehicular crossings that are perpendicular to the street*

The proposed shared vehicular crossing is unacceptable, as stated above.

*i) Minimisation of the driveway crossover to ensure that there is no net loss of parking*

Satisfactory.

*j) The location of driveways adjacent to (0.0m) or at 5.4m from adjoining driveway*

Satisfactory.

**Conclusion**

The proposal is unacceptable with regard to the objectives and controls in Chapter E1 of the Woollahra DCP 2015.

**15.4. Chapter E2: Stormwater and Flood Risk Management**

**Part E2.2.2: Water Sensitive Urban Design**

	Existing	Proposed	Control	Complies
Location of Rainwater Tanks	-	Basement	Behind Front Building Line	YES



*C2 encourages rainwater tanks but C3 limits its collection from roofs only. C4 notes connection to non-potable water uses.*

Each house is to be provided with a rainwater tank located within the basement. Conditions could be applied to ensure compliance with Controls C3 and C4, should the application be approved.

*C5 and C6 require overflow from rainwater tanks to be directed to the OSD system or Council's drainage network, whichever applies.*

Conditions could be applied to address Controls C5 and C6, should the application be supported.

### **Part E2.2.3 Stormwater Treatment**

*C1 requires stormwater treatment with connections to Sydney Harbour or waterways, new developments and major alterations and additions. This treatment is to be on private property in accordance with C3.*

The submitted Stormwater Plan does propose a stormwater treatment system, which was considered to be unsatisfactory by Council's Technical Services Officer and is contrary to Controls C1 and C3.

### **Part E2.2.4: On Site Detention (OSD) of Stormwater**

Council's Technical Services Department has not raised any concerns relating to the proposed onsite detention of stormwater system, and is acceptable in this regard.

### **Part E2.2.8: Connection to Council's Parks, Reserves, Bushland and Natural Waterways; Sydney Harbour; and Sydney Water Channels**

*C1 allows discharge to a natural watercourse may be permitted although in accordance with C3, stormwater pipes and structures are not permitted to be viewed. Written approval is required from the Waterways Authority and Sydney Water in accordance with C4 and C5 respectively.*

Council's Technical Service Department has generally supported the proposed connection to Sydney Water Channel located at the rear of the property. However the submitted Stormwater Plans need to be modified to ensure that the Stormwater runoff from the site is directed to 450mm x 450mm junction pit (minimum), prior discharging to the Sydney Water channel. These changes were not provided, as the application has not been supported.

It should be noted that Sydney Water has supported the proposed development, subject to conditions, refer to **Annexure 10**.

### **Part E2.2.10: Groundwater (Hydrogeology)**

*C2 requires all below-ground structures to be fully waterproofed and "tanked".*

*C3 ensures that groundwater is not discharged to Council's stormwater network.*

The submitted Stormwater Plan does not comply with Controls C2 and C3, thus Council's Technical Services Department recommended that the Stormwater Plan be amended so that the underground structures are fully tanked and no subsoil drainage is discharged to the Sydney Water channel. These changes were not requested, as the application has not been supported.

### **Part E2.3.3: Flood Planning Levels**

The subject site is located within the flood prone area. The applicant submitted a Flood Study Assessment, which was considered acceptable to Council's Drainage Engineer, subject to the following condition:

#### ***Flood Protection***

*The Construction Certificate plans and specifications, required by clause 139 of the Regulation, must include a Flood Risk Management Plan on the basis of the Flood Planning Level (FPL) detailing:*

- a. A permanent flood risk management plan shall be installed in a prominent area of the basement carpark.*
- b. A permanent flood risk management plan shall be installed in an area frequented by the residents such as the laundry.*
- c. The driveway entry is to be protected by a mechanical flood barrier with the threshold set to the flood planning level of 4.5m AHD.*
- d. Permanent brass plaques are to be mounted adjacent to all mechanical flood barriers explaining their purpose and operation*
- e. All below ground construction is to be fully tanked.*
- f. Emergency self-powered lights, indicating the safe exit to a flood free area above the probable maximum flood (PMF) are to be installed in the car parking area.*
- g. All habitable floors have to be above or protected from flooding to the flood planning level.*
- h. Flood compatible materials shall be used for all flood exposed construction*
- i. All flood exposed electrical wiring and equipment is to be waterproofed.*
- j. All flood protection measures are to be inspected and certified as fit for purpose after construction is complete by an engineer experienced in flood mitigation.*

This condition could be imposed to address flooding issues, should consent be granted.

### **Conclusion**

The proposal is unacceptable with regard to the objectives and controls in Chapter E4 of the Woollahra DCP 2015.

### **15.5. Chapter E5: Waste Management**

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

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

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

## Part E5.2: Demolition and Construction Phase

C2 and C3 promote reuse of salvaged and excess construction materials. C4 promotes prefabricated or recycled materials where possible. C5 seeks to minimise site excavation and disturbance. The proposal is acceptable with regard to Part E5.2 of the Woollahra DCP 2015.

## Part E5.3: On-Site Waste and Recycling Controls for all Development

	Existing	Proposed	Control	Complies
Garbage and Recycling Areas	-	Separated	Separated	YES
Location of Garbage and Recycling Areas	-	Basement	Behind Building Line or Non-Habitable Areas	YES

*C2 requires waste storage areas to facilitate the separation of garbage and recycling.*

A waste storage area for garbage and recycling has been proposed within the basement of the new building, in accordance with Control C2.

*C3 and C4 require waste storage areas to be behind the building line or in non-habitable spaces and integrated within the building design.*

The proposed garbage storage area is located behind the building line within the basement, in accordance with Control C3 and C4.

*C5 states that access to waste and compost storage areas are to be safe and convenient for occupants to access with a grade less than 1:8, secure and located to minimise noise or odour.*

The proposed access to the waste storage area is considered to be safe and convenient for future occupants of the building and would be acceptable in terms of noise and odour.

*C6 requires manual maneuverability by one person for bulk bins.*

Complies.

*C7 ensures that waste collection points should not interfere with traffic or pedestrian safety.*

Satisfactory.

The proposal is acceptable with regard to Part E5.3 of the Woollahra DCP 2015.

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

	Existing	Proposed	Control	Complies
Garbage and Recycling Areas	-	Required	Required	YES
Location of Waste Storage Area	-	Basement Level	Basement Level	YES
Maximum Distance from Waste Storage Area to Collection Point	-	<75m	75m	YES

Area of Bin Store: 8.2m <sup>2</sup>	Weekly Rate	No. of Units	X 120L Bins	X 240L Bins	Complies
Waste Bins	120L/Unit	3	3 x 120L		YES
Recycling Bins	55L/Unit	3	2 x 120L		YES
Green Waste and Organics	-	3	240L		YES

Area of Bin Store: 8.2m <sup>2</sup>	Weekly Rate	No. of Units	X 120L Bins	X 240L Bins	Complies
Grand Total			6		

*C1 requires indoor waste and recycling facilities for each dwelling and C2/C3 requires an onsite communal storage area.*

Not specified, however this could be conditioned to comply should consent be granted.

*C4 specifies a rate of 120L/unit for waste, 55L/unit for recycling and 240L/unit for green waste and food organics. With 3 units, 5 x 120L (and 1 x 240L) waste and recycling bins.*

The proposed waste storage area is able to accommodate a compliant amount of waste, recycling and green waste bins.

*C8 requires waste storage areas to be located in the basement or designed in accordance with CPTED where it is a standalone structure.*

The proposed garbage storage is located within the basement.

*C11 limits the travel distance between the waste storage area and the collection point to 75m.*

Complies.

## Conclusion

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

## 15.6. Chapter E6: Sustainability

The proposed development involves the installation of solar panels to the rear roof slope of the building. The proposed solar panels are located behind the front setback, however these panels may be visible from the Kiaora Road, as the site has two street frontages. These solar panels are considered acceptable, as the proposed building has a dark coloured roof, thus the panels will blend with the roofing material and will not adversely affect the visual amenity of Kiaora Road. Further this, the site is not located within a heritage conservation area. A condition could be imposed to ensure these panels are no higher than 300mm above the roof surface and installed parallel to this roof slope, should the application be approved, in accordance with Control C1.

## Conclusion

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

## Section 7.12 Contributions Plan 2011

In accordance with Schedule 1, a 1% levy applies with the monies being used for a variety of works as outlined in Schedule 2 of the Section 7.12 Contributions Plan 2011. A condition of consent could be imposed should approval be granted.

Cost of Works	Rate	Contribution Payable
\$2 605 900	1%	\$26 059

## **16. APPLICABLE ACTS/REGULATIONS**

### **16.1. Environmental Planning and Assessment Regulation 2000**

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

Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires Council to consider Australian Standard AS 2601-2004: The demolition of structures. A condition of consent could be imposed to address this clause, should consent be granted.

### **16.2. Swimming Pools Act 1992**

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

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

These requirements could form conditions of consent, should the application be approved.

## **17. THE LIKELY IMPACTS OF THE PROPOSAL**

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

## **18. THE SUITABILITY OF THE SITE**

The site is unsuitable for the proposed multi-dwelling development with basement parking, given the subject has a very narrow frontage, is of an irregular shape, contains potential acid sulphate soils, a high water table, is flood prone, potential contamination and sandy soil conditions. The proposed development is therefore considered to be unacceptable in this regard.

## **19. THE PUBLIC INTEREST**

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

## **20. CONCLUSION**

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



## **21. DISCLOSURE STATEMENTS**

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

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

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, is not satisfied that the written request from the applicant has adequately addressed the relevant matters to be addressed under Clause 4.6 of the Woollahra Local Environmental Plan 2014 and therefore consent cannot be granted to the development which contravenes the Height of Buildings development standard under Clause 4.3 of the Woollahra Local Environmental Plan 2014.

**AND**

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, refuse development consent to Development Application No. 143/2020/1 for demolition of the existing dwelling & the construction of a new two storey multi-dwelling housing development with basement car parking, a swimming pool and associated landscaping works on land at 40 Glendon Road Double Bay, for the following reasons:

### **1. Woollahra Local Environmental Plan 2014 – Aims of Plan**

The proposal is unacceptable because it does not comply with:

- Part 1, Clause 1.2(2)(g) - The proposal does not protect the amenity and the natural environment.
- Part 1, Clause 1.2(2)(h) – The proposal does not minimise stormwater and flooding impacts.
- Part 1, Clause 1.2(2)(j) - The proposal does not promote a high standard of design in the private and public domain.
- Part 1, Clause 1.2(2)(l) - The proposal does not achieve the desired future character of the Manning Road Precinct.
- Part 1, Clause 1.2(2)(m) - The proposal does not minimise excavation and manage the associated impacts, given the environmental hazards present on the site.

### **2. Woollahra Local Environmental Plan 2014 – Land Use Table**

The proposal is unacceptable because it does not comply with the following objective of the R3 Medium Density Residential Zone:

- Objective 4 - To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.

### **3. Woollahra Local Environmental Plan 2014- Height**

The proposal does not comply with the height of buildings development standard prescribed in Clause 4.3 of the Woollahra LEP 2014. The written request submitted under Clause 4.6 to vary the development standard is not well-founded for the following reasons:

- a) It has not been demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case or that there are sufficient environmental planning grounds to justify contravening the standard;
- b) The proposal is inconsistent with the objectives for development within the R3 zone. Specifically, the development fails to achieve the fourth bullet point of the zone, as it is considered to be excessive in bulk and scale and would not achieve the desired future character of the Manning Road Precinct;
- c) The proposal is inconsistent with the objective of the development standard set out in Clause 4.3(1)(a) of the WLEP 2014. Specifically, it does not achieve a building height that is consistent with the desired future character of the neighbourhood.

### **4. Woollahra Local Environmental Plan 2014- Floor Space Ratio (FSR)**

The proposal does not comply with the maximum FSR development standard prescribed in Clause 4.4 of the Woollahra LEP 2014. The applicant has failed to submit a request under Clause 4.6 to vary the standard, contrary to Clause 4.6(3)(a) and (b) of the Woollahra LEP 2014.

### **5. Acid Sulphate Soils**

The proposed excavation works extend more than 1m below the natural ground surface and are likely to lower the water table by more than 1m. As the subject site is classified as Class 3 on Council's Acid Sulphate Soils Map, an Acid Sulphate Soil Management Plan (ASSMP) is required. The applicant has not provided this information, which is contrary to Clause 6.1(3) Woollahra LEP, 2014.

### **6. Excavation**

The proposed excavation works for the new basement car park is considered to be excessive and is insufficiently set back from the site boundaries. The extent of this excavation is considered to be inappropriate, given the environmental constraints of the site including Acid Sulphate Soils, flooding, the high water table, potential land contamination and the sandy soil conditions. The proposed excavation is contrary to Clause 6.2(3) of the Woollahra LEP 2014 and Objectives O2, O3, O4, O5 and Control C2 and C6 of Part 3.4 of the Woollahra DCP, 2015.

### **7. Desired Future Character of the Manning Road Precinct**

The proposal is contrary to Objectives O1, O2, O3, O4, O5 and O6 of Part B1.5.2 of the WDCP 2015, because:

- (i) it represents an overdevelopment of the site and relies on a 6m wide frontage to Glendon Road to provide vehicular access to the basement car park. This does not allow for sufficient deep soil landscaping and substantial planting to the frontage of the site, which detracts from the quality of the streetscape, the key elements of the precinct and landscape character the locality; and
- (ii) the proposed multi-dwelling housing with a consolidated hipped roof does not provide regular separation and rhythm of spaces between buildings. This is inconsistent with one of the key elements identified in the desired future character in the Manning Road Precinct.

## **8. Streetscape**

The height of the proposed development, including the visually intrusive roof structures (lift over-runs), is out of scale with the general pattern of development within Glendon Road. The proposal is therefore considered to detract from the quality of the streetscape and is contrary Objectives O1 and O2 and Controls C1 and C5, of Part B3.5.1 of the WDCP, 2015.

## **9. Visual Privacy**

The proposed first floor front balconies to House 1 and 2 adversely affect the visual privacy of the northern private open space at No.42 Glendon Road, contrary to Objective O2 and Control C7 of Part B3.5.4 of the WDCP, 2015.

## **10. Driveway Access**

The proposed vehicular access off Glendon Road relying on the shared use of the existing driveway crossing at No.42 Glendon Road will result in unsatisfactory traffic and parking impacts, contrary to Objectives O8 of Part B3.6 and Part E1.10.6 of the Woollahra DCP, 2015.

## **11. Onsite Parking**

The proposed onsite parking arrangement will detract from the character and appearance of the streetscape, contrary to Objectives O1, O2 and, O7 and Controls C1, C2, C3 and C10 of Part B3.6 of the Woollahra DCP 2015, because:

- (i) The proposed driveway will occupy almost the full width of the existing the existing narrow frontage (6m wide) to Glendon Road.
- (ii) The proposed garage door to the basement parking is disproportionately high.
- (iii) The combination of the above will result in dominating feature upon the streetscape of the Glendon Road.

## **12. Deep Soil Landscaping (front setback)**

The proposed development does not comply with the minimum deep soil landscaping requirements (front setback), and will not allow for trees and planting to be provided to soften and balance the substantial scale of the proposed works. This detracts from the streetscape quality, contrary to Objectives O1 and O2 and Control C2 and Control C2(a) of Part 3.7.1 of the WDCP, 2015.

**13. Fencing (Kiaora Road)**

The height of the proposed new fencing to the rear of the site (Kiaora Road frontage) is considered to be excessive and is inconsistent with the general pattern of development within Kiaora Road, which detracts from character of the streetscape, contrary to Objectives O1, O2 and Control C9 of Part B3.7.2 of the Woollahra DCP, 2015.

**14. Fencing (dividing fencing between dwellings)**

The proposed dividing fencing between the private open spaces of the new dwellings will result in excessive and unnecessary bulk, overshadowing onto the private open spaces within the development, particularly to House 2, contrary to Objective O1 of Part B3.7.2 of the Woollahra DCP, 2015.

**15. Internal Amenity**

The proposed design and orientation of the living and kitchen areas to House 2 and 3 do not allow for sufficient solar access to these areas, resulting in poor internal amenity, contrary to Objective O1 and Control C5 of Part B3.8.6 of the Woollahra, DCP 2015.

**16. Suitability of the site**

The site is considered to be unsuitable for the proposed multi-dwelling development with basement parking, given the subject has a narrow frontage, is an irregular shape, contains potential acid sulphate soils, a high water table, is flood prone, potential contamination and sandy soil conditions, contrary to Clause 4.15(1)(c) of the Environmental and Assessment Act, 1979.

**17. Inadequate Information/Plans**

The submitted plans and documentation are insufficient and unclear contrary to Cl.50 and Part 1 of Schedule 1 of the Environmental Planning and Assessment Regulation, in the following manner:

- The application has not been accompanied by adequate plans:
  - There is no lift over-run shown on the elevations or sections drawings for the lifts to Houses 1 and 2;
  - There is no section line shown on the floor plans, therefore it cannot be ascertained what part of the building Section 1 and 2 is showing;
  - It is unclear whether the proposed front first floor balconies to House 1 and 2 constitutes gross floor area;
  - There is insufficient fencing details. No elevations of the proposed fencing to the side and rear boundaries have been provided. This new fencing is not indicated on the floor plans. The proposed fencing materials were also not specified;
  - The location of the proposed swimming pool plant equipment and the lift plant has not been specified on the plans. It is not clear whether any air condition has been proposed;
  - The type of fuel to be used in the fireplaces to Houses 1 to 3 has not been specified. **Note:** Solid fuel is not permitted by Control C10 of Part 3.7.3 WDCP, 2015;

- No communal aerial is specified on the proposed plans, in order to comply with Control C5 of Part 3.7.3 of the WDCP, 2015;
- It is not clear on the submitted plans whether the proposed privacy screens to the first floor windows/doors would provide sufficient screening to protect the visual privacy of surrounding habitable room windows and private open space.
- **Cl.4.6 Variation (FSR):**
  - The application has not been accompanied by a Cl.4.6 variation (FSR) to justify the non-compliance with the potential FSR development standard.
- **Driveway Access**
  - The shared driveway crossing arrangement is not supported. It should be noted that changes to the access point would result in changes to the basement layout, which would require further assessment.
- **Acid Sulphate Soils**
  - No Acid Sulphate Soils Management Plan has been provided in order to manage the likely disturbed Potential Acid Sulphate Soils that were identified on the subject site.
- **Stormwater Plans:**




The following issues were identified with the submitted Stormwater Plans:

  - No stormwater treatment system, in order to comply with Part E2.2.3 of the WDCP, 2015 was indicated on the submitted Stormwater Plans;
  - The stormwater plans do not show that the below ground structures are fully tanked and that no subsoil drainage is discharged to the Sydney Water channel;
  - The Stormwater plans do not show a 450mm x 450mm (minimum) junction pit prior discharging to the Sydney Water channel.
- **Elevational Shadow Diagrams**
  - No elevational shadow diagrams were provided to demonstrate the solar access impacts on the north facing habitable room windows at No.42 Glendon Road.








## 18. Public Interest

The proposed development is not in the public interest.

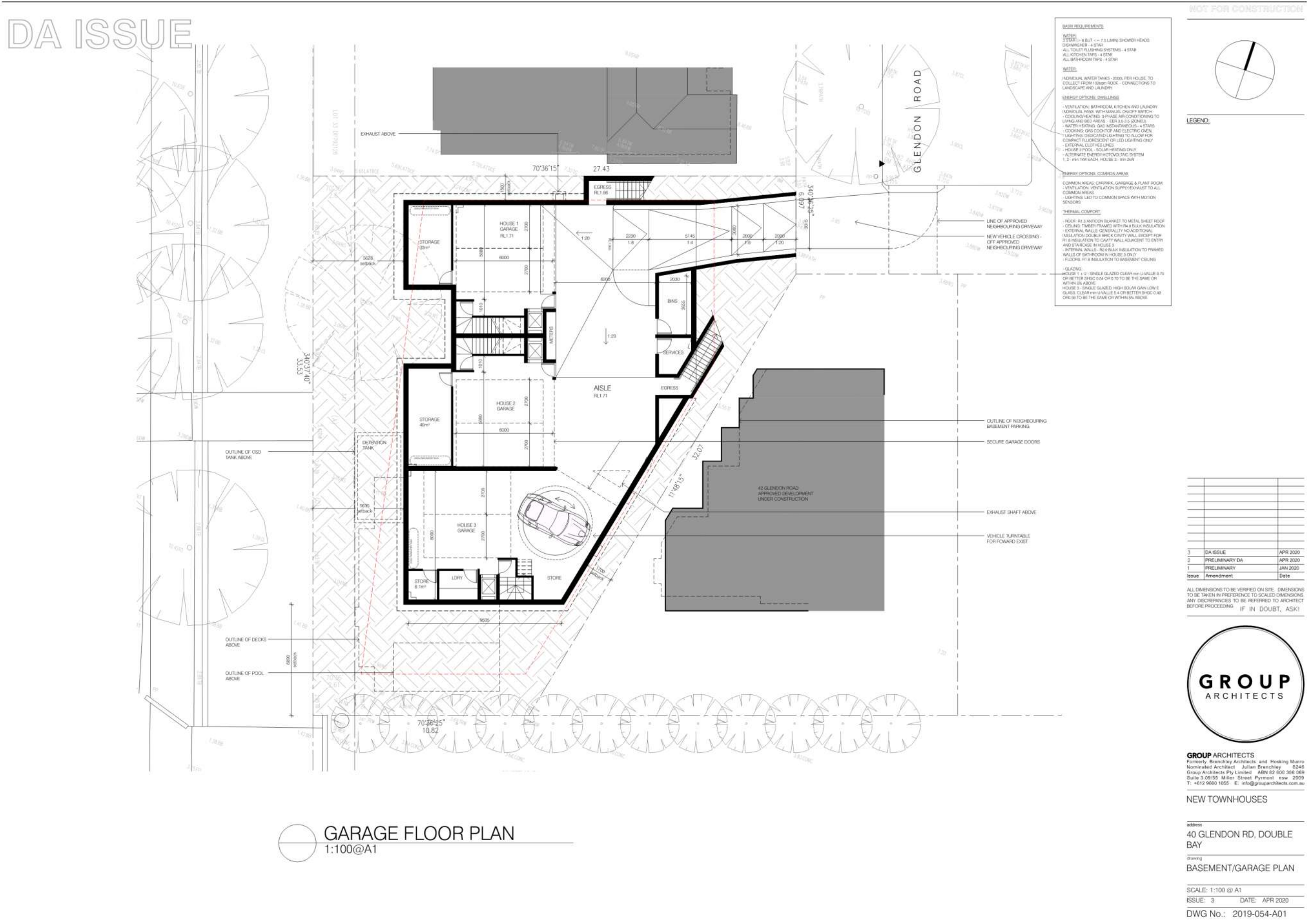
## Annexures

1. Plans, Section and Elevations [↓](#) 
2. Landscape Plan [↓](#) 
3. Clause 4.6 Written Request - Height [↓](#) 

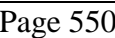


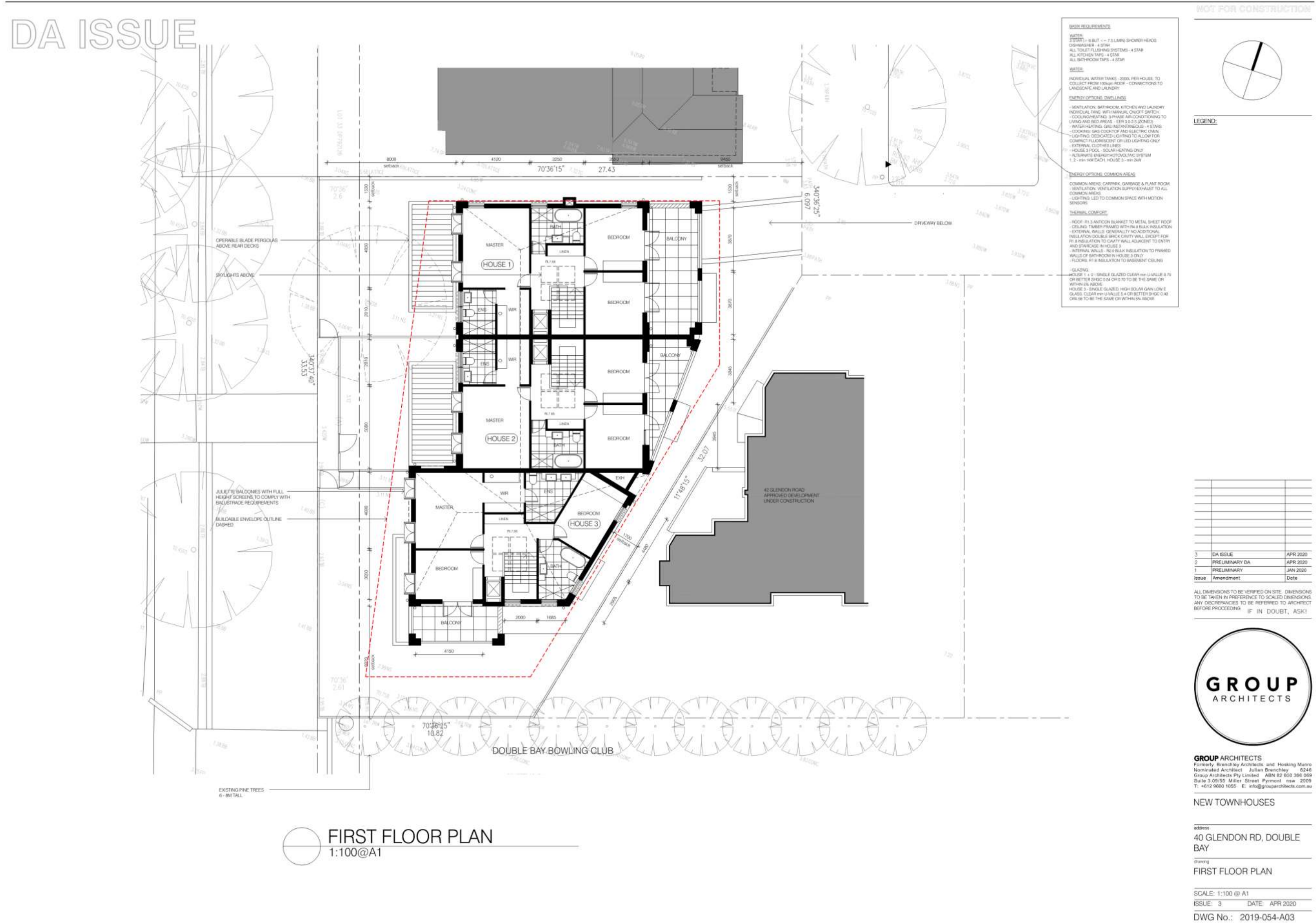
4. Referral Response - Technical Services [↓](#) 
5. Referral Response - Traffic [↓](#) 
6. Referral Response - Drainage [↓](#) 
7. Referral Response - Trees and Landscaping [↓](#) 
8. Referral Response - Environmental Health [↓](#) 
9. Referral Response - Heritage [↓](#) 
10. Referral Response - Sydney Water [↓](#) 













DA ISSUE

DOUBLE BAY  
BOWLING CLUB



- BASIC REQUIREMENTS**
- WATER: 2 (BUT) - 8 BUT - 7.5 L/MIN SHOWER HEADS
  - DISHWASHER - 4 STAR
  - ALL TOILET FLUSHING SYSTEMS - 4 STAR
  - ALL KITCHEN TAPS - 4 STAR
  - ALL BATHROOM TAPS - 4 STAR
- WATER**
- INDIVIDUAL WATER TANKS - 3000L PER HOUSE TO COLLECT FROM 100mm ROOF - CONNECTIONS TO LANDSCAPE AND LAUNDRY
- ENERGY OPTIONS: DWELLINGS**
- VENTILATION: BATHROOM, KITCHEN AND LAUNDRY
  - MULTIPLY FANS WITH MANUAL ON/OFF SWITCH
  - COOLING/HEATING: 3 PHASE AIR CONDITIONING TO LIVING AND BED AREAS - 1 EER 3.0 3.5 (2000W)
  - WATER HEATING: GAS NETWORKED GAS - 4 STAR
  - COOKING: GAS COOKTOP AND ELECTRIC OVEN, LIGHTING: DEDICATED LIGHTING TO ALLOW FOR COMPACT FLUORESCENT OR LED LIGHTING ONLY
  - EXTERNAL CLOTHES LINES
  - HOUSE 3 POOL - SOLAR HEATING ONLY
  - ADAPTIVE ENERGY HOT/COLDING SYSTEM 1.2 - 1.6kW EACH HOUSE 3 - 1.6kW 3kW
- ENERGY OPTIONS: COMMON AREAS**
- COMMON AREAS: CARPARK, GARAGE & PLANT ROOM
  - VENTILATION: VENTILATION SUPPLY/EXHAUST TO ALL COMMON AREAS
  - LIGHTING: LED TO COMMON SPACE WITH MOTION SENSORS
- THERMAL COMFORT**
- ROOF: R1.5 ANTI-CON BLANKET TO METAL SHEET ROOF
  - CEILING: TIMBER FRAMED WITH R1.5 BULK INSULATION
  - EXTERNAL WALLS: GENERALLY NO ADDITIONAL INSULATION DOUBLE BRICK CAVITY WALL EXCEPT FOR R1.8 INSULATION TO CAVITY WALL ADJACENT TO ENTRY AND STAIRCASE IN HOUSE 3
  - INTERNAL WALLS: R1.8 BULK INSULATION TO FRAMED WALLS OR BATHROOM IN HOUSE 3 ONLY
  - FLOORS: R1.8 INSULATION TO BASEMENT CEILING
- GLAZING**
- HOUSE 1 + 2: SINGLE GLAZED CLEAR WITH U-VALUE 6.70 OR BETTER SHGC 0.54 OR 70 TO BE THE SAME OR WITHIN 5% ABOVE
  - HOUSE 3: SINGLE GLAZED HIGH SOLAR GAIN LOW E GLASS CLEAR WITH U-VALUE 5.4 OR BETTER SHGC 0.49 OR 10 TO BE THE SAME OR WITHIN 5% ABOVE

NOT FOR CONSTRUCTION

LEGEND:



3	DA ISSUE	APR 2020
2	PRELIMINARY DA	APR 2020
1	PRELIMINARY	JAN 2020
Issue	Amendment	Date

ALL DIMENSIONS TO BE VERIFIED ON SITE. DIMENSIONS TO BE TAKEN IN PREFERENCE TO SCALED DIMENSIONS. ANY DISCREPANCIES TO BE REFERRED TO ARCHITECT BEFORE PROCEEDING. IF IN DOUBT, ASK!



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Formerly Branchley Architects and Hosking Munro  
Nominated Architect: Julian Branchley 6246  
Group Architects Pty Limited ABN 62 600 386 989  
Suite 3.09/55 Miller Street Pyrmont NSW 2009  
T: +612 9560 1055 E: info@grouparchitects.com.au

NEW TOWNHOUSES

Address:  
40 GLENDON RD, DOUBLE  
BAY

Drawing:  
ELEVATIONS 1

SCALE: 1:100 @ A1  
ISSUE: 3 DATE: APR 2020  
DWG No.: 2019-054-A04



DA ISSUE



3	DA ISSUE	APR 2020
2	PRELIMINARY DA	APR 2020
1	PRELIMINARY	JAN 2020
Issue	Amendment	Date

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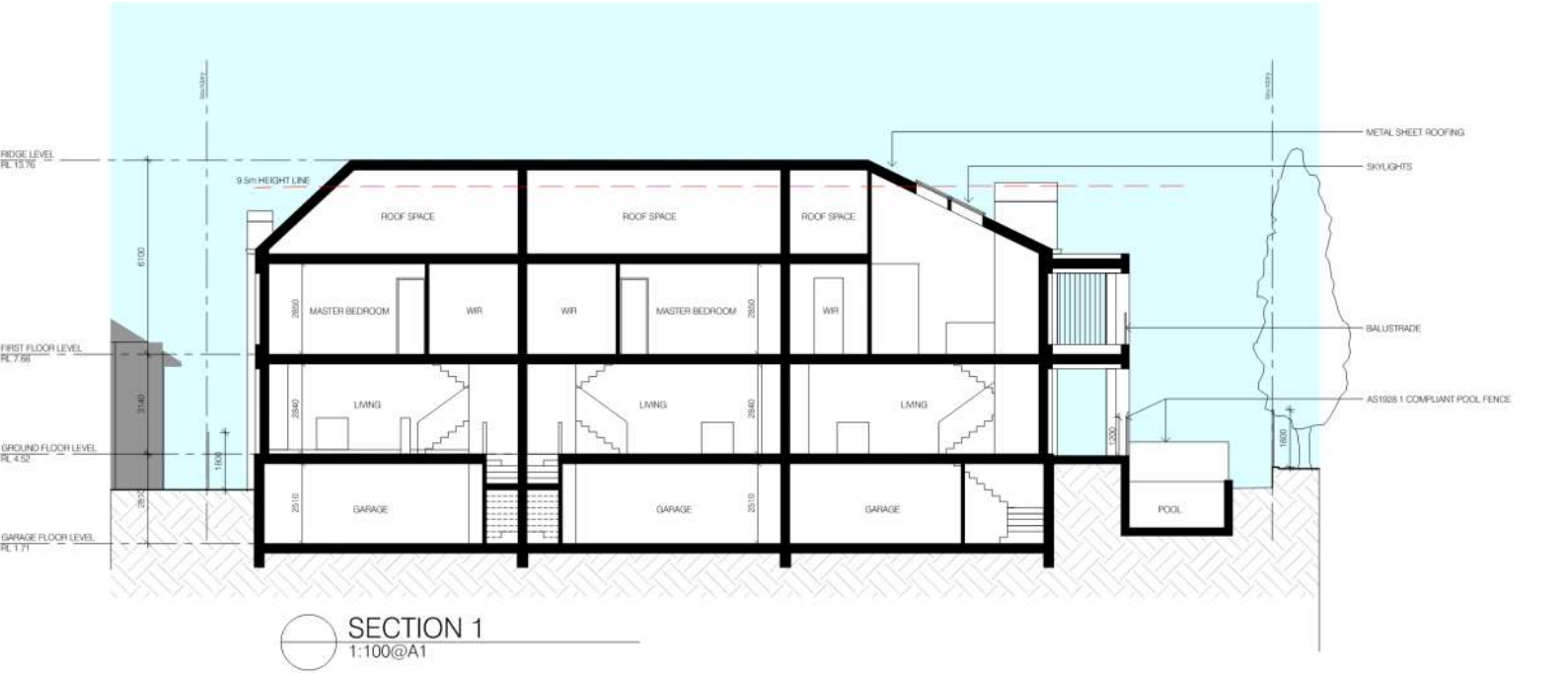
NEW TOWNHOUSES

Address  
40 GLENDON RD, DOUBLE BAY

Drawing  
ELEVATIONS 2

SCALE: 1:100 @ A1  
ISSUE: 3 DATE: APR 2020  
DWG No.: 2019-054-A05

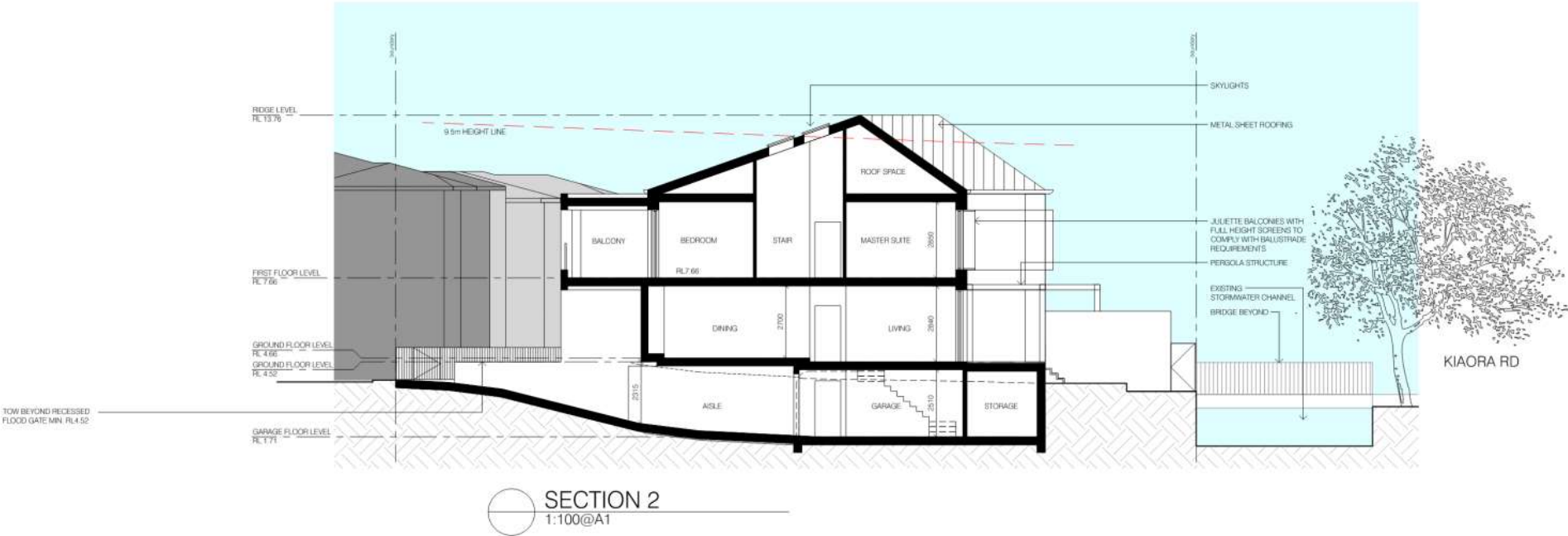
DA ISSUE



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  - DISHWASHER - 4 STAR
  - ALL TOILET FLUSHING SYSTEMS - 4 STAR
  - ALL KITCHEN TAPS - 4 STAR
  - ALL BATHROOM TAPS - 4 STAR
- WATER**
- INDIVIDUAL WATER TANKS - 2000L PER HOUSE TO COLLECT FROM 100mm ROOF - CONNECTIONS TO LANDSCAPE AND LAUNDRY
- ENERGY OPTIONS: DWELLINGS**
- VENTILATION: BATHROOM, KITCHEN AND LAUNDRY
  - INDIVIDUAL FANS WITH MANUAL ON/OFF SWITCH
  - COOLING/HEATING: 3-PHASE AIR CONDITIONING TO LIVING AND BED AREAS - EER 3.0-3.5 (2000W)
  - WATER HEATING: GAS NETWORKED GAS - 4 STAR
  - COOKING: GAS COOKTOP AND ELECTRIC OVEN, LIGHTING: DEDICATED LIGHTING TO ALLOW FOR COMPACT FLUORESCENT OR LED LIGHTING ONLY
  - EXTERNAL CLOTHES LINES
  - HOUSE 3 POOL - SOLAR HEATING ONLY
  - ADAPTIVE ENERGY/COOLING SYSTEM 1: 2 - 10W W/ EACH HOUSE 3 - 10W 30W
- ENERGY OPTIONS: COMMON AREAS**
- COMMON AREAS: CARPARK, GARAGE & PLANT ROOM
  - VENTILATION: VENTILATION SUPPLY/EXHAUST TO ALL COMMON AREAS
  - LIGHTING: LED TO COMMON SPACE 60W MOTION SENSORS
- THERMAL COMFORT**
- ROOF: R1.5 ANTI-CON BLANKET TO METAL SHEET ROOF
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NOT FOR CONSTRUCTION

LEGEND:



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2	PRELIMINARY DA	APR 2020
1	PRELIMINARY	JAN 2020
Issue	Amendment	Date

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NEW TOWNHOUSES

Address:  
40 GLENDON RD, DOUBLE  
BAY

Drawing:  
SECTIONS

SCALE: 1:100 @ A1  
ISSUE: 3 DATE: APR 2020  
DWG No.: 2019-054-A06

DA ISSUE

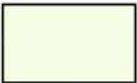
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LEGEND



FLOOR AREA



LANDSCAPED AREA

LANDSCAPING AREAS:	
SITE AREA:	779.2sqm
EXISTING DEEP SOIL	approx 400sqm
FRONT SETBACK:	53sqm
DEEP SOIL (FRONT):	14sqm - 26%
REAR SETBACK:	103sqm
DEEP SOIL (FRONT):	56sqm - 54%
BUILT AREA:	347sqm
UNBUILT AREA:	432.2sqm
TOTAL DEEP SOIL/ LANDSCAPE	241.6sqm 55% OF UNBUILT AREA

FLOOR AREAS:	
SITE AREA:	779.2sqm
GROUND FLOOR GFA:	260sqm
FIRST FLOOR GFA:	236sqm
TOTAL GFA:	496sqm
FSR:	0.63:1

LEGEND:

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2	PRELIMINARY DA	APR 2020
1	PRELIMINARY	JAN 2020
Issue	Amendment	Date

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NEW TOWNHOUSES

Address  
40 GLENDON RD, DOUBLE  
BAY

Drawing  
LANDSCAPED AREAS/FSR

SCALE: 1:100 @ A1  
ISSUE: 3 DATE: APR 2020  
DWG No.: 2019-054-A07



DA ISSUE

NOT FOR CONSTRUCTION

LEGEND:



HOUSE 1  
FIRST FLOOR  
23 sqm

HOUSE 2  
GROUND FLOOR  
11 sqm

HOUSE 3  
GROUND FLOOR  
11 sqm



PRIVATE OPEN SPACE:	
HOUSE 1	
GROUND FLOOR:	94 sqm
BALCONY:	23 sqm
TOTAL:	117 sqm
HOUSE 2	
GROUND FLOOR:	58 sqm
BALCONY:	11 sqm
TOTAL:	69 sqm
HOUSE 3	
GROUND FLOOR:	159 sqm
BALCONY:	11 sqm
TOTAL:	170 sqm

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2	PRELIMINARY DA	APR 2020
1	PRELIMINARY	JAN 2020
Issue	Amendment	Date

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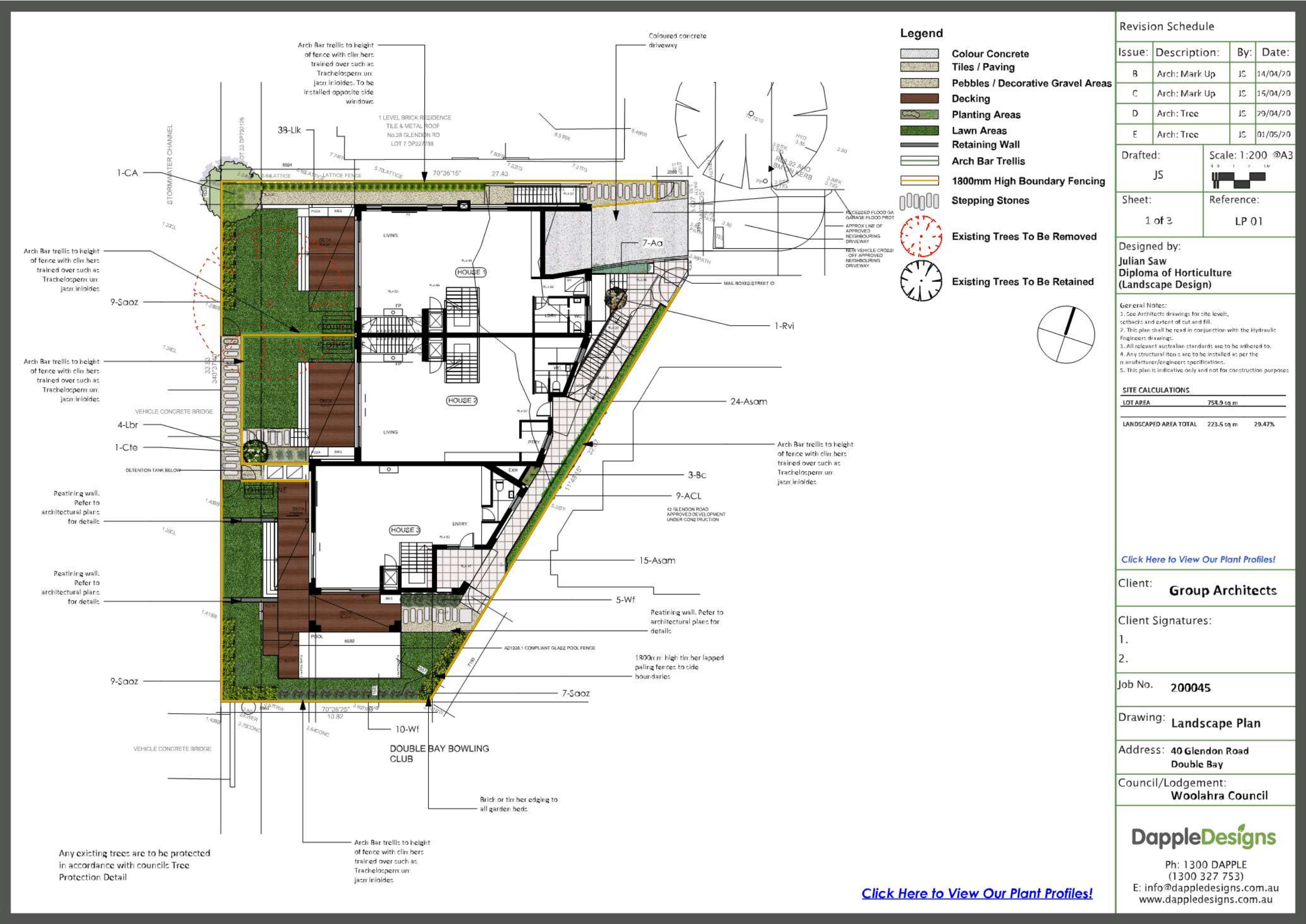
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NEW TOWNHOUSES

Address:  
40 GLENDON RD, DOUBLE  
BAY

Drawing:  
PRIVATE OPEN SPACE

SCALE: 1:100 @ A1  
ISSUE: 3 DATE: APR 2020  
DWG No.: 2019-054-A08





LANDSCAPE SPECIFICATION

SITE ESTABLISHMENT

ALL RUBBISH, DEBRIS, FALLEN BRANCHES SHALL BE CLEARED FROM LANDSCAPED AREAS AND DISPOSED OF USING SKIP BINS ONSITE OR BY TRANSPORTING TO THE LOCAL WASTE MANANAGEMENT FACILITY. ANY UNUSED BRICKS, CONCRETE BLOCKS OR TIMBER SHOULD BE EITHER RE-USED ONSITE WHERE POSSIBLE OR RECYCLED AT THE LOCAL WASTE MANANAGEMENT FACILITY.

TREE PROTECTION

TREES TO BE RETAINED SHALL BE PROTECTED DURING SITE WORKS AND TREE PROTECTION BARRIERS INSTALLED ACCORDING TO TREE PROTECTION DETAILS. NO EXCAVATION OR CHANGE IN SOIL LEVEL SHOULD TAKE PLACE AROUND THE BASE OF SUCH TREES. ANY ARBORIST REPORT MUST BE ADHERED TO AND TREE PROTECTION ZONES MAINTAINEDWHERE APPLICABLE.

WEED ERADICATION

AREAS TO BE LANDSCAPED ARE TO BE SPRAYED WITH GLYPHOSATE AT THE RECOMMENDED RATE AT LEAST 1 WEEK PRIOR TO ANY LANDSCAPE WORKS TAKING PLACE IN ORDER TO ALLOW WEEDS TO DIE OFF. CARE IS TO BE TAKEN TO PROTECT REMAINING VEGETATION FROM THE HERBICIDE APPLICATION AND SHOULD ONLY BE UNDERTAKEN IN STILL WEATHER. ALL WEEDS ARE THEN TO BE DISPOSED OF APPROPRIATELY AT THE LOCAL WASTE MANANAGEMENT FACILITY.

GARDEN BED PREPERATION

ENSURE ALL GARDEN BEDS HAVE BEEN EXCAVATED TO 250MM BELOW FINISHED LEVELS. RIP THE SUBGRADE A FURTHER 100MM IN DEPTH. INSTALL PREMIUM GARDEN SOIL OR MIX NATURAL TOP SOIL WITH IMPORTED SOIL TO A DEPTH OF 250MM. INSTALL 75MM DEPTH OF LEAF LITTER MULCH FROM ANL LANDSCAPE SUPPLIES OR EQUIVALENT.

LAWN AREA PREPERATION

EXCAVATE LAWN AREAS TO A DEPTH OF 100MM BELOW REQUIRED FINISHED LEVELS. DO NOT EXCAVATE WITHIN WITHIN TREE PROTECTION ZONES WHERE APPLICABLE OR WITHIN 1500MM OF THE TRUNK OF ANY EXISTING TREES TO BE RETAINED. ENSURE THAT ALL SURFACE WATER IS DIRECTED TOWARD ANY DRAINAGE PITS, KERBS AND AWAY FROM ANY BUILDINGS. SUBGRADE IS TO BE RIPPED TO A DEPTH OF 150MM AND A 50MM DEEP LAYER OF TURF UNDERLAY INSTALLED ON TOP. LAWNS SHOULD HAVE AN EVEN GRADE SO THAT NO PONDING OR POOLING OCCURS. 'SIR LAUNCHER' FERTILISER OR EQUIVELANT SHOULD BE SPREAD OVER LAWN AREAS PRIOR TO LAYING TURF. LAY 'SIR WALTER BUFFALO' TURF ROLLS CLOSELY BUTTED ENSURING NO GAPS BETWEEN ARE PRESENT. ROLL AND WATER THOROUGHLY AFTER LAYING.

PLANTING

PLANTS ARE TO BE HEALTHY, FREE OF PEST/DISEASES AND TRUE TO TYPE & SPECIES. REFER TO LANDSCAPE PLAN FOR LOCATION AND SPACING. ALL PLANTS SHOULD BE PLACED IN A HOLE DUG TWICE THE SIZE OF THE POT. GENTLY TEESE THE ROOTS OF ANY POT BOUND PLANTS. THE BASE OF THE TRUNK SHOULD BE INSTALLED LEVEL WITH THE SURFACE OF THE GROUND AND DISH CREATED AROUND THE BASE OF EACH PLANT TO AID WITH WATER RETENTION. WATER THOROUGHLY AFTER PLANTING.

PLANT LIST

TYPE	SYMBOL	BOTANIC NAME	COMMON NAME	MATURE HEIGHT X WIDTH	NATIVE?	QTY	POT SIZE
TREES							
	CA	CUPANIOPSIS ANACARDIOIDES	TUCKEROO	8M X 4M	YES	1	75LTR
SHRUBS							
	AcI	ACACIA 'LIMELIGHT'	LIMELIGHT	1M X 1M	YES	9	200MM
	Cte	CHOISYA TERNATA	MEXICAN ORANGE BLOSSOM	2M X 2M	NO	1	200MM
	Lbr	LEUCOPHYTA BROWNII	CUSHION PLANT	1M X 1M	YES	4	200MM
	Rvi	RHODODENDRON VIREYA	VIREYA RHODODENDRON	2M X 1.5M	NO	1	200MM
	Wf	WESTRINGIA FRUITICOSA	COASTAL ROSEMARY	UP TO 1.5M TRIMMED	YES	15	200MM
GRASSES & STRAP LEAF PLANTS							
	Lik	LOMANDRA LONGIFOLIA 'KATRINUS'	KATRINUS	0.75M X 0.75M	YES	38	140MM
SUCCULENTS							
	Aa	AGAVE ATTENUATA	FOXTAIL AGAVE	1M X 1M	NO	7	200MM
FERNS & CYCADS							
	Bc	BLECHNUM CARTILAGINEUM	GRISTLE FERN	1M X 1M	YES	3	200MM
HEDGES							
	Asam	ACMENA SMITHII 'ALLYN MAGIC'	DWARF LILY PILLY	TRIMMED UP TO 1M	YES	39	200MM
	Saoz	SYZYGium AUSTRALe 'AUSSIE SOUTHERN'	SCRUB CHERRY	TRIMMED UP TO 3M	YES	25	200MM

STAKING

ALL TREES AND TOP HEAVY SCREENING SHRUBS SHOULD BE STAKED WITH 2 X 25MM X 25MM LONG TIMBER STAKES PER PLANT. LENGTH OF STAKES IS DEPENDENT ON THE HEIGHT AND STABILITY OF THE TREE/SHRUB. STAKES SHOULD BE FIRMLY POSITIONED. HESSIAN TAPE IS TO BE PLACED AROUND THE TREE AND STAKES ALLOWING SOME MOVEMENT IN ORDER TO ALLOW THE TRUNK TO DEVELOP STRENGTH OVERTIME.

GARDEN EDGING

USE EITHER 'HAVEN' BRICK EDGING OR SIMILAR LAID ON A 50MM THICK BED OF MORTAR, OR TREATED TIMBER EDGING SECURED WITH INGROUND TIMBER STAKES. ALL GARDENS ARE TO HAVE EDGING INSTALLED AND BE INSTALLED AS PER PLAN.

RETAINING WALLS

REFER TO MANUFACTURERS INSTRUCTIONS FOR CONSTRUCTION OF RETAINING WALLS. DETAILS ON THIS PLAN ARE A GUIDE ONLY.

COMPLETION

SITE IS TO BE CLEARED OF ANY SURPLUS MATERIALS AND DEBRIS PRIOR TO PRACTICAL COMPLETION. WORK IS TO BE COMPLETED TO THE SATISFACTION OF COUNCILS GUIDELINES AND ANY DA CONDITIONS

MAINTENANCE PERIOD

A 12 MONTH MAINTENANCE PERIOD FROM THE DATE OF PRACTICAL COMPLETION WILL APPLY. DURING THIS TIME THE OWNER IS RESPONSIBLE FOR RECTIFYING ANY DEFECTIVE WORK. DURING THE MAINTENACE PERIOD THE FOLLOWING ACTIVITIES ARE TO BE UNDERTAKEN.

a) REPLACEMENTS: ANY PLANTS/TREES THAT HAVE DIED SHALL BE REPLACED WITH THE SAME SPECIES AND SIZE AS INDICATED ON THIS PLAN. THE SPECIMENS MUST BE IN GOOD HEALTH AND FREE FROM PESTS AND DISEASES.

b) WATERING: REGULAR WATERING OF PLANTS IS REQUIRED. PLANTS SHOULD BE WATERED TWICE A WEEK WITHIN THE FIRST

2 MONTHS OF PLANTING AND AND DURING DRY PERIODS. LESS FREQUENT WATERING IS REQUIRED ONCE PLANTS ARE ESTABLISHED AND DURING PERIODS OF RAIN. THE CONTRACTOR/OWNER SHOULD USE THEIR DISCRETION.

c) GARDEN BEDS: GARDEN AREAS SHOULD BE REGULARLY WEEDED AND MULCH TOPPED UP IF REQUIRED. NO BARE SOIL IS TO BE PRESENT AND SPECIFIED DEPTHS MAINTAINED.

d) LAWN AREAS: LAWN AREAS SHALL BE MOWN REGULARLY (AT LEAST ONCE A WEEK IN GROWING SEASON) IN ORDER TO PROMOTE A THICK LAWN THAT OUTCOMPETES ANY WEEDS. LAWN CLIPPINGS ARE NOT TO BE SPREAD OVER GARDEN AREAS. ANY DEAD AREAS OF LAWN OCCURING THE MAINTENANCE PERIOD, ARE TO BE REPLACE WITH THE TURF VARIETY SPECIFED IN THE PLAN.

e) PRUNING: ADEQUATE HORTICULTURAL PRUNING METHODS SHOULD BE USED ON PLANTS AS BECOMES NECESSARY. ANY HEDGES ARE TO BE TRIMMED REGULARLY, DEAD AND DANGEROUS TREE BRANCHES PRUNED AND LIGHT PRUNING OF SHRUBS TO PROMOTE THICK FOLIAGE COVER.

f) FERTILISING: 'ORGANIC LIFE' FERTILISER OR EQUIVELANT SHALL BE APPLIED AS PER MANUFACTURERS INSTRUCTIONS TO ALL GARDEN BEDS ONCE PER MONTH. DYNAMIC LIFTER OR SIMILAR SHOULD BE APPLIED TO ALL LAWN AREAS TWICE A YEAR, ONCE IN MID SPRING AND ONCE IN EARLY SUMMER. WATER THOROUGHLY AFTER EACH APPLICATION OF FERTILISER.

[Click Here to View Our Plant Profiles!](#)

Revision Schedule

Issue:	Description:	By:	Date:
B	Arch: Mark Up	JS	14/04/20
C	Arch: Mark Up	JS	16/04/20
D	Arch: Tree	JS	29/04/20
E	Arch: Tree	JS	01/05/20
Drafted: JS		Scale: 1:200 @A3 	
Sheet: 2 of 3		Reference: LP 01	

Designed by:  
**Julian Saw**  
**Diploma of Horticulture**  
**(Landscape Design)**

General Notes:  
1. See Architects drawings for site levels, setbacks and extent of cut and fill.  
2. This plan shall be read in conjunction with the Hydraulic Engineers drawing.  
3. All relevant Australian standards are to be adhered to.  
4. Any structural items are to be installed as per the manufacturer/engineers specifications.  
5. This plan is indicative only and not for construction purposes.

SITE CALCULATIONS		
LOT AREA	758.9 sq m	
LANDSCAPED AREA TOTAL	223.6 sq m	29.47%

[Click Here to View Our Plant Profiles!](#)

Client: **Group Architects**

Client Signatures:  
1.  
2.

Job No. **200045**


Drawing: **Plant List/Specification**

Address: **40 Glendon Road**  
**Double Bay**

Council/Lodgement:  
**Woolahra Council**

Ph: 1300 DAPPLE  
(1300 327 753)  
E: info@dappledesigns.com.au  
www.dappledesigns.com.au





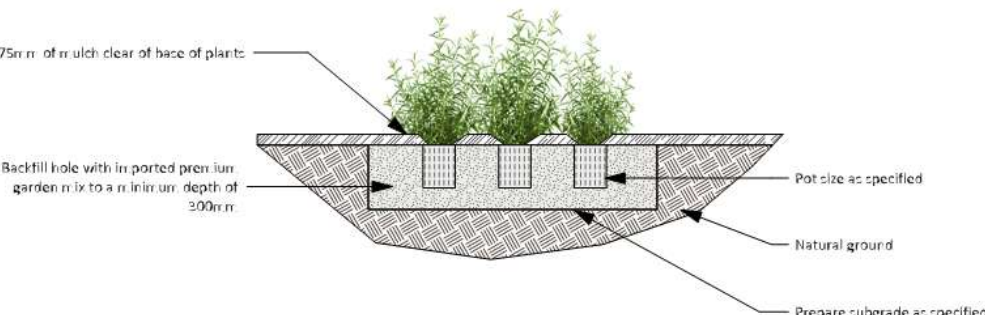
Labels: Turf, Natural ground, 50mm depth of turf underlay, Prepare subgrade as specified.

DETAILS

1. TURF ROLLS ARE TO BE IN GOOD HEALTH, FREE FROM PESTS AND DISEASES AND WITHOUT HOLES
2. APPLY WATER SAVING CRYSTALS TO THE GROUND PRIOR TO LAYING
3. BUT ROLLS CLOSELY TOGETHER TO AVOID GAPS AND DIEBACK
4. WATER THOROUGHLY AFTER PLANTING AND REGULARLY UNTIL ESTABLISHED

TURF LAYING DETAIL

SCALE 1:20



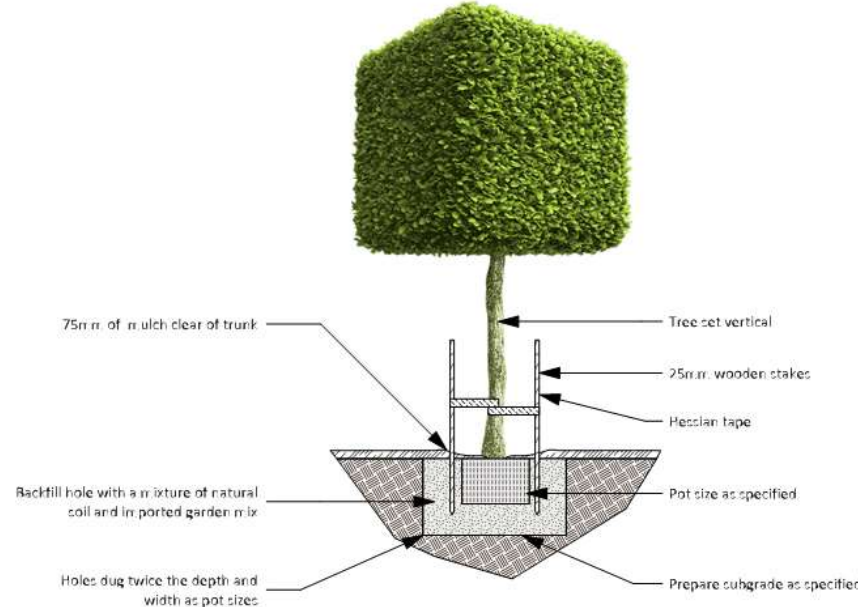
Labels: 75mm of mulch clear of base of plants, Backfill hole with imported premium garden mix to a minimum depth of 300mm, Pot size as specified, Natural ground, Prepare subgrade as specified.

DETAILS

1. SPECIMENS ARE TO BE IN GOOD HEALTH AND FREE FROM PESTS AND DISEASES
2. GENTLY LOOSEN ROOTS IF REQUIRED, PRIOR TO PLANTING
3. WATER THOROUGHLY AFTER PLANTING
4. REFER TO PLAN FOR QUANTITIES AND SPACING

SHRUB & GROUNDCOVER PLANTING DETAIL

SCALE 1:30



Labels: 75mm of mulch clear of trunk, Tree set vertical, 25mm wooden stakes, Hessian tape, Pot size as specified, Prepare subgrade as specified, Backfill hole with a mixture of natural soil and imported garden mix, Holes dug twice the depth and width as pot sizes.

DETAILS

1. SPECIMENS ARE TO BE IN GOOD HEALTH AND FREE FROM PESTS AND DISEASES
2. WATER THOROUGHLY AFTER PLANTING

TREE PLANTING DETAIL

SCALE 1:40

Revision Schedule			
Issue:	Description:	By:	Date:
B	Arch: Mark Up	JS	14/04/20
C	Arch: Mark Up	JS	15/04/20
D	Arch: Tree	JS	29/04/20
E	Arch: Tree	JS	01/05/20

Drafted:  
JS

Scale: 1:200 @A3

Sheet:  
3 of 3

Reference:  
LP 01

Designed by:

**Julian Saw**  
Diploma of Horticulture  
(Landscape Design)

General Notes:

1. See Architects drawings for site levels, setbacks and extent of cut and fill.
2. This plan shall be read in conjunction with the Hydraulic Engineers drawing.
3. All relevant Australian standards are to be adhered to.
4. Any structural items are to be installed as per the manufacturer/engineers specifications.
5. This plan is indicative only and not for construction purposes.

SITE CALCULATIONS		
LOT AREA	758.9 sq m	
LANDSCAPED AREA TOTAL	223.5 sq m	29.47%

[Click Here to View Our Plant Profiles!](#)

Client: **Group Architects**

Client Signatures:

1.

2.

Job No. **200045**

Drawing: **Construction Details**

Address: **40 Glendon Road  
Double Bay**

Council/Lodgement: **Woollahra Council**

**DappleDesigns**

Ph: 1300 DAPPLE  
(1300 327 753)  
E: info@dappledesigns.com.au  
www.dappledesigns.com.au



## **WOOLLAHRA LEP 2014 Clause 4.6 Exceptions to Development Standards – Height**

Proposed demolition of the existing dwelling and construction of a new two storey multi dwelling housing development with basement car parking and associated landscaping works at

**No. 40 Glendon Road,  
Double Bay**

Prepared for:

**Prominent Ventures Pty Ltd**  
C/- Group Architects  
Level 1, 46-48 Dunning Avenue  
Rosebery NSW 2018

Prepared by:

**GSA PLANNING**  
Urban Design, Environmental & Traffic Planners  
(A.B.N 18 003 667 963)  
95 Paddington Street, Paddington NSW 2021  
p: 02 9362 3364  
e: [info@gsaplanning.com.au](mailto:info@gsaplanning.com.au)

JOB NO. 20015  
May 2020

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

---

**APPLICANT'S NAME:** Prominent Ventures Pty Ltd

**SITE ADDRESS:** No. 40 Glendon Road, Double Bay

**PROPOSAL:** Proposed demolition of the existing dwelling and construction of a new two storey multi dwelling housing development with basement car parking and associated landscaping works.

**1. (i) Name of the applicable planning instrument which specifies the development standard:**

Woollahra Local Environmental Plan (LEP) 2014

**(ii) The land is zoned:**

R3 Medium Density Residential

**(iii) The number of the relevant clause therein:**

Clause 4.3 – Height of Buildings

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning.

**2. Specify the nature of Development Standard sought to be varied and details of variation:**

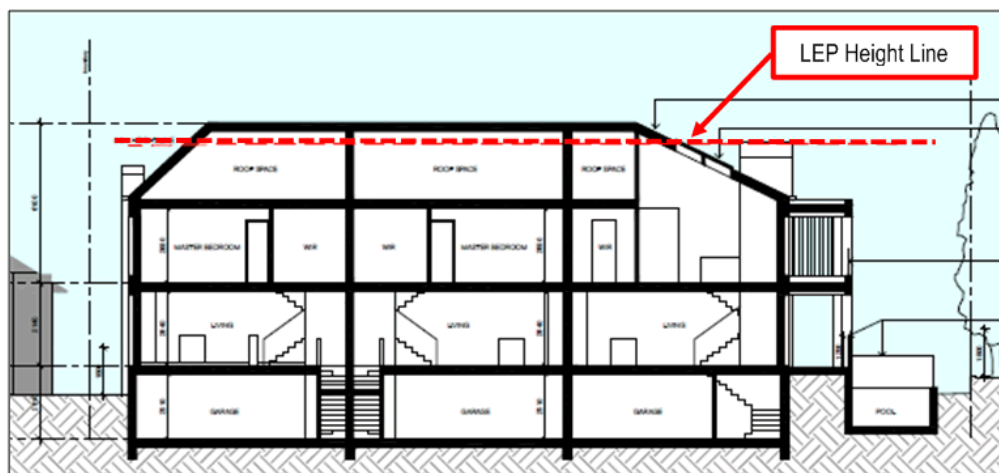
The development standard to which this request for variation relates is Clause 4.3 of the LEP – Height of Buildings. This Clause operates in conjunction with the Height Map which indicates a maximum 9.5 metres applies to the subject site. Clause 4.3 is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

The proposed new two storey multi dwelling housing development will have a proposed maximum building height of 10.35m. The proposal is, therefore, non-compliant with the maximum building height control of 9.5m, in the order of 850mm (8.9%) (see Figure 1 on the following page).

As indicated in Figure 1, on the following page, the non-complaint portion of the development relates to the pitched roof form. The proposed pitch has been designed to be proportional to the two-storey form. A building that complies with the height limit would result in a roof form that is too shallow for this building. The proposed height facilitates a medium density development consistent with the planning objectives of the area. The roof form is located within the buildable area.

It should also be noted, that in order for the building to comply with Council's freeboard flooding controls, the building has been lifted and this contributes to the additional height.

Importantly, the non-compliance will not reduce the amenity or privacy of the neighbouring developments. The proposed level of additional overshadowing is minor and there are no windows proposed above the 9.5m height line. The proposed lift shafts also sit below the height line.



Source: Group Architects

**Figure 1: Proposed building showing height non-compliance**

### 3. Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (*Initial Action*), Preston CJ notes at [87] and [90]:

*Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.*

However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

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

The proposal seeks flexibility in the application of the height development standard to the development in the circumstance of this case.

### 5. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause states, inter alia:

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.



This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in these circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

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

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

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

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

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

Despite the non-compliance, the proposal is consistent with the desired medium density character of the area. The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls. Consistency with the objectives of the height standard will now be discussed.

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

The proposed building facilitates a medium density development, consistent with the planning objectives of the area. The proposed building is consistent with the recently approved dual occupancy at No. 42 Glendon Road which is similar in bulk and scale to the proposal and provides additional housing in the zone. The proposal has been skillfully designed to complement the bulk and scale of surrounding development, demonstrating compatibility with the desired future character of the Manning Road Precinct. In fact, the roof form is located within the buildable area and therefore adequately setback from neighboring properties. The proposal building height has also been increased due to the freeboard controls. Compliance with these controls is consistent with the desired future character.

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

The site is located within a R3 Medium Density Zone and complies with the zone objectives. The proposal is consistent with No. 42 Glendon Road, a recently approved dual occupancy development which will provide additional housing in the area. Additionally, the style of the roof form is consistent with other development in the area and a smaller roof form would look

disproportional to the two storey form. The shadow diagrams indicate that the proposed development will create minimal additional overshadowing to the neighboring developments as the roof form is compliant with the building setbacks.

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

The shadow diagrams prepared indicate that the proposal maintains the existing level of solar access for the neighbouring properties. The minimal additional overshadowing maintains solar access to the rear private open space of No. 42 Glendon Road between 9am and 12pm. The northern windows at the upper floor level of No. 42 Glendon will have access to sunlight at 12pm, as existing. The remainder of the overshadowing occurs to the Bowling Club and street network. The proposal will not diminish the neighbouring properties access to solar access and complies with the DCP control.

- (d) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion, and**  
**(e) to protect the amenity of the public domain by providing public views of the harbour and surrounding areas.**

The non-compliance will not reduce the neighbouring properties amenity in relation to public and private views, loss of privacy, overshadowing or visual intrusion.

Firstly, the DCP does not indicate any view corridors across the site. The proposal maintains the significant views and vistas identified in the Manning Road Precinct map which relate to significant views of the harbour and surrounding areas. The proposal has been sited and designed to ensure that views are maintained landscaping which includes the sensitive location of any landscaping.

Secondly, the non-compliance will not reduce the privacy of the neighbouring developments as there are no windows proposed above the 9.5m height line. The proposed lift shafts also sit below the height line. The proposal will maintain the existing levels of visual and acoustic privacy as the proposal will retain its residential use. Given the continuing residential use, it is unlikely that there would be significant additional noise generation associated with the proposal.

Thirdly, as indicated above, the non-compliance will not unreasonably reduce the neighbours access to sunlight. The proposed additional overshadowing continues to provide solar access to the rear private open space of No. 42 Glendon Road between 9am and 12pm and the northern windows at the upper floor level at 12pm.

Finally, regarding visual intrusion, the proposed Juliette balconies will include full height balustrade screens, no windows are located within the non-complaint portion of the roof form; and privacy screens have been added where appropriate.

It should be noted that the portion of non-compliance only relates to the roof form which does not include windows or balconies. The roof form is within the buildable area and complies with the side setbacks.

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



**Test 3 - The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;**

In our opinion, the underlying purpose of the development standard is to present a building that is compatible with the height, context and character of the locality whilst preserving the amenity of adjoining properties.

The proposed non-compliance of 850mm relates to the pitched roof form only. The proposed roof form will be located within the buildable area and comply with the setback controls. The design of the proposed pitch is proportional to the two-storey form and facilitates a medium density development that consistent with the planning objectives of the area.

The non-compliance will not reduce the amenity or privacy of the neighbouring developments. The proposed level of additional overshadowing is minor and there are no windows proposed above the 9.5m height line. Privacy screens have been added where appropriate and there is not expected to be an increase in the level of noise or visual intrusion. Also, the proposed lift shafts also sit below the height line. The building is required to comply with Council's freeboard flooding controls which contributes to the additional height.

In our opinion, the non-compliance is acceptable in this instance.

**5.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard**

Environmental planning grounds is deliberately broad and could include contextual fit, social benefits and the absence of environmental impacts. This section must consider grounds that relate to the subject matter, and the objects of the EPA Act (Section 1.3): in particular (c) to promote the orderly and economic development of the land and (g) to promote good design and amenity of the built environment. Also consider whether the proposal achieves the objectives of the precinct (Woollahra). For interest sake *Four2Five v Ashfield Council* [2015] NSWLEC 90 discussed the matter at [26] as follows:

*These phrases are of wide generality enabling a variety of circumstances or grounds to justify contravention of the particular development standard. The "sufficient ... grounds" must be "environmental planning grounds" by their nature. The word "environment" is defined in the EPA Act to mean "includes all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings".*

The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

A proposal with a compliant building height will result in a building that looks incorrect architecturally. A shallower pitch to comply with the controls would be visually inconsistent with the two storey form and appear odd in the streetscape. The non-compliant portion of the roof form add the additional roof height that is appropriate for the design of the building. The proposed pitch has been designed to be proportional to the two-storey form. The roof form is located within the buildable area and does not increase the visual bulk or scale of the building. The proposed height facilitates a medium density development consistent with the planning objectives of the area.

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].

Accordingly, in our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard, as required in Clause 4.6(3)(b).

#### 6. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) guides the consent authority's consideration of this Clause 4.6 variation request. It provides that:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

The applicant submits that the consent authority can be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this request, and having regard to the site and locality.

In our opinion, the proposal achieves the objective of the building height development standard, as already demonstrated; and the R3 Zone, as discussed below:

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

**Response:** The proposal replaces the existing single dwelling, which is in an ageing condition, with a well-designed multi dwelling housing development that provides additional medium density housing in the locality. The proposal provides three dwellings with high levels of amenity to meet the needs of the future residents. It should also be noted that the proposal is similar to the approved development at No. 42 Glendon Road. The development is a dual occupancy development that provides additional housing in the area.

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

**Response:** The proposal provides three dwellings within an emerging medium density residential environment. The proposed dwellings comprise three bedrooms and contribute to the variety of housing types in the area.

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

**Response:** The proposed multi dwelling housing is a high-quality development that will be a positive contribution to the area. The proposal has been skilfully designed to complement the bulk and scale of surrounding development. The development is two storeys in height and incorporates a pitched roof form that appears consistent in the streetscape, demonstrating compatibility with the desired future character of the Manning Road Precinct and the emerging medium density character of the area. It

should also be noted that the proposal is similar to the approved dual occupancy at No. 42 Glendon Road. Both developments are a similar bulk and scale, and both achieve the future desired character of the area and zone.

From this, we consider the proposal is in the public interest and should be supported.

#### 7. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning, Industry and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. While the proposal does not exceed the development standard by over 10%, the Planning Circular provides for the Local Planning Panel to assume concurrence.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The height non-compliance will enhance the amenity and functionality of the proposed multi dwelling housing development without significantly impacting neighbouring properties.

The public benefit of maintaining the development standard is not considered significant given that, regardless of the non-compliance, the proposal will appear consistent in the streetscape.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

#### 8. Conclusion

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the compliance matrix prepared in light of *Initial Action* (see Table 1 on the following page).

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives of the R3 Zone pursuant to the LEP. On that basis, the request to vary Clause 4.3 should be upheld.



Table 1: Compliance Matrix

Para (Initial Action)	Requirement	Section of this Report	Summary	Satisfied
10	Is it a development standard (s.1.4)	1	Yes	YES
11	What is the development standard	1	Clause 4.3 - Height of Buildings	YES
12	What is the control	1 & 2	9.5m	YES
14	<b>First Precondition to Enlivening the Power</b> – Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
15, 25	<b>1<sup>st</sup> Positive Opinion</b> – That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement.	5	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	<b>First Aspect is Clause 4.6(3)(a)</b> – That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in <i>Wehbe</i> .	5.1	The proposal satisfies Tests 1 and 3 of <i>Wehbe</i> : <ul style="list-style-type: none"> <li>The objectives of the standard are achieved notwithstanding the non-compliance with the standard; and</li> <li>The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.</li> </ul>	YES
23-24	<b>Second Aspect is Clause 4.6(3)(b)</b> – The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: <ol style="list-style-type: none"> <li>The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.</li> <li>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.</li> </ol>	5.2	Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> <li>The proposed height facilitates a medium density development consistent with the planning objectives of the area;</li> <li>The proposed pitch has been designed to be proportional to the two-storey form;</li> <li>The roof form is located within the buildable area and side setbacks;</li> <li>The proposal is required to comply with Council's freeboard flooding controls which contribute additional height;</li> <li>The non-compliance will not reduce the amenity or privacy of the neighbouring developments.</li> <li>The proposed level of additional overshadowing is minor;</li> <li>There are no windows proposed above the 9.5m height line; and</li> <li>The proposed lift shafts also sit below the height line.</li> </ul>	YES
26-27	<b>2<sup>nd</sup> Positive Opinion</b> –	6	The proposed development is consistent with the objectives of the	YES

	That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.		height standard as addressed under Test 1 of <i>Webb</i> . The proposal is also consistent with the objectives of the R3 Zone, as addressed in the SEE.	
28-29	<b>Second Precondition to Enlivening the Power –</b> That the concurrence of the Secretary has been obtained [Clause 4.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under Clause 4.6.	7	As the relevant matters for consideration under Clause 4.6 have been satisfied as outlined above, the Council can grant development consent.	YES

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Completion Date: 20 August 2020

## REFERRAL RESPONSE – DEVELOPMENT ENGINEERING

**FILE NO:** Development Applications/ 143/2020/1  
**ADDRESS:** 40 Glendon Road DOUBLE BAY 2028  
**PROPOSAL:** Demolition of the existing dwelling & the construction of a new two storey multi-dwelling housing development with basement car parking, a swimming pool and associated landscaping works  
**FROM:** Ms S Lin  
**TO:** Mrs L Holbert

### 1. ISSUES

- Stormwater
- Referral to WaterNSW
- Refer to comments from Council's Traffic Engineers separately.

### 2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environment Effects, referenced 20015, prepared by GSA Planning, dated May 2020.
- Architectural Plans, referenced 2019-054, prepared by Group Architects, dated June 2020.
- Survey, referenced 1648, prepared by GeoStrata, dated 22/04/2020.
- Stormwater Management Plan, referenced 220-1883 Rev B, prepared by Green Arrow, dated 05/05/2020.
- Geotechnical Report, referenced 32966PNrpt, prepared by JK Geotechnics, dated 14/05/2020.
- Flood Report, referenced 220-1883, prepared by Green Arrow, dated 03/06/2020
- Traffic Report, referenced 20.040r02v02, prepared by Traffix, dated 11/06/2020.

### 3. ASSESSMENT

Comments have been prepared on the following.

#### a. Site Drainage comments

*Preliminary assessment of the submitted stormwater plans has identified the following issues which shall be addressed by the applicant prior to further assessment:*

- a) *Pursuant to Chapter E2.2.3 of Council's DCP, stormwater treatment system shall be provided to the proposed development. In this regard, details of the proposed proprietary stormwater treatment system and demonstrate how it complies with Council's water quality targets must be provided. Results from the pollution modelling program such as MUSIC shall be submitted with the revised stormwater plans.*

- b) Notation shall be depicted on the stormwater drawings that the proposed below ground structures are fully tanked and no subsoil drainage is permitted to be discharged to the Sydney Water channel.*
- c) Stormwater runoff from the site must be directed to a min. 450mm x 450mm junction pit prior discharging to the Sydney Water channel.*

**b. Traffic comments**

*Refer to comments from Council's Traffic Engineer for the vehicular access point.*

**c. Vehicle Access & Accommodation comments**

*Council's Development Engineers have no objection to the proposed basement layout. However it is noted that Council's Traffic Engineer has not finalized their comment regarding the proposed vehicular access point and the justification provided by the applicant's Traffic Engineer. It is advised that until this matter is resolved, Council's Development Engineer will not be able to finalise the assessment as alternative access point will result in new design of basement layout.*

**d. Other matters**

*It is noted from the geotechnical report the proposed excavation will extend below the water table and dewatering will be necessary, As such, it is advised that referral to WaterNSW is required for this application.*

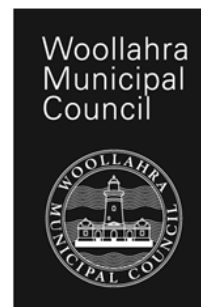
**4. RECOMMENDATION**

Council's Development Engineer has determined that insufficient information has been submitted to enable an assessment of the proposal. The following information is required before any further assessment of the application can be undertaken:

- The submission of revised stormwater plans.

## Memorandum - Traffic

Date 24 August, 2020  
File No. Development Applications: 142/2020/1  
To Mrs L Holbert  
CC Ms S Lin  
From Ms E Fang  
Address **40 GLENDON ROAD DOUBLE BAY 2028**



ABN 32 218 483 245

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

Correspondence to  
General Manager  
PO Box 61  
Double Bay NSW 1360  
DX 3607 Double Bay  
records@woollahra.nsw.gov.au  
www.woollahra.nsw.gov.au  
**Telephone (02) 9391 7000**  
**Facsimile (02) 9391 7044**

I refer to the memo from the Planning Department dated 12 June 2020 requesting comments in relation to the above.

Traffic Engineering has reviewed:

1. Statement of Environmental Effects (SEE), referenced Job No. 20015, prepared by GSA Planning, dated May 2020;
2. Traffic Impact Statement, referenced 20.040r01v02, prepared by TRAFFIX, dated 24 April 2020;
3. Traffic Response to Request for Information, referenced 20.040r02v02, prepared by TRAFFIX, dated 11 June 2020;
4. Updated Architectural Plan – Basement/Garage Plan & Driveway Section, Issue 4, referenced 2019-054, prepared by Group Architects, dated June 2020;
5. Architectural Plans, Issue 3, referenced 2019-054, prepared by Group Architects, dated April 2020.

### Proposal

Demolition of the existing dwelling & the construction of a new two storey multi-dwelling housing development with basement car parking, a swimming pool and associated landscaping works

Attachment to report 20210323 (Title Referral Response - Traffic)

## COMMENTS

### Parking Provision

The parking provision for the proposed development has been assessed in accordance with Council's *DCP 2015 Chapter E1 Parking and Access*:

*Table 1: Car Parking Provision*

Residential Component	Quantity	DCP Maximum Requirement per Dwelling	DCP Maximum Allowed Parking
3 bedrooms	3	2	6
Visitor	3	0.25	0.75 (1)
Total allowed			7

The proposal includes six (6) designated parking spaces in three (3) double garages, which complies with DCP's maximum requirement for multi-dwelling housing and is deemed satisfactory.

*Table 2: Bicycle and Motorbike Parking Provision*

BICYCLE			
	Quantity	DCP Minimum Requirement	DCP Minimum Required Parking
Residential Residents	3 dwellings	1 per dwelling	3
Residential Visitors	3 dwellings	1 per 10 dwellings	0.3 (0)
Total			3
MOTORBIKE			
	Quantity	DCP Minimum Requirement	DCP Minimum Required Parking
Car Spaces	6	1 per 10 car spaces	0.6 (1)
Total			1

In response, the proposal includes one secure storage room for each dwelling that can accommodate a Class 1 bike locker under AS2890.3 Part 3: *Bicycle Parking*, which is deemed acceptable. The non-provision of motorcycle parking will result in a shortfall of one (1) parking space than DCP's minimum requirement. It is however acknowledged that given the nature and scale of the proposal, motorcycle parking demand will be minimal, and the provision can be readily made, thus the marginal shortfall is considered acceptable.

### Traffic Generation

Traffic generation from the proposed development has been calculated in accordance with *RMS Guide to Traffic Generating Developments 2002*, and *RMS Guide to Traffic Generating Developments Updated traffic surveys TDT 2013/04a*.

### **Existing Development**

Attachment to report 20210323 (Title Referral Response - Traffic)

*Low Density Residential*

- Weekday peak hour vehicle trips: 1 dwelling x 0.95-0.99 per dwelling = 0.95-0.99 trips
- Daily vehicle trips: 1 dwelling x 10.7 per dwelling = 10.7 trips

**Proposed Development**

*Medium Density Residential – Larger unit*

- Weekday peak hour vehicle trips: 3 dwellings x 0.5-0.65 per dwelling = 1.5-1.95 trips
- Daily vehicle trips: 3 dwellings x 5.0-6.5 per unit = 15-19.5 trips

**Net Increase**

- Weekday peak hour vehicle trips = 0.51-1 trips
- Daily vehicle trips = 4.3-8.8 trips

Based on the above calculation, the proposed development will not generate unacceptable adverse impacts on the surrounding road network in terms of traffic flow efficiency and road safety considerations.

Access Driveway

Pursuant to Clause 1.2 (2) of Council's LEP, it is one of the aims that impacts of traffic and parking be minimised. It is evident that the proposal to relocate the existing public utilities along Glendon Road to accommodate a new access driveway does not comply with such aims.

It should also be noted that the proposed shared crossing arrangement would result in conflict of traffic from vehicles entering/leaving the subject site and the neighbouring site of 42 Glendon Road. Given the current design adopts a combined access driveway, and that the aisle for garage of house 3 is relatively narrow, for which a turning table is proposed to allow vehicle movements, Traffic Section queries the conclusion made in traffic report stating that opposing vehicles would be a rare occurrence, and that chances of vehicles waiting on the street will be minimal.

As such, the proposal fails to demonstrate that impacts of traffic and parking have been minimised, and it arouses concerns for potential conflicts from vehicles accessing/exiting the subject site and neighbouring site, therefore the proposed new access driveway with a shared crossing arrangement cannot be supported and is considered undesirable given there is an existing access point via Kiaora Road. These issue should be addressed prior to any further assessment.

**RECOMMENDATION**

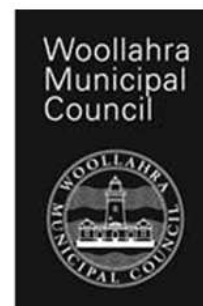
Council's Traffic Engineer has reviewed the application and recommend that the development not be supported at this stage until the following issues are addressed:

1. Access Driveway – the proposal fails to demonstrate that impacts of traffic and parking have been minimised, and it arouses concerns for potential conflicts from vehicles accessing/exiting the subject site and neighbouring site, therefore the proposed new access driveway with a shared crossing arrangement cannot be supported and is considered undesirable given there is an existing access point via Kiaora Road. These issue should be addressed prior to any further assessment.

Attachment to report 20210323 (Title Referral Response - Traffic)



## Memorandum - Drainage



ABN 32 218 483 245

Redleaf Council Chambers

536 New South Head Road  
Double Bay NSW 2028

Correspondence to

General Manager

PO Box 61

Double Bay NSW 1360

DX 3607 Double Bay

records@woollahra.nsw.gov.au

www.woollahra.nsw.gov.au

**Telephone (02) 9391 7000**

**Facsimile (02) 9391 7044**

Date 12/11/2020  
File No. Development Applications: DA2020/143/1  
To Mr Robert Lam  
CC  
From Michael Casteleyn  
**Address** 40 Glendon Road DOUBLE BAY

---

I refer to the following documents received for this report:

20/97279 document - Flood Assessment - DA2020/143/1 - 40 Glendon Road DOUBLE BAY

### RECOMMENDATION

Council's drainage Engineer has determined that the development proposal is generally satisfactory, subject to the following conditions;

#### C.54 Flood Protection

The Construction Certificate plans and specifications, required by clause 139 of the *Regulation*, must include a Flood Risk Management Plan on the basis of the Flood Planning Level (FPL) detailing:

- a. A permanent flood risk management plan shall be installed in a prominent area of the basement carpark.

- b. A permanent flood risk management plan shall be installed in an area frequented by the residents such as the laundry.
- c. The driveway entry is to be protected by a mechanical flood barrier with the threshold set to the flood planning level of 4.5m AHD.
- d. Permanent brass plaques are to be mounted adjacent to all mechanical flood barriers explaining their purpose and operation
- e. All below ground construction is to be fully tanked.
- f. Emergency self-powered lights, indicating the safe exit to a flood free area above the probable maximum flood (PMF) are to be installed in the car parking area.
- g. All habitable floors have to be above or protected from flooding to the flood planning level.
- h. Flood compatible materials shall be used for all flood exposed construction
- i. All flood exposed electrical wiring and equipment is to be waterproofed.
- j. All flood protection measures are to be inspected and certified as fit for purpose after construction is complete by a engineer experienced in flood mitigation.

1 September 2020

## REFERRAL RESPONSE – TREES & LANDSCAPING

**FILE NO:** DA 143/2020/1

**ADDRESS:** 40 Glendon Road DOUBLE BAY 2028

**PROPOSAL:** Demolition of the existing dwelling & the construction of a new two storey multi-dwelling housing development with basement car parking, a swimming pool and associated landscaping works

**FROM:** David Grey - Tree & Landscape Officer

**TO:** Mrs L Holbert

**I refer to the following documents received for this report:**

- Statement of Environmental Effects, prepared by GSA Planning, dated May 2020
- Survey Plan No. 1648, drafted by Geo Strata, dated 22 April 2020
- Architectural Drawing No. A 01 – A 08, drawn by Group Architects, dated April 2020
- Arboricultural Impact Assessment Report, written by Graham Brooks Arboricultural Services, dated 12 May 2020
- Landscape Plan No. LP 01 (3 sheets), designed by Dapple Design, dated 1 May 2020

A site inspection was carried out on 1 September 2020

**Relevant Control:**

- Woollahra Local Environment Plan 2014
- Woollahra Development Control Plan 2015
- The comments and recommendations within this Referral Response have taken into consideration the guidelines established within Australian Standard AS 4373 – Pruning of amenity trees and Australian Standard AS 4970 – Protection of trees on development sites

**ISSUES**

Removal of existing tree from rear of site

## COMMENTS

This proposal calls for the removal of a specimen of Sweet Viburnum tree from the rear boundary of the site. The crown of the tree is of good appearance whilst the structure of the tree was found to be moderate to poorly formed.

Given the extent of the proposed excavations within the root zones of the tree and the overall extent of the development I believe it is a more assured outcome to allow removal of this tree and its replacement with an advanced specimen close to the completion of the development. I don't believe the existing tree has a landscape status that would warrant modification of the proposal. An advanced specimen of the NSW native Tuckeroo tree is recommended as a replacement adjacent to the tree being removed.

## RECOMMENDATIONS

Council's Tree and Landscape Officer has determined that the development proposal is satisfactory in terms of tree preservation and landscaping, subject to compliance with the following Conditions of Consent.

## CONDITIONS OF CONSENT

*Please note that the standard conditions of consent are generally modified by the Technical Services Department to suit a particular development application. Please ensure all Technical Services conditions of consent are cut and pasted from this document only, and not inserted as standard conditions using the automatically generated (F3) function*

### A. General Conditions

#### A.1 Tree Preservation & Approved Landscaping Works

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

- a) The following trees shall be retained

- Trees on Council Land

Council Ref No.	Species	Location	Dimension (metres)	Tree Value
7	<i>Lophostemon confertus</i> (Brush Box)	Front – Council verge – Adj to 38 Glendon Rd.	12 x 10	\$5,000

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

- b) The following trees may be removed:

Council Ref No.	Species	Location	Dimension (metres)
6	<i>Viburnum odoratissimum</i> (Sweet Viburnum)	Rear – West boundary	8 x 8

**Note:** Tree/s to be removed shall appear coloured red on the construction certificate plans.

## A.2 Approved Plans and supporting documents

Reference	Description	Author/Drawn	Date(s)
LP 01 (3 sheets)	Landscape Plan	Dapple Design	1 May 2020
	Arboricultural Impact Assessment Report	Graham Brooks Arboricultural Services	12 May 2020

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

### B.1 Establishment of Tree Protection Zone (TPZ) Fence

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

#### a) Tree Protection Zone areas

Council Ref No.	Species	Tree Location	Fence Radius from Centre of Trunk (Metres)
1 - 5	<i>Cupressus sempervirens</i> (Italian Cypress)	Standing on 18 Kiaora Rd – North west corner (Bowling Club)	Fence as single enclosure 1.4 metres from southern boundary
7	<i>Lophostemon confertus</i> (Brush Box)	Front – Council verge – Adj to 38 Glendon Rd.	2m

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

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

- Tree Protection Zones shall be fenced with a 1.8 metre high chainmesh or weldmesh fence and secured to restrict access. The fence shall be established prior to any materials being brought onto the site and before the commencement of works including demolition. The area within the fence shall be mulched and maintained to a depth of 75mm. The soil within the TPZ shall be kept in a moist condition for the duration of the construction works. Unless approved by the site arborist there shall be no access within the TPZ.
- A sign identifying the Tree Protection Zone shall be erected on each side of the protection fence indicating the existence of a TPZ. Signage must be visible from within the development site.
- No excavation, construction activity, grade changes, storage of materials, stockpiling, siting of works sheds, preparation of mixes or cleaning of tools is



permitted within Tree Protection Zones, unless specified in Condition B.2 of this consent.

- e) Temporary access within the TPZ for pedestrian and machinery movements shall only be permitted with the approval of the site arborist or unless specified in this consent.
- f) The site foreman must be made aware of all tree protection requirements associated with these conditions of consent by the project arborist. Any subsequent site personnel and contractors to the site must be made aware of all tree protection requirements by the site foreman.
- g) The project arborist shall provide written certification of compliance with the above condition.

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

**C.1 Payment of Security, Levies and Fees (S80A(6) & S94 of the Act, Section 608 of the Local Government Act 1993)**

Description	Amount	Indexed	Council Fee Code
<b>LONG SERVICE LEVY</b> under Building and Construction Industry Long Service Payments Act 1986			
<b>Tree Damage Security Deposit –</b> Making good any damage caused to any public tree as a consequence of the doing of anything to which the consent relates.	\$5,000.00	No	T114
<b>INSPECTION FEES</b> under section 608 of the Local Government Act 1993			
Tree Inspection Fee	\$200.00	No	T95

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

**NIL**

**E. Conditions which must be satisfied during any development work**

**E.1 Tree Preservation**

All persons must comply with Council's Development Control Plan (DCP) 2015, Chapter E.3 Tree Management other than where varied by this consent. The DCP applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.

General Protection Requirements

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

- b) Excavation must cease where tree roots with a diameter exceeding 50mm are exposed. The *principal contractor* must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.
- c) Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.

**Note:** Trees must be pruned in accordance with *Australian Standard AS 4373 "Pruning of Amenity Trees"* and *WorkCover NSW Code of Practice Amenity Tree Industry*.

## E.2 Replacement/Supplementary trees which must be planted

Any replacement or supplementary tree shall be grown in accordance with Tree stock for landscape use (AS 2303:2018). The replacement tree shall be planted in a *deep soil landscaped area* and maintained in a healthy and vigorous condition. If the replacement tree is found to be faulty, damaged, dying or dead before it attains a size whereby it is protected by Council's Tree Preservation Order, it must be replaced with another of the same species which complies with the criteria outlined below.

Species/Type	Planting/Location	Container Size/Size of Tree (at planting)	Minimum Dimensions at Maturity (metres)
1 x <i>Cupaniopsis anacardioides</i> (Tuckeroo)	Rear – North west corner	100 litre	8 x 6

The project arborist shall document compliance with the above condition.

## E.3 Hand excavation within tree root zones

Excavation undertaken within the specified radius from the trunks of the following trees shall be hand dug.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
1 - 5	<i>Cupressus sempervirens</i> (Italian Cypress)	Standing on 18 Kiaora Rd – North west corner (Bowling Club)	3m

Small hand tools such as mattocks or using compressed air or water jetting only shall be used. Roots with a diameter equal to or in excess of 50mm shall not be severed or damaged unless approved in writing by the project arborist.

Mechanical excavation is permitted beyond this radius when root pruning by hand along the perimeter line is completed. Exposed roots to be retained shall be covered with mulch or a geotextile fabric and kept in a moist condition and prevented from drying out.

All root pruning must be undertaken in accordance with the Australian Standard 4373 "Pruning of Amenity Trees" and carried out by a qualified Arborist (minimum qualification of Australian Qualification Framework Level 5 or recognised equivalent).

The project arborist shall document compliance with the above condition.

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

**F.1 Amenity Landscaping**

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

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



David Grey  
Tree Officer

Completion Date: 10/6/2020

## **REFERRAL RESPONSE - ENVIRONMENTAL HEALTH**

**FILE NO:** Development Applications/ 143/2020/1  
**ADDRESS:** 40 Glendon Road DOUBLE BAY 2028  
**PROPOSAL:** Demolition of the existing dwelling & the construction of a new two storey multi-dwelling housing development with basement car parking, a swimming pool and associated landscaping works  
**FROM:** K Pakhomova  
**TO:** Mrs L Holbert

### **1. ISSUES**

### **2. DOCUMENTATION**

I refer to the following documents received for this report:

- Statement of Environment Effects, referenced 20015 prepared by GSA Planning , dated May 2020 .
- Architectural Plans, prepared by Group Architects , dated April 2020 ,
- Survey, referenced , prepared by , dated .
- Acoustic Report, referenced , prepared by Acoustic Report Prepared by>>, dated .
- Noise Management Plan, referenced , prepared by , dated .
- Acid Sulphate Soil Report, referenced E32966Plet rev1 , prepared by JK Environments, dated 14 May 2020.
- Land Contamination Report, referenced , prepared by , dated .
- Plan of Management, referenced , prepared by , dated

### **3. RESEARCH**

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

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

### **4. SUMMARY OF PROPOSAL**

It is proposed to demolish the existing single dwelling and construct a new two storey multi dwelling housing development with basement car parking, a swimming pool and associated landscaping works.

### **5. ASSESSMENT**

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

**a) Acoustics**

*NSW Department of Environment & Climate Change: Construction Noise Guideline*  
*NSW Industrial Noise Policy*  
*Local Government Noise Guide*

**a.1. Description of existing acoustic environment**

**a.2 Description of acoustic environment post development**

**a.3 Acoustic Assessment**

**b) Food Premises**

*Food Act 2003*

**c) Hair Salons**

**d) Skin Penetration**

*Public Health Act 1991 No 10*

**e) Acid Sulphate Soils**

Acid Sulphate Soil Report, referenced E32966Plet rev1 , prepared by JK Environments, dated 14 May 2020. Please read below.

**f) Land Contamination (SEPP 55)**

*Contaminated Land Management Act 1997*  
*SEPP 55-Remediation of Land*

**g) Child care**

*Children (Education and Care Services) Supplementary Provisions Regulation 2004*

**h) Swimming Pools**

*Swimming Pools Act 1992*

**i) Ventilation**

#

**j) Lighting**

*Relevant Australian Standard*



**k) Hours of operation**

#

**l) Waste management**

#

**m) Construction**

#

**n) Other matters**

#

## 6. RECOMMENDATION

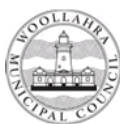
Council's Environmental Health Officer has determined that insufficient information has been submitted to enable an assessment of the proposal. The following information is required before any further assessment of the application can be undertaken:

Acid Sulphate Soil Report, referenced E32966Plet rev1 , prepared by JK Environments, dated 14 May 2020 states 'As such, and considering the information reviewed for this investigation (risk maps, subsurface conditions etc), PASS conditions are considered to be present at the site and are likely to be disturbed during the proposed development works. Disturbed PASS will require management and an **ASSMP** is considered **necessary** for the proposed development described in Section 1.2 of this report'. The applicant is required to provide an Acid Sulphate Soil Management Plan to Council prior to consent for assessment.

**Kristina Pakhomova**

**Environmental Health Officer**

**Date: 10/6/2020**



Woollahra  
Municipal  
Council

27 May 2020

## REFERRAL RESPONSE - HERITAGE

**FILE NO:** Development Applications/ 143/2020/1

**ADDRESS:** 40 Glendon Road DOUBLE BAY 2028

**PROPOSAL:** Demolition of the existing dwelling & the construction of a new two storey multi-dwelling housing development with basement car parking, a swimming pool and associated landscaping works

**FROM:** Charlotte Simons - Heritage Officer

**TO:** Mrs L Holbert

### DOCUMENTATION

The following documentation provided by the applicant has been examined for this referral response:

- Drawing set by Group Architects, dated April 2020, and numbered 2019-054-A00 – A08
- Demolition Report and Heritage Impact Assessment by Zoltan Kovacs Architect, dated February 2020
- Statement of Environmental Effects by GSA Planning, dated May 2020
- Survey plan by Geo Strata, ref 1648 Detail, dated 22 April 2020.

### SITE INSPECTION / RESEARCH

Review of the following documents and photographic evidence:

- Council's property system, to establish dates of earlier building and development applications for the subject and surrounding properties
- Council's photography files relevant to the immediate area
- Council's heritage inventory sheets
- Council's aerial photography and mapping database
- Google Maps – street view.

### STATUTORY AND POLICY DOCUMENTS

The following statutory and policy documents are relevant to the application:

- National Parks & Wildlife Act 1974
- Woollahra LEP 2014
- Woollahra DCP 2015.

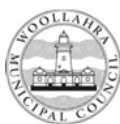
### ASSESSMENT OF HERITAGE IMPACT

**Compliance with the relevant legislative framework and planning controls**

### SIGNIFICANCE OF SUBJECT PROPERTY/TO THE CONSERVATION AREA

The development site comprises one allotment (Lot 8, DP 32788). The extant building is a relatively modified and modest single storey Bungalow style dwelling constructed c1917.

Referral Response – Heritage – DA2020 143 1 – 40 Glendon Road DOUBLE BAY



Woollahra  
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The house has a pair of front facing gables around a small recessed verandah. Externally the house retains little visible evidence of its Inter-War era character as a result of renovations carried out during the 1960s and 1970s, which removed most original exterior features and simplified the principal elevation. The original French pattern terracotta tiles have been replaced with concrete tiles, several original timber windows have been replaced with aluminium sliding windows, the face brickwork has been rendered, and joinery to the gable ends and verandah has been removed. Despite changes to original finishes and materials, the overall form and original internal layout of the house remains somewhat intact. There are several Inter-War bungalows in the vicinity of the subject property that are of similar design, although all of the dwellings have been modified from their original design.

The heritage assessment within the Demolition Report prepared by Zoltan Kovacs provides the following statement of significance for 40 Glendon Road, Double Bay:

*The land was originally part of Sir Daniel Cooper's land grant which was gradually broken up from 1883. Resulting from a later subdivision, the land is not representative of any historic subdivisions. The single storey brick and tile house on the land was built as a double fronted Inter-war Bungalow, in c. 1917, whose Inter-war features are no longer evident due to extensive alterations during the 1960s.*

#### National Parks and Wildlife Act 1974

A basic search conducted on AHIMS (Aboriginal Heritage Information Management System) on 27 May 2020 from the Office of Environment & Heritage NSW (OEH) website has revealed that there are no recorded Aboriginal sites recorded within a 200m buffer in or near the above location.

The site does not contain landscape features that indicate the likely existence of Aboriginal objects as defined in Section 2, Step 2 p.12 of the Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW ('Due Diligence Code') published by the Department of Environment, Climate Change and Water and dated 13 September 2010.

The subject site is considered to be on 'disturbed land' as per the definition outlined in the Due Diligence Code, p. 18.

#### Woollahra LEP 2014 Part 5.10 Heritage Conservation

The subject site is not a heritage item in Woollahra Local Environment Plan 2014 'the LEP' and is not within a heritage conservation area.

#### *Significance of items in the vicinity*

There are no listed heritage items in close proximity that would be adversely affected by the proposal.

#### Woollahra DCP 2015



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The subject building was constructed c1917 as a single storey Inter-War Bungalow style dwelling. The house has been modified over time with several alterations and additions, and the exterior Inter-War character of the bungalow has been largely lost. The low-lying house is set within a flat valley landscape, and is not visually prominent within the surrounding streetscape. While the dwelling provides evidence of the historical development patterns of the area and makes a modest contribution to the streetscape qualities within the Manning Road Precinct, it is not considered to be a fine example of its type. The property is not heritage listed and is not located within a heritage conservation area.

A Demolition Report has been submitted with the development application and includes historical research on the development of the property over time. The construction of the original dwelling is not associated with any known prominent architect and has no distinctive landmark qualities or other features that would make it potentially significant or rare. There are no significant associations with the subject property. The report has assessed the potential heritage significance of the existing dwelling and has concluded that it does not meet the criteria for identification as a place of local significance. The findings of the report are considered to be accurate. Accordingly, the property is not considered a potential heritage item and therefore no objection is raised to the proposed demolition of the existing building.

As the property is not listed as a heritage item and is not located within a heritage conservation area, the design of the proposed new development will not result in any adverse impacts on heritage items/areas of value. There are no heritage items located within the vicinity of the site that will be adversely impacted and the proposal will not affect any significant views. As such, there are no concerns raised on heritage grounds regarding the design of the proposed new development.

Given that the building that is proposed to be demolished is an insignificant item, it is considered that the photographic record included in the Demolition Report by Zoltan Kovacs Architect of the property would satisfy the standard condition for recording insignificant items.

The AHIMS basic search did not reveal any recorded Aboriginal sites within 200m of the subject site. As the site has been previously disturbed when the existing structures and landscaping were constructed, it is unlikely that any archaeological evidence will remain, therefore no further actions under the Due Diligence Code of Practice are required.

## CONCLUSION

### National Parks & Wildlife Service Act, 1979

Appropriate conditions of consent to manage Aboriginal heritage will be provided below.

### Woollahra LEP, 2014 Part 5.10 Clauses 1(a), 4

- Clause 1(a) The development does conserve the heritage of Woollahra.
- Clause 4 This referral constitutes an assessment under this clause.

## RECOMMENDATION

Referral Response – Heritage – DA2020 143 1 – 40 Glendon Road DOUBLE BAY





Woollahra  
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The proposal is generally acceptable, subject to conditions, as it complies with the relevant statutory and policy documents and would have a satisfactory impact.

Consent, subject to conditions.

### **1. Aboriginal Objects – Unexpected Findings**

If unexpected Aboriginal objects are found during the works covered by this approval, all work must cease immediately in the affected area(s) and the Department of Premier and Cabinet, Community Engagement, Heritage must be notified. Additional assessment and approval pursuant to the National Parks and Wildlife Act 1974 may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

**Note:** The Definition of Aboriginal object as per the Woollahra Local Environmental Plan 2014: any deposit, object or other material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of an area of New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.  
Standard Condition: B10

Charlotte Simons - Heritage Officer



30 June 2020

**Larissa Holbert**

Woollahra Municipal Council  
PO Box 61, Double Bay NSW 1360  
larissa.holbert@woollahra.nsw.gov.au

**RE: Development Application 143/2020/1 at 40 Glendon Road, Double Bay**

Thank you for notifying Sydney Water of DA 143/2020/1 at 40 Glendon Road, Double Bay, which proposes a new two-storey, three-dwelling housing development with basement car parking, a swimming pool and associated landscaping works. Sydney Water has reviewed the application based on the information supplied and provides the following comments to assist in planning the servicing needs of the proposed development.

**Water Servicing**

- Potable water servicing should be available via a 100mm CICL watermain (laid in 1916) on Glendon Road.
- Amplifications or extensions to the potable water network may be required complying with the Water Services Association of Australia (WSAA) code – Sydney Water edition.

**Wastewater Servicing**

- Wastewater servicing should be available via a 225mm CICL wastewater main (laid in 1963) within the property boundary.
- Amplifications or extensions to the wastewater network may be required complying with the Water Services Association of Australia (WSAA) code – Sydney Water edition.

**Stormwater**

- Requirements for Sydney Water's stormwater assets (for certain types of development) may apply to this site. The proponent should ensure that satisfactory steps/measures will be taken to protect existing stormwater assets, such as avoiding building over and/or adjacent to stormwater assets including building bridges over stormwater assets. More information regarding Sydney Water's stormwater policy is available via the following web page: [Building over or adjacent to Sydney Water stormwater assets.](#)
- The proponent should also consider taking measures to minimise or eliminate potential flooding, degradation of water quality, and avoid adverse impacts on any heritage items, and create pipeline easements where required.



This advice is not formal approval of our servicing requirements. Detailed requirements, including any potential extensions or amplifications, will be provided once the development is referred to Sydney Water for a Section 73 application. More information about the Section 73 application process is available on our web page in the [Land Development Manual](#).

Further advice and requirements for this proposal can be found in Attachments 1. If you require any further information, please do not hesitate to contact the Growth Planning Team at [urbangrowth@sydneywater.com.au](mailto:urbangrowth@sydneywater.com.au).

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Kristine Leitch", with a stylized flourish extending to the right.

**Kristine Leitch**  
Growth Intelligence Manager  
City Growth and Development, Sydney Water  
1 Smith Street, Parramatta NSW 2150



#### Attachment 1

##### **Sydney Water Servicing**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water.

The proponent is advised to make an early application for the certificate, as there may be water and wastewater pipes to be built that can take some time. This can also impact on other services and buildings, driveways or landscape designs.

Applications must be made through an authorised Water Servicing Coordinator. For help either visit [www.sydneywater.com.au](http://www.sydneywater.com.au) > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.

##### **Building Plan Approval**

The approved plans must be submitted to the Sydney Water [Tap in™](#) online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

*The Sydney Water [Tap in™](#) online self-service replaces our Quick Check Agents as of 30 November 2015.*

The [Tap in™](#) service provides 24/7 access to a range of services, including:

- building plan approvals
- connection and disconnection approvals
- diagrams
- trade waste approvals
- pressure information
- water meter installations
- pressure boosting and pump approvals
- changes to an existing service or asset, e.g. relocating or moving an asset.

Sydney Water's [Tap in™](#) online service is available at:  
<https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>

## SECTION 4.55 APPLICATION ASSESSMENT REPORT

<b>ITEM No.</b>	D5
<b>FILE No.</b>	DA503/2016/5
<b>ADDRESS</b>	1 Yawang Lane Bellevue Hill (previously known as 236-240 Old South Head Road Bellevue Hill)
<b>COUNCIL WARD</b>	Bellevue Hill
<b>SITE AREA</b>	1056m <sup>2</sup>
<b>ZONING</b>	R3 Medium Density Residential
<b>EXISTING CONSENT</b>	Demolition of all existing dwellings and ancillary structures, the amalgamation of the three lots, the erection of a new residential flat building with associated car parking and associated landscaping and siteworks
<b>DATE OF CONSENT</b>	09/05/2017
<b>TYPE OF CONSENT</b>	Integrated development
<b>CONSENT AUTHORITY</b>	Woollahra Council
<b>PROPOSED MODIFICATION</b>	Modifications to the approved residential flat building including a new upper level
<b>DATE S4.55 LODGED</b>	21/07/2020 (original proposal) <b>24/09/2020 (amended proposal)</b>
<b>APPLICANT</b>	Ms F Whiting
<b>OWNER</b>	The Owners - Strata Plan No. 95655
<b>AUTHOR</b>	Ms L Samuels
<b>TEAM LEADER</b>	Mr M Moratelli
<b>SUBMISSIONS</b>	11
<b>RECOMMENDATION</b>	Refusal

### 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:

- Contentious development  
Development that:  
(a) is the subject of 10 or more unique submissions by way of objection

### 2. REASONS FOR RECOMMENDATION

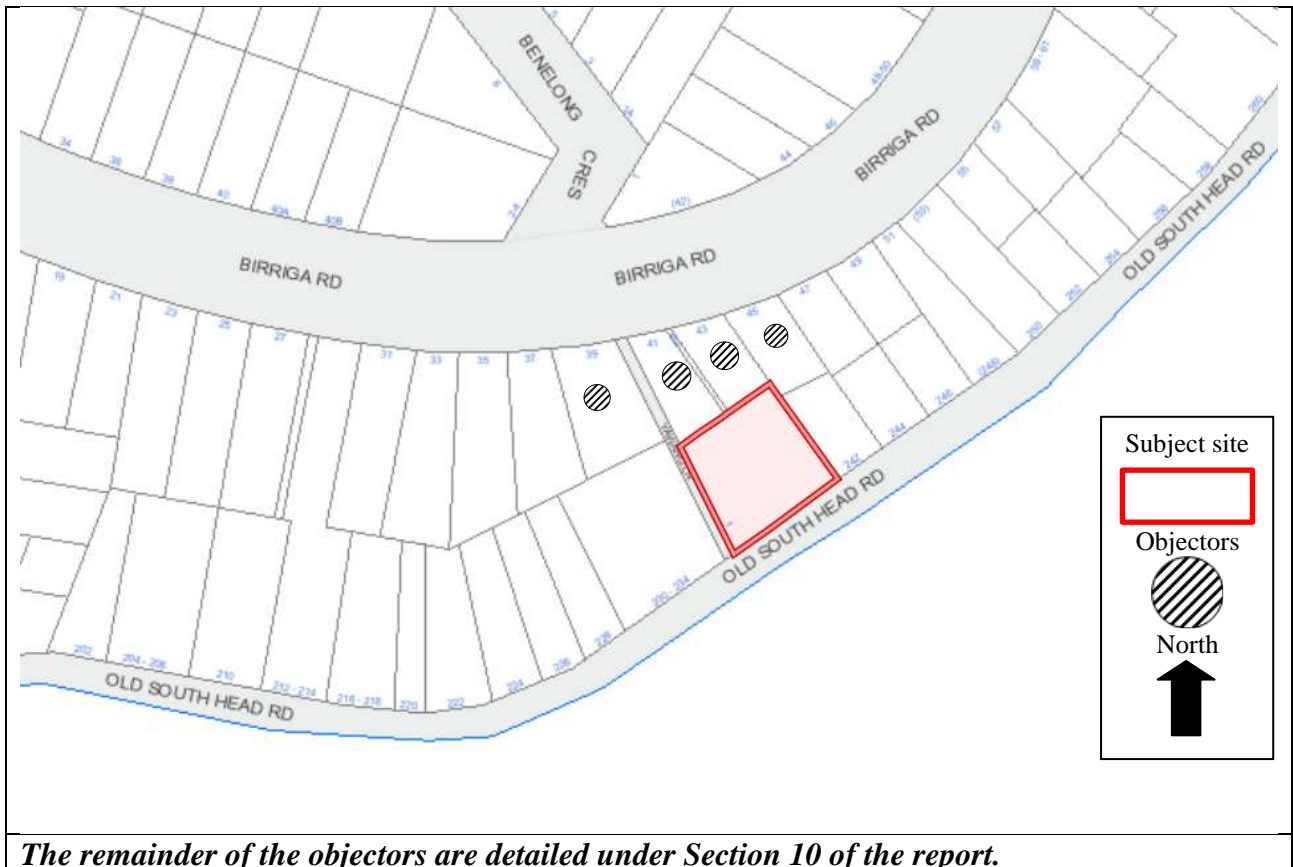
The application has been assessed within the framework of the matters for consideration under section 4.15 of the Environmental Planning and Assessment Act 1979 and is recommended for refusal because:

- It is considered to be unsatisfactory with planning provisions contained in WLEP 2014 and WDCP 2015



- It will have adverse effects on the amenity of adjoining properties and/or local built and natural environment such that refusal is justified
- The site is not suitable for the proposed development
- The proposal is not in the public interest

### 3. LOCALITY PLAN



### 4. SUMMARY

#### 4.1. Approved Development

The approved development involves the following works:

- The demolition of the three existing dwellings and ancillary structures and the construction of a new residential flat building with associated car parking, landscaping and siteworks. The residential flat building comprises 10 units.

#### 4.2. Previous Approved Modifications

- DA503/2016/2 approved an amendment to **Condition A.6** (General Terms of Approval - Water Management Act 2000).
- DA503/2016/3 approved an increase to the building height by 155mm, alterations to the internal layout of the units, relocating the solar panels on the roof and minor modifications to the basement carpark layout.

- DA503/2016/4 approved modification to the finished floor levels to provide extra height for the basement level car stackers, provision of air conditioning units and a surrounding acoustic screen on the roof, deletion of the geothermal energy supply, deletion of **Condition G.2** requiring a substation, modification of **Conditions A.2, E.25, F.3, H.3, H.4, H.1 and I.1**.

#### 4.3. Proposed Modification

The Section 4.55 application involves the following works:

- The construction of an additional level (level 5) which is an addition to Unit 10. The addition comprises a bedroom and living area on the existing roof, with access provided by a new internal stair.
- New roof terrace accessed from the level 5 addition.

The plans were amended on **24/09/2020** and involved the following:

- Reducing the windows on the northern elevation and the provision of louvres to the remaining northern elevation windows.
- Reducing the height of the lift overrun.

#### 4.4. History

Previous Relevant Applications
DA 4/2019 approved alterations to the layout of Unit 2 to provide an additional bedroom (increase from 2 bedrooms to 3 bedrooms), new kitchen addition and a new deck accessed from the kitchen.

### 5. REFERRALS

- ☒ **Environmental Health**
- ☐ Acceptable (no conditions)
- ☒ Acceptable (standard conditions)
- ☐ Acceptable (special conditions)
- ☐ Refusal recommended

### ASSESSMENT UNDER SECTION 4.55

The application is assessed under Section 4.55 of the Environmental Planning and Assessment Act 1979.

### 6. SECTION 4.55(2): OTHER MODIFICATIONS

Section 4.55(2) relates to the modification of a development consent for all other modifications. The application involves the addition of a new upper level and associated roof terrace.

The considerations in Section 4.55(2) require Council to consider the following:

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

- b) *It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent*
- c) *It has notified the application in accordance with:*
  - i) *The regulations, if the regulations so require, or*
  - ii) *A development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent*
- d) *It has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be*

*Moto Projects No 2 Pty Limited v North Sydney Council [1999] 106 LGERA 298* applies the following tests to ascertain whether a development is substantially the same development.

1. *Is the proposal a modification of the original proposal, in that it does not radically transform the original proposal?*
2. *Is the proposed development essentially or materially the same development as the development for which consent was originally granted?*
3. *Is the way in which the development is to be carried out essentially or materially the same?*
4. *Does the proposed modification affect an aspect of the development that was important, material or essential to the development when it was originally approved?*

The qualitative and quantitative aspects of the original consent have been compared to the proposal, and the development as proposed to be modified is not considered to be substantially the same as that which was originally approved for the following reasons:

- The additional level introduces a new element that was not considered in the original assessment. This additional level involves non-compliances with the height and FSR controls which were not present in the assessment of the original DA.
- The proposed roof terrace also introduces a new element that was not considered in the original assessment. The original DA was approved with a 'landscaped green roof', which provided a high level of visual amenity to the neighbouring properties and did not result in any visual or acoustic privacy impacts.
- The proposed additional level modifies an aspect of the development which was an integral part of the original development approval. The original assessment report stated "*The proposal attains a height of 13.5m which complies with the WLEP 2014 control and is consistent with the desired future character of the neighbourhood. The height of the development, which presents as four storeys to Old South Head Road, is compatible with the surrounding development in the streetscape.*"
- The approval of the residential flat building also relied on the fact that the development complied with the FSR control. The original assessment report stated "*The bulk and scale of the proposal is considered to be reasonable as the proposal complies with the FSR control.*" Approval would not have been granted if the original application resulted in a non-compliance with the FSR control, as there were no environmental planning grounds to support a non-compliant FSR.

- The proposed five storey development will have a significantly altered visual presentation when viewed from the neighbouring properties.
- With regard to *Iris Diversified Property Pty Ltd v Randwick City Council*, the qualitative aspects of the additional storey indicate that the proposal is not substantially the same. The additional height and additional storey have an unacceptable impact upon the character of the area and would be inconsistent with the desired future character of the streetscape. The 13.5m height limit within the WLEP 2014 clearly identifies that a four storey built form is appropriate in this location.
- The modification involves a change to the staging of construction, given that construction of the approved residential flat building has been completed and an Occupation Certificate has been issued.

For the reasons outlined above, the proposal as modified is not substantially the same as the approved development and this forms a reason for refusal.

The application was notified and advertised in accordance with the Woollahra Community Participation Plan and submissions are considered under Section 10 of the report.

## PROPERTY DETAILS AND REFERRALS

### 7. SITE AND LOCALITY

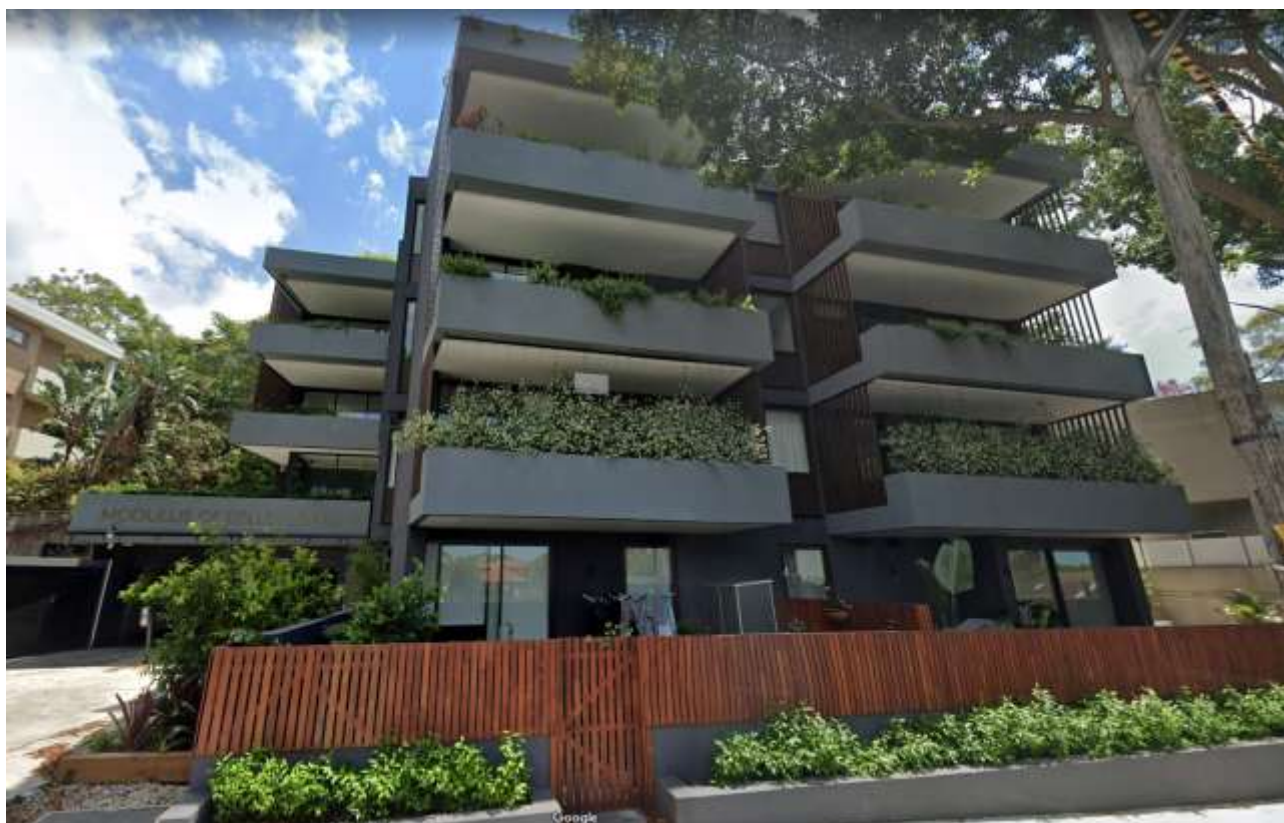
<b>Physical features</b>
The site is located on the north-western side of Old South Head Road and is rectangular in shape. The site adjoins Yawang Lane to the west. The subject site has an area of 1,056m <sup>2</sup> .
<b>Existing buildings and structures</b>
The site is occupied by the residential flat building approved under DA 503/2016/1.
<b>Surrounding Environment</b>
<p>The site is located within the Bellevue Hill South precinct under the WDCP 2015. The following properties adjoin the subject site:</p> <ul style="list-style-type: none"><li>• To the north-east is 242 Old South Head Road, which is occupied by a two storey residential flat building.</li><li>• To the south-west is 230 Old South Head Road, which is occupied by a four storey residential flat building.</li><li>• To the north-west (rear) is 41 Birriga Road and 43 Birriga Road, which is occupied by a four and five storey residential flat building respectively.</li></ul> <p>The locality is predominantly characterised by residential flat buildings of various architectural styles.</p>





Aerial view of the subject site





Subject site viewed from Old South Head Road



Neighbouring properties to the west



Neighbouring properties to the east

## 8. RELEVANT PROPERTY HISTORY

Current use
The residential flat building approved under DA 503/2016/1 has been constructed on the site.
Requests for Additional Information and Replacement Applications
The following information was requested: <ul style="list-style-type: none"> <li>Shadow Diagrams.</li> <li>Coloured plans.</li> </ul> The requested information has been submitted but remains unsatisfactory. This forms a reason for refusal.
Land and Environment Court Appeal(s)
N/A

## 9. REFERRALS

Referral	Summary of Referral Response	Annexure
Environmental Health	Council's Environmental Health Officer has determined that the proposal is acceptable, subject to conditions. <b>(Recommendation is for refusal and as such the no conditions have not been imposed)</b>	N/A

## ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

The application is assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979.



## **10. ADVERTISING AND NOTIFICATION**

### **10.1. Notification Period**

The application was advertised and notified from 19 August 2020 to 2 September 2020 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. Submissions were received from:

1. Carolyn Thomas, 4/43 Birriga Road, Bellevue Hill
2. Susan Landreth, 1/45 Birriga Road, Bellevue Hill
3. Stephen Sander, 5/43 Birriga Road, Bellevue Hill
4. Elise Gillies, 6/39 Birriga Road, Bellevue Hill
5. Marion Tynan, 9/39 Birriga Road, Bellevue Hill
6. JT Allen on behalf of Amanda and Tim MacCartney, 416 – 418 New South Head Road Double Bay
7. Marta Tich & Krystof Tichy, 10/39 Birriga Road, Bellevue Hill
8. Mairead Dunbar, 11/65 Birriga Road, Bellevue Hill
9. Yan Zhao on behalf of G Chen and N Jiang, 3 Gladstone Street, Burwood
10. G Chen and N Jiang, [chengangyi@fangluelaw.cn](mailto:chengangyi@fangluelaw.cn)
11. Raimond Schaw & Associates on behalf of 41 Birriga Road, Bellevue Hill

The submissions raised the following issues:

#### **These issues form a reason for refusal:**

- Excessive gross floor area
- Excessive height and out of character with neighbouring buildings. The increased height will set a precedent.
- The extrapolated height line of the plans is inaccurate
- Overdevelopment of the site
- Visual bulk
- The development was originally approved with a green roof (the developer committed that they would not extend the development to the roof).
- Overlooking from the proposed level into the habitable rooms at 39 Birriga Road
- Visual and acoustic privacy impacts from proposed roof level terrace

#### **These issues would not warrant refusal of the application:**

- Impact on light and solar access to the neighbouring properties
- Impact on sky outlook
- Current outlook to plant on the roof
- The applicant didn't discuss the proposal with neighbours
- Impact of additional residents on public transport delays
- Civil dispute during the construction of the RFB
- The applicant has been involved in legal issues regarding the construction of the development

#### **These issues would be addressed by condition if the application was recommended for approval:**

- Noise from additional construction works

- Impact on views
- Construction noise
- Dust

**Note:** During the assessment of this Section 4.55 Application, it was discovered that some unauthorised works have occurred on site. Council's Compliance Officers are in the process of investigating this and will take appropriate action.

### **Statutory Declaration**

The applicant completed the statutory declaration dated 04/09/2020 declaring that the site notice was erected and maintained during the notification period.

#### **11. SYDNEY REGIONAL ENVIRONMENTAL PLAN (SYDNEY HARBOUR CATCHMENT) 2005**

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

#### **12. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014**

##### **12.1. Part 1.2: Aims of Plan**

The proposal is unsatisfactory in terms of the aims in Part 1.2(2) of the Woollahra LEP 2014 for the following reasons:

- The proposal fails to achieve aim (g) as it would have an unacceptable impact on the amenity of surrounding properties.
- The proposal fails to achieve aim (j) as it does not constitute a high standard of design within the private and public domain.
- The proposal fails to achieve aim (l) as the development is inconsistent with the desired future character of the area.

##### **12.2. Land Use Table**

#### **R3 Medium Density Residential zone**

The proposal is defined as alterations to a residential flat building and is permitted within the R3 Medium Density Residential zone, but is inconsistent with the final objective of the R3 zone which is 'to ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.' This is discussed further below.

##### **12.3. Part 4.3: Height of Buildings**

Part 4.3 limits development to a maximum height of 13.5m.

	<b>Approved (DA 502/2016/1)</b>	<b>Proposed</b>	<b>Control</b>	<b>Complies</b>
Maximum Building Height	13.5m	15.2m	13.5m	NO

The proposal involves a non-compliance of 1.7m with the maximum height control and relates to the top part of the additional level. Given that this is a Section 4.55 Application, the height has been measured from the existing ground level at the time the original DA was lodged.

While a Clause 4.6 is not required for Section 4.55 Applications, the following assessment is provided with regard to the objectives:

- The proposed height and additional storey is inconsistent with the desired future character of the area which seeks to respect the streetscape character. The streetscape is typified by 4 storey developments and the proposed fifth storey is considered to be inappropriate as viewed from the streetscape and particularly from the neighbouring properties.
- The shadow diagrams have not been prepared at 21 June and therefore it is considered that insufficient information has been provided with regard to solar access.
- The owners of the neighbouring properties have objected to the proposal with regard to impact on views. The applicant has provided insufficient information to allow for an assessment of the impact of the additional level upon the water views towards Bondi obtained from the properties to the rear.
- Insufficient information has been provided with regard to sightline diagrams from the roof terrace to the neighbouring properties.

#### 12.4. Part 4.4: Floor Space Ratio

Part 4.4 limits development to a maximum floor space ratio of 0.9:1 for a residential flat building.

Site Area: 1,056m <sup>2</sup>	Approved	Approved (DA 4/2019)	Proposed	Control	Complies
Floor Space Ratio	969m <sup>2</sup>	981m <sup>2</sup>	1,034m <sup>2</sup> (0.98:1) or 1046m <sup>2</sup> (1.08:1) (including the amending DA 4/2019)	0.9:1 (969m <sup>2</sup> )	NO

The proposal does not comply with Clause 4.4 of WLEP 2014 and is unacceptable with regard to the control and the objectives for the following reasons:

- The gross floor area control reflects the desired future character for the neighbourhood. The proposed additional 65m<sup>2</sup> of floor area breaches the control and is unacceptable in this regard. There are no environmental planning grounds to justify the need for additional floor area on this site.
- The non-compliance with the FSR results in a non-compliance with the height control.
- The development is inconsistent with Objective (i) of the FSR standard and Objective 4 of the R3 zone as set out in the Land Use Table of the WLEP as the height, bulk and scale of the development is inconsistent with the desired future character of the neighbourhood.
- The development is inconsistent with Objective (ii) of the FSR standard as the additional bulk has an adverse visual impact on the neighbouring properties (particularly the units to the rear which look over the existing roof). Furthermore, it is likely that the proposal would have an impact on views from the neighbouring properties.

#### 13. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015



### **13.1. Chapter B1: Bellevue Hill South Residential Precinct**

The proposal fails to meet the streetscape character and key elements of the precinct and desired future character objectives of the Bellevue Hill South precinct, as noted in Part B1 of the Woollahra DCP 2015.

### **13.2. Chapter B3: General Development Controls**

#### **Part B3.2: Building Envelope**

The addition complies with the front, side and rear setback controls.

#### **Part B3.5: Built Form and Context**

##### Part B3.5.1: Streetscape and Local Character

The desired future character of the precinct seeks that new development is compatible with the prevailing characteristics of the street. While there are a variety of building forms, this part of Old South Head Road is typified by 4 storey buildings. As such, it is considered that the built form is not compatible with the streetscape and the desired future character for the area.

##### Part B3.5.2: Overshadowing

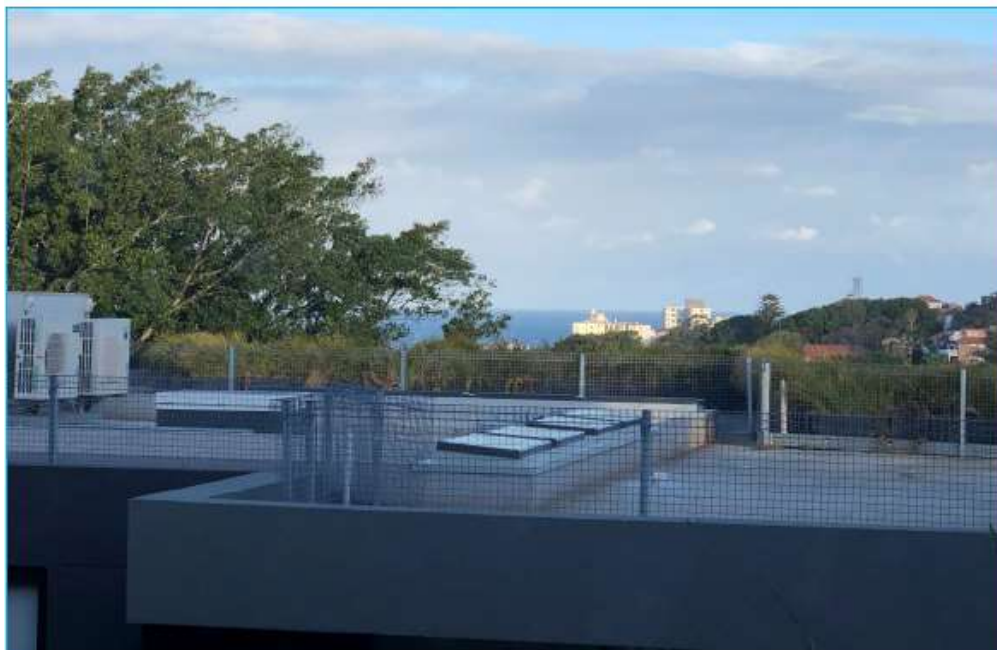
C1(a) stipulates that sunlight is provided to at least 50% of the main ground level private open space to adjoining properties for a minimum of two hours between 9am and 3pm on June 21. C1 states that north facing windows to habitable rooms of neighbouring dwellings do not have sunlight reduced to less than 3 hours during the same period.

The Shadow Diagrams have been prepared for 31 July, which is inconsistent with the requirements within the DCP. As such, it is considered that insufficient information has been provided with regard to overshadowing. This forms a reason for refusal.

##### Part B3.5.3: Public and Private Views

###### Private views

A number of properties have objected with regard to view loss and photos are provided below. The applicant has not provided a view analysis (photomontage) indicating the view impact upon the objector's properties to the rear. As such, it is considered that insufficient information has been provided with regard to view impacts. This forms a reason for refusal.



View from the top floor unit (Unit 3) at 41 Birriga Road



View from 6/39 Birriga Road



View from the kitchen at 9/39 Birriga Road

#### Part B3.5.4: Acoustic and Visual Privacy

C4 states that there should not be any sightlines from habitable room windows into habitable room windows or private open space in an adjoining property within 9.0m. This can be achieved via window location, layout and separation, screens or translucent glazing to 1.5m sill height. C7 requires that balconies, terraces, decks and roof terraces are suitably screened to prevent direct views into habitable rooms or private open space of adjoining and adjacent dwellings. C10 requires that for a roof terrace there are no direct sightlines to the neighbouring private open space or habitable room windows within 12m.

The proposal is considered to be unacceptable in this regard for the following reasons:

- Insufficient information has been provided with regard to the window locations of the surrounding neighbouring properties and sight lines between the proposed windows and roof terrace and the neighbouring properties.
- The plans do not clearly indicate the extent of the roof which is trafficable.

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

#### **Part B3.7: External Areas**

The proposal does not involve any change to the approved deep soil landscaping on site.

### **14. THE LIKELY IMPACTS OF THE PROPOSAL**

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

## **15. THE PUBLIC INTEREST**

The proposal is considered to be contrary to the public interest.

## **16. CONCLUSION**

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

## **17. DISCLOSURE STATEMENTS**

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

## **18. RECOMMENDATION: PURSUANT TO SECTION 4.55 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

THAT the Woollahra Local Planning Panel, exercising the functions of Council as consent authority, refuse to modify development consent to Development Application 503/2016/5 for demolition of all existing dwellings and ancillary structures, the amalgamation of the three lots, the erection of a new residential flat building with associated car parking and associated landscaping and siteworks on land at 1 Yawang Lane, Bellevue Hill, for the following reasons:

### **1. Not substantially the same development**

The development as proposed to be modified would not be substantially the same as the development (DA503/2016/1) for which consent was originally granted and before that consent was modified as follows:

- a) The proposed modifications are considered to be unacceptable with regards to Section 4.55(2)(a) of the *Environmental Planning and Assessment Act 1979*;
- b) The proposed modifications radically transform the approved development;
- c) The proposal as modified is not essentially and materially the same development as was originally approved;
- d) The proposed modifications materially change the way in which the development will be carried out; and
- e) The proposed modifications affect an aspect of the development that was important, material or essential to the development when it was originally approved.

### **2. The height of the development is excessive**

The proposal involves a non-compliance with the height standard and the additional storey is inconsistent with the desired future character of the area which seeks to respect the streetscape character. The streetscape is typified by four storey developments and the proposed fifth storey is considered to be inappropriate as viewed from the streetscape and the neighbouring properties. The proposal is unacceptable with regard to the following:

- The height control and objectives under Clause 4.3 of WLEP 2014.
- The proposal fails to achieve aim (g) of the WLEP 2014 as it would have an unacceptable impact on the amenity of surrounding properties, including visual impact.

- The proposal fails to achieve aim (l) of the WLEP 2014 as the development is inconsistent with the desired future character of the area.

### **3. The floor space ratio of the development is excessive**

The proposal involves a non-compliance with the floor space ratio standard and the additional storey increases the height, bulk and scale of the development. The additional bulk will have an adverse visual impact on the neighbouring properties. The proposal is unacceptable with regard to the following:




- The FSR standard and objectives under Clause 4.4 of WLEP 2014.
- The proposal fails to achieve aim (j) of the WLEP 2014 as it does not constitute a high standard of design within the private and public domain.

### **4. Insufficient information**

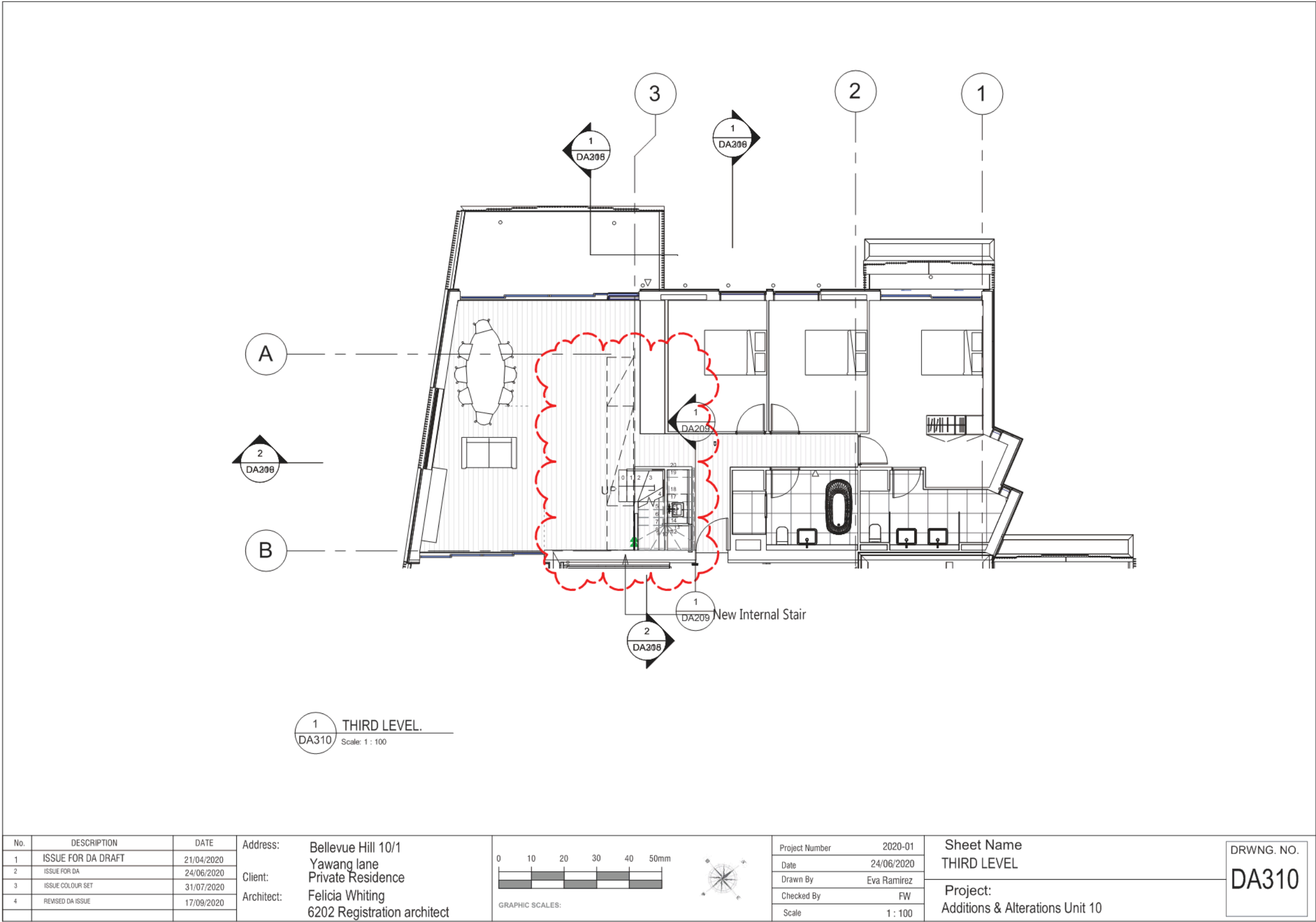
Insufficient information has been provided with regard to the following matters:

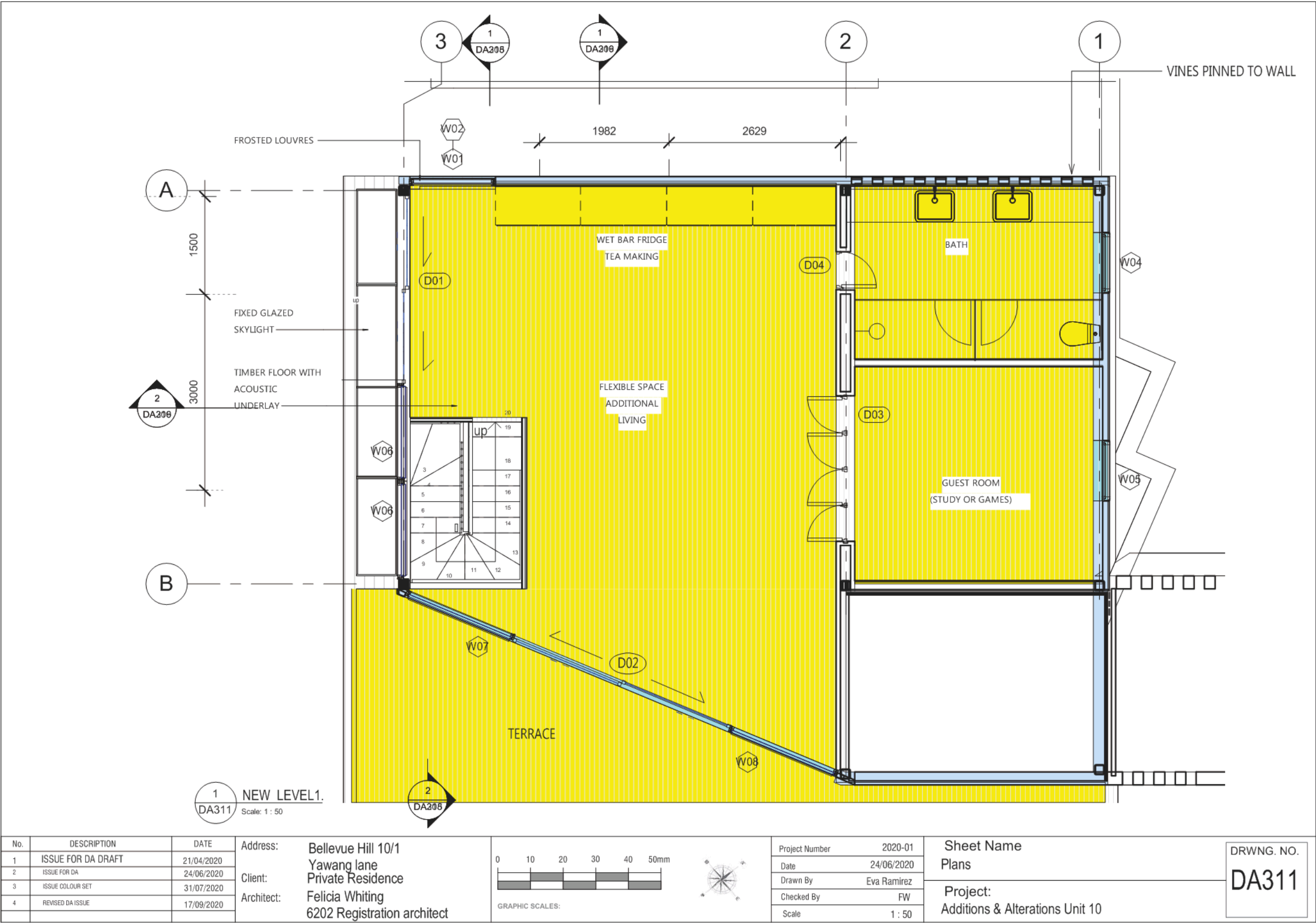
- A view analysis (photomontage) indicating the view impact resulting from the proposed development, from the objector's properties to the rear.
- The submitted shadow diagrams do not relate to 21 June.
- Insufficient information has been provided with regard to the window locations of the surrounding neighbouring properties. The plans should also indicate the sight lines between the proposed windows and roof terrace and the neighbouring windows.
- The plans do not clearly indicate the extent of the roof which is trafficable.

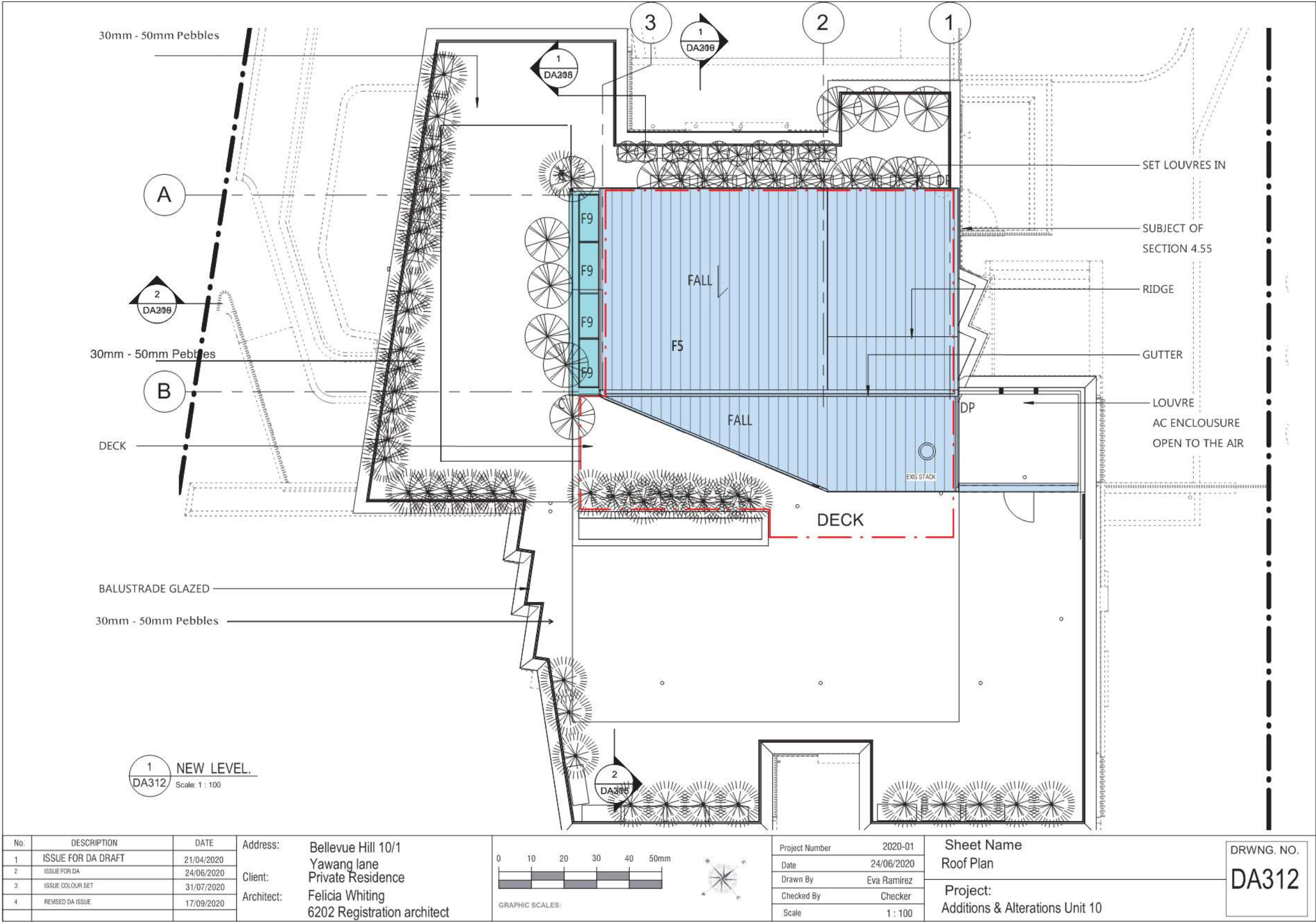
### **Annexures**

1. Architectural Plans [↓](#) 
2. Shadow Diagrams [↓](#) 
3. Survey Plan [↓](#) 

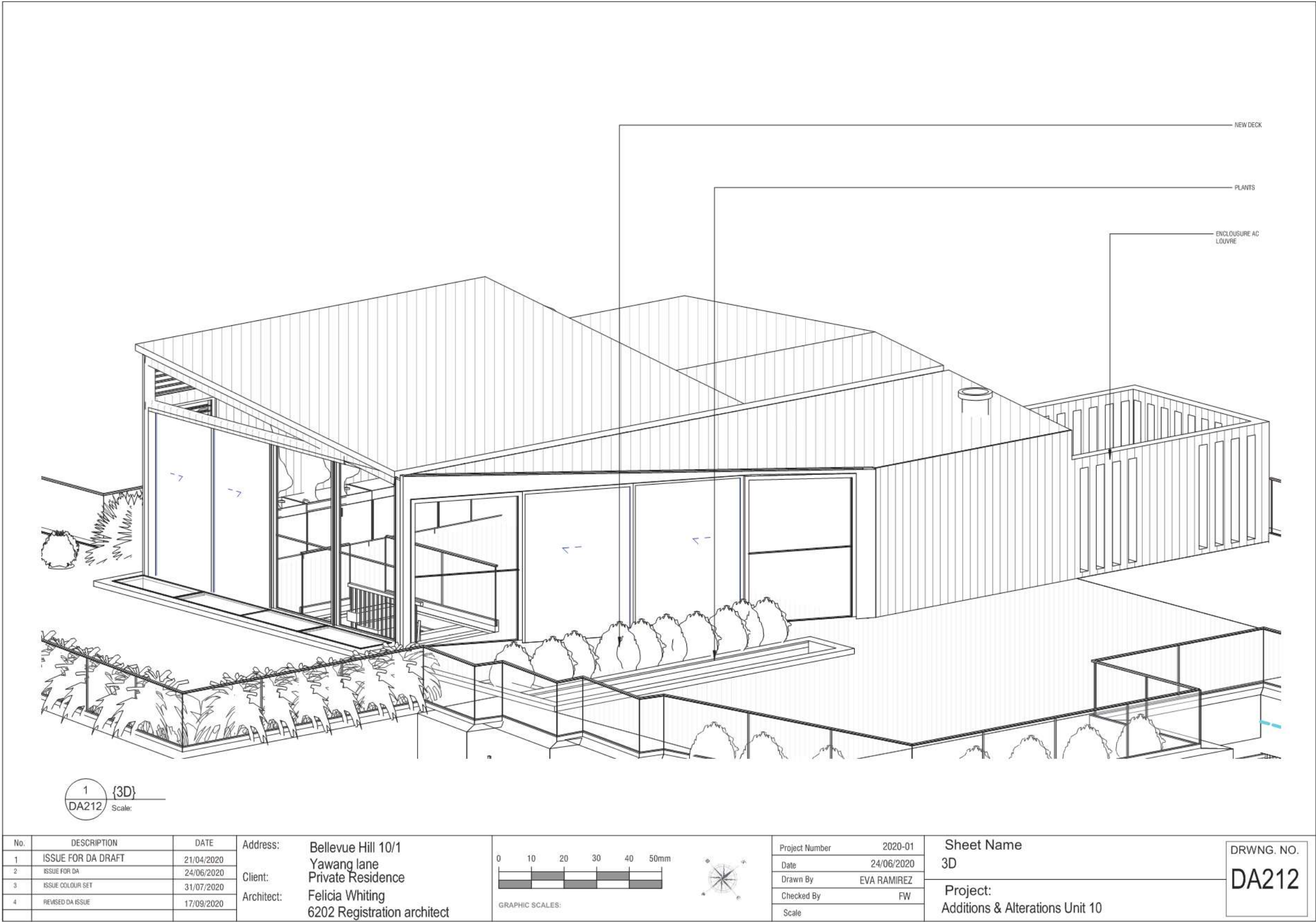


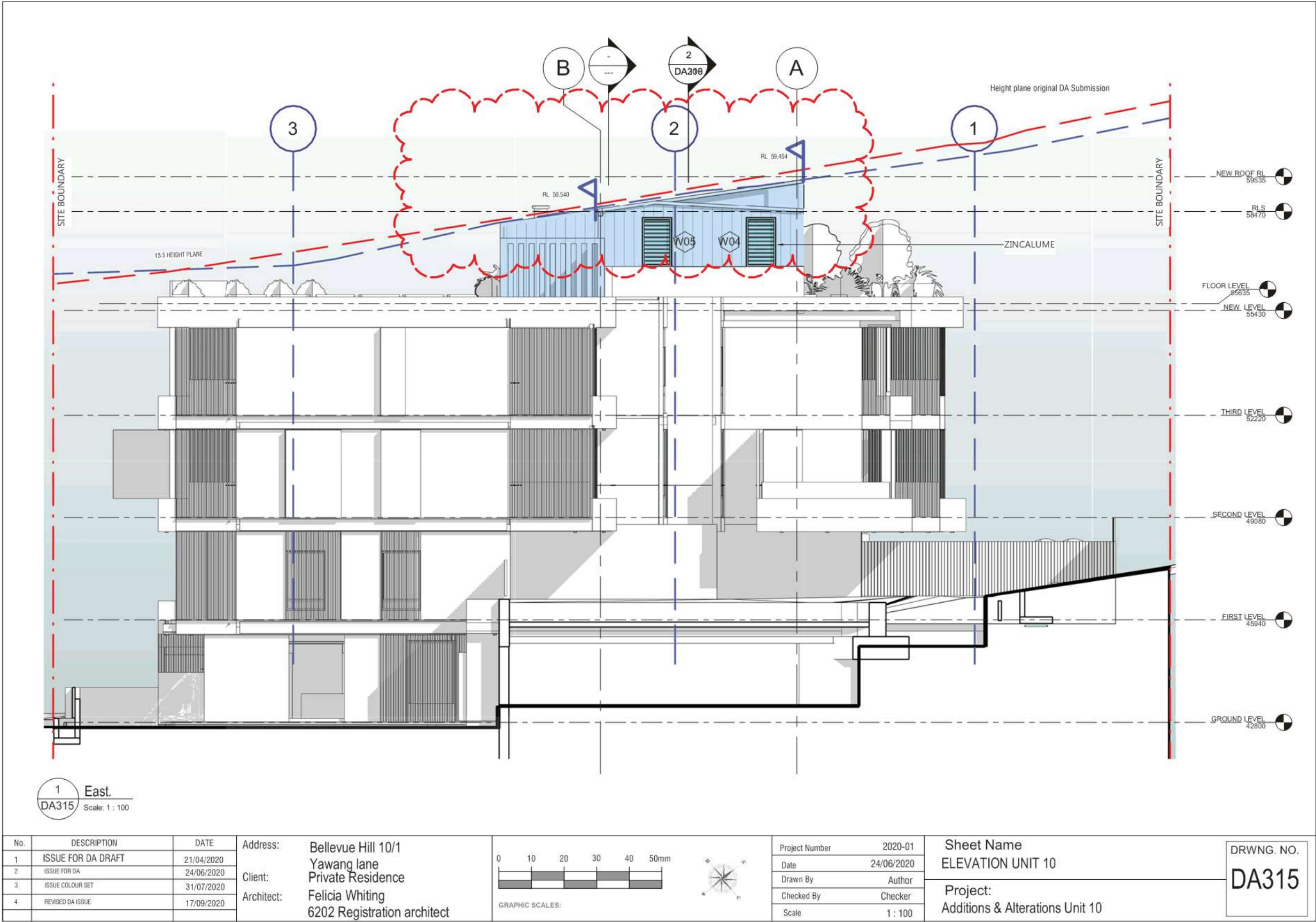




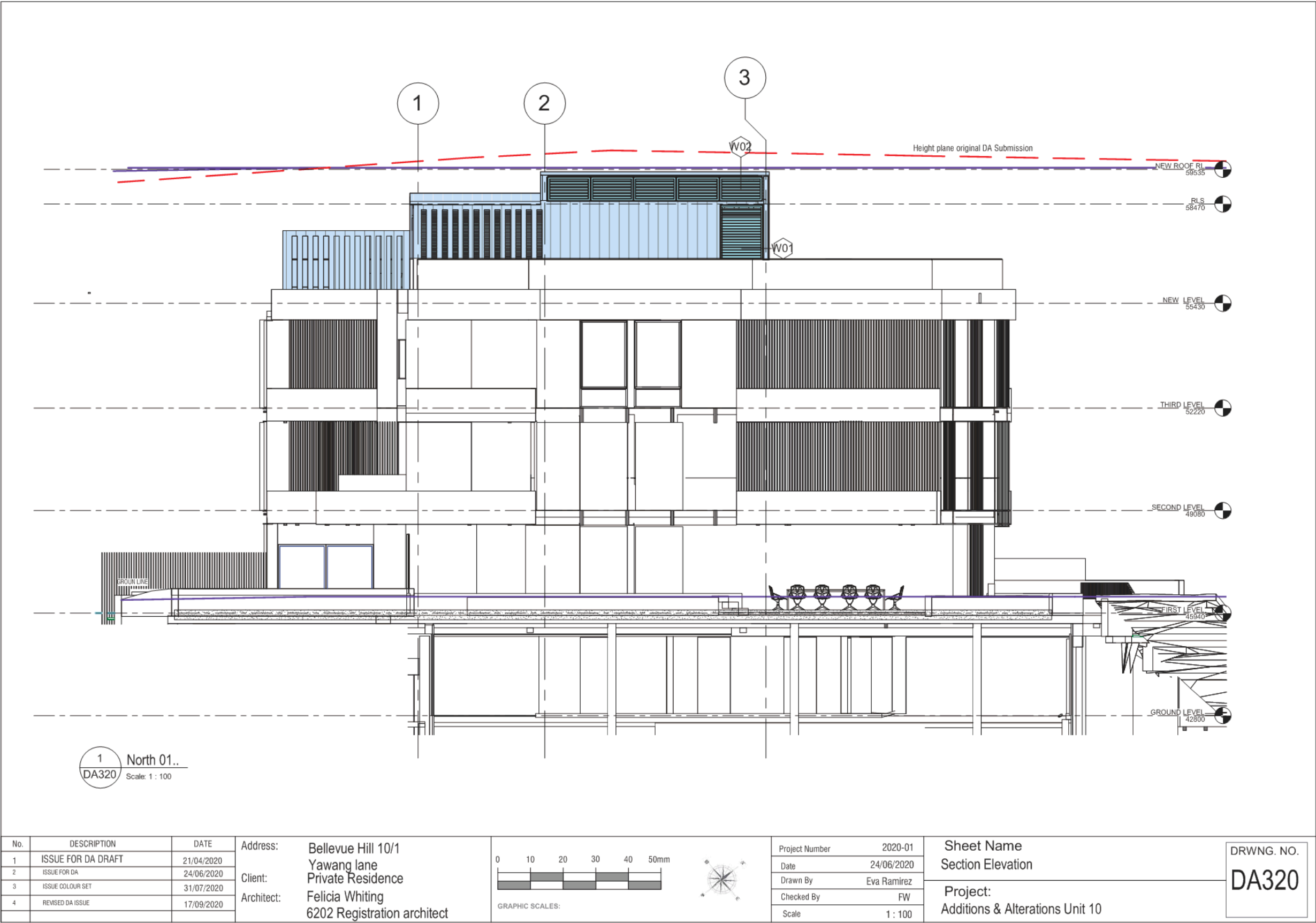


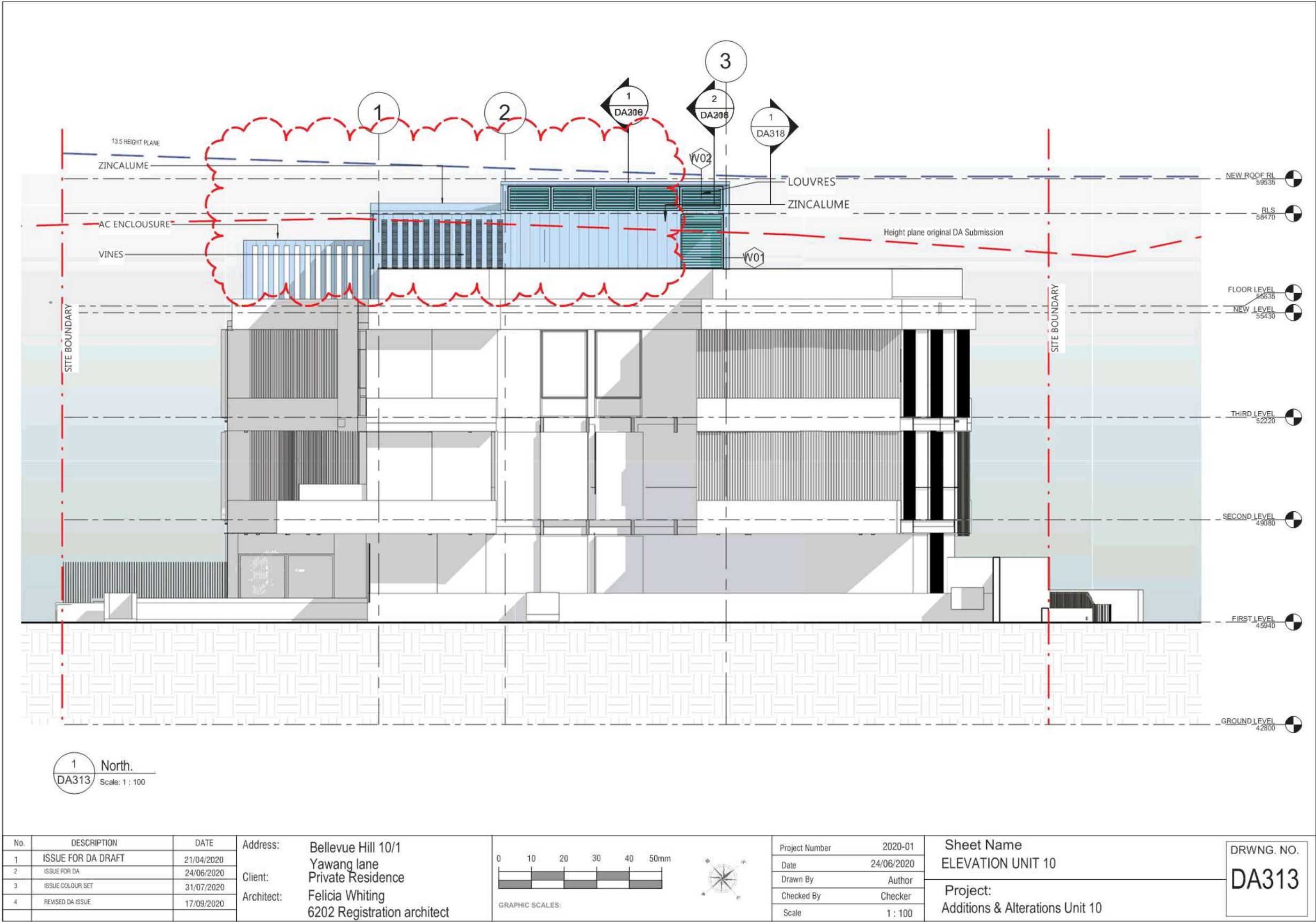


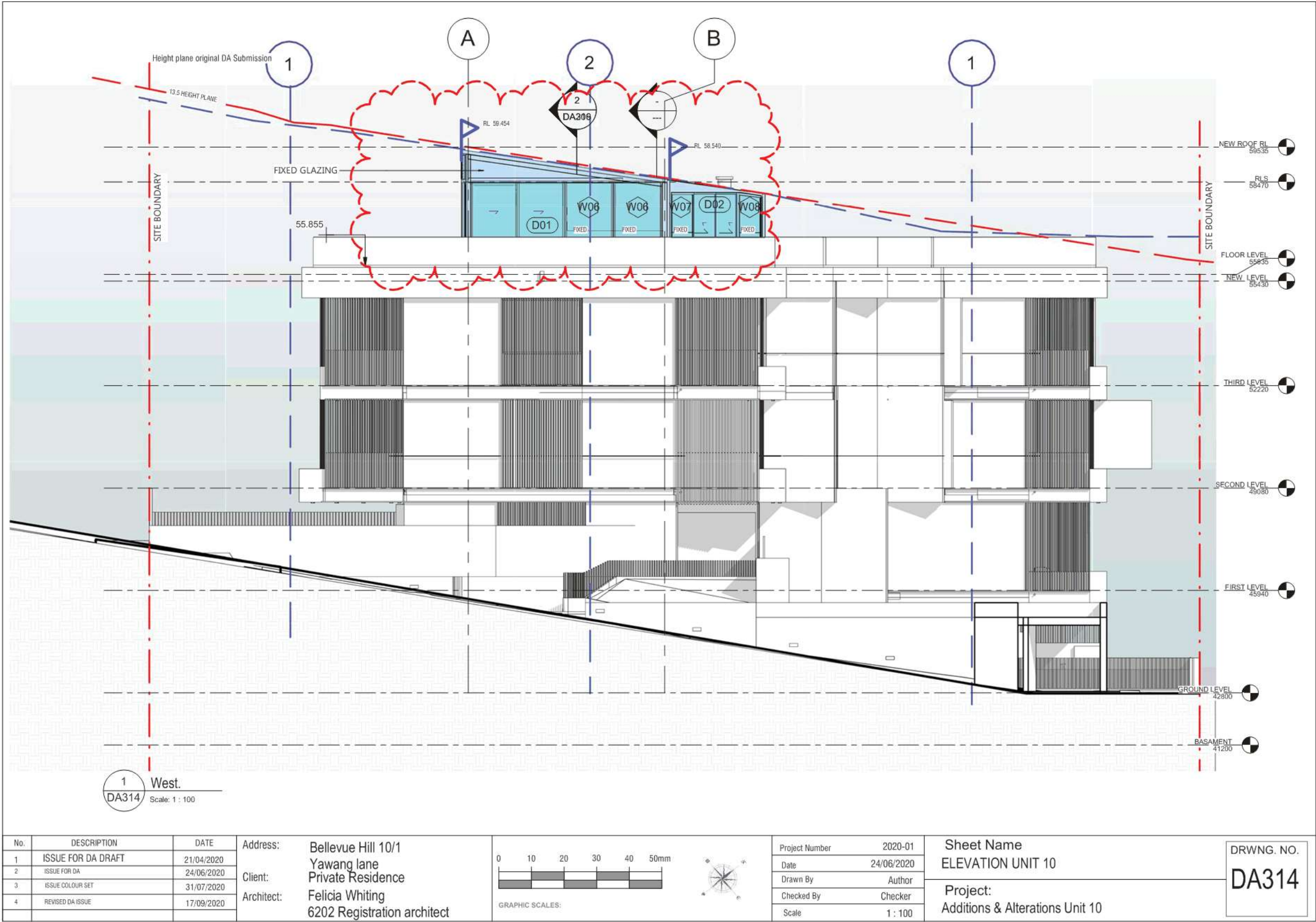




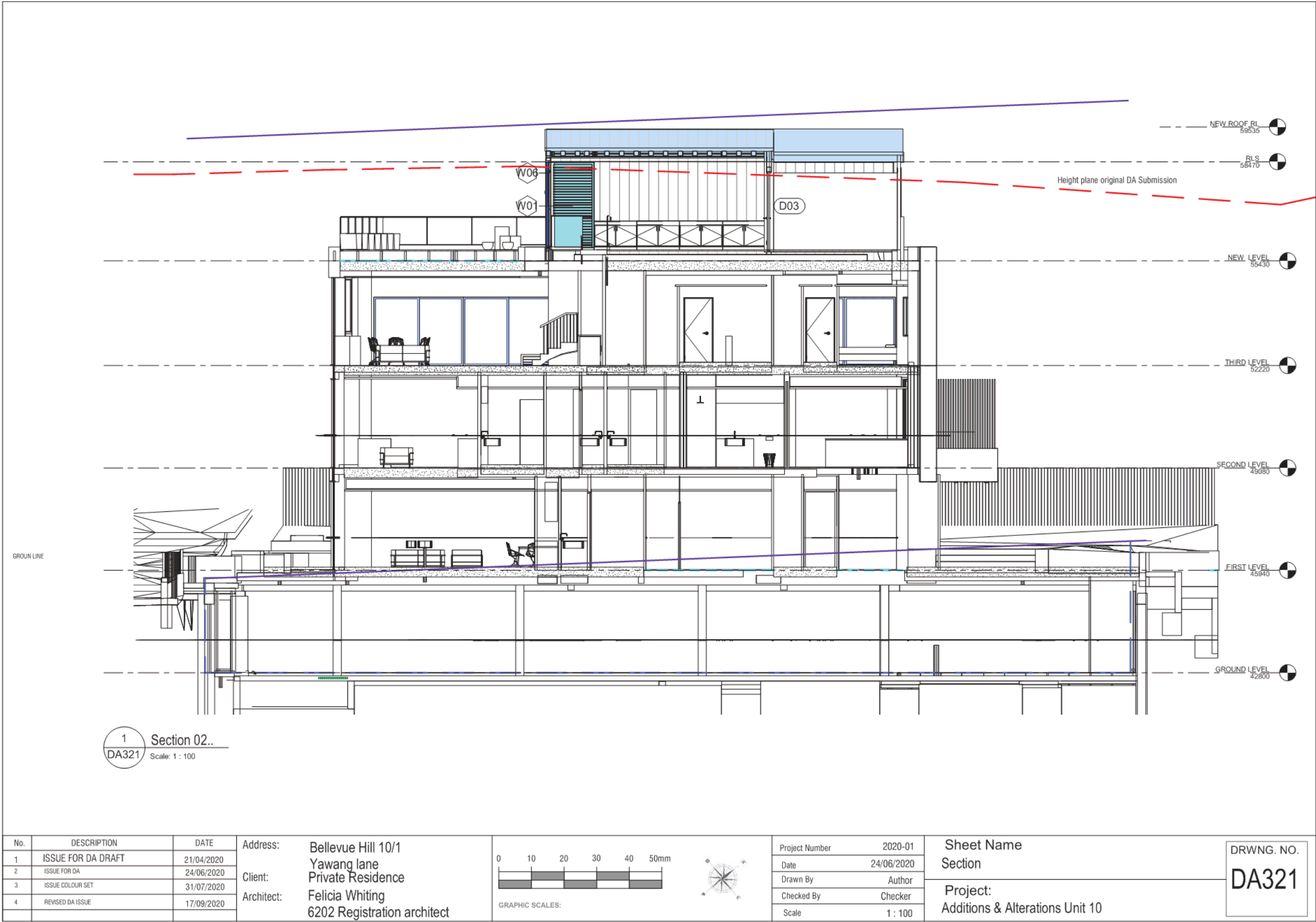


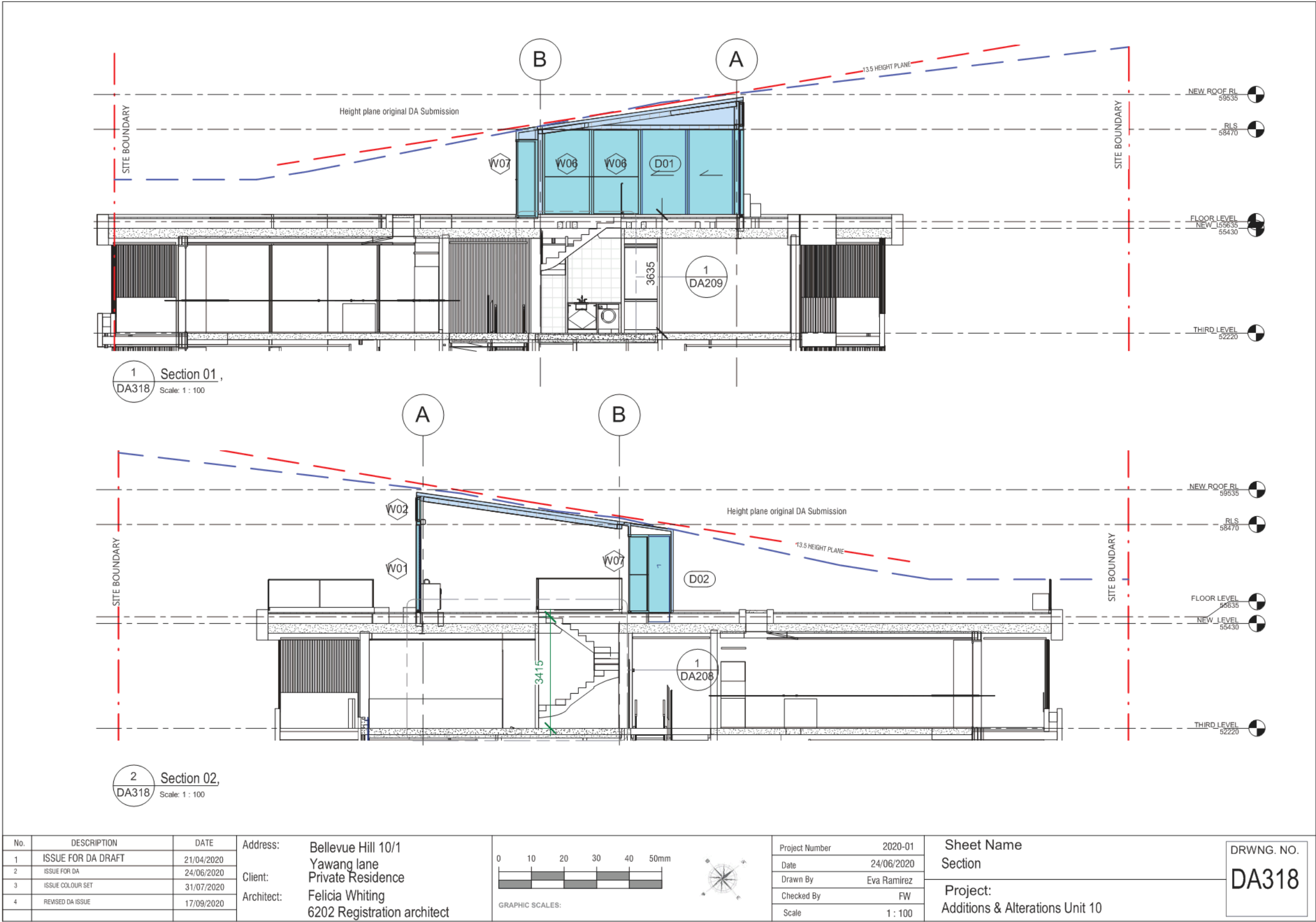




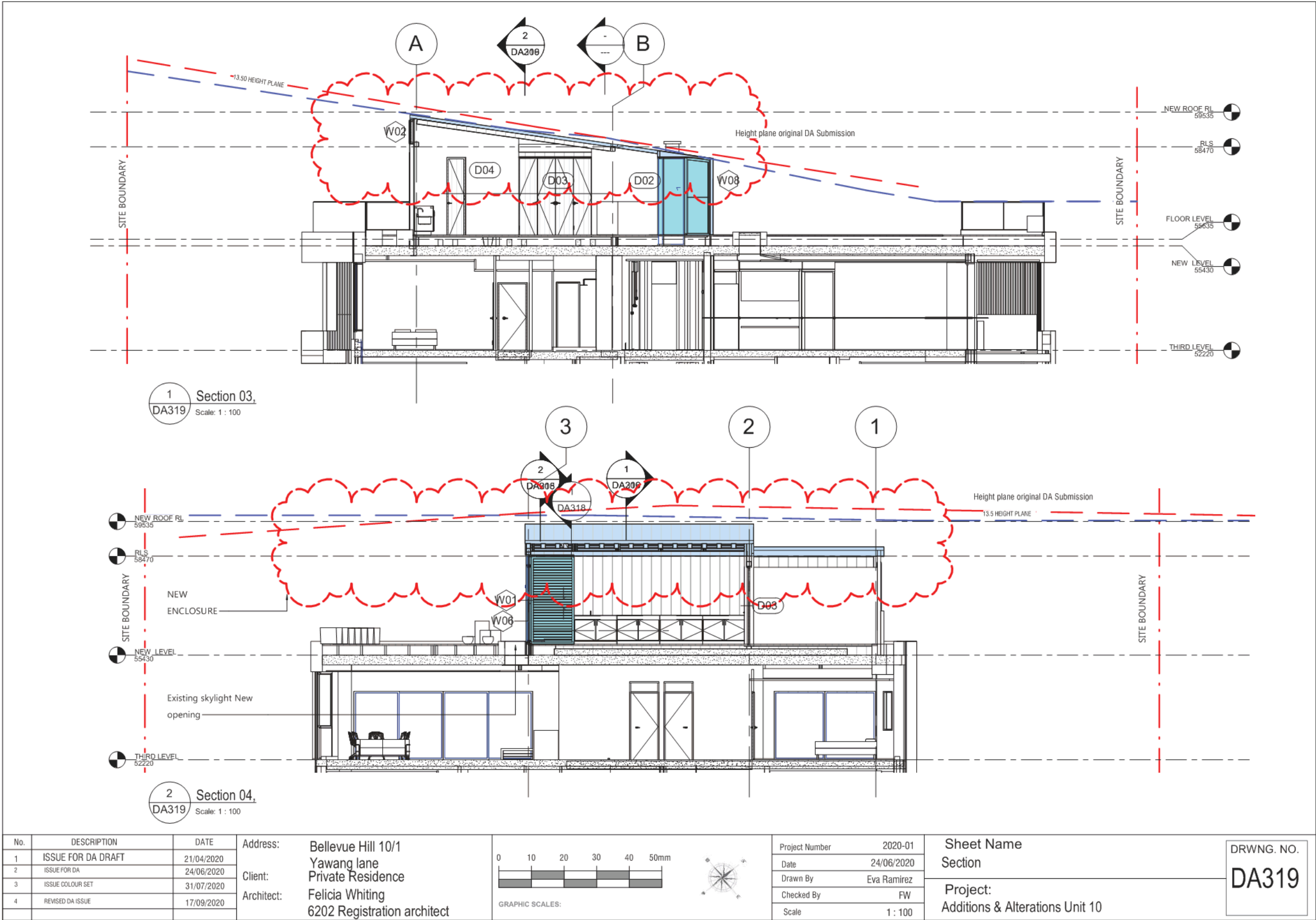


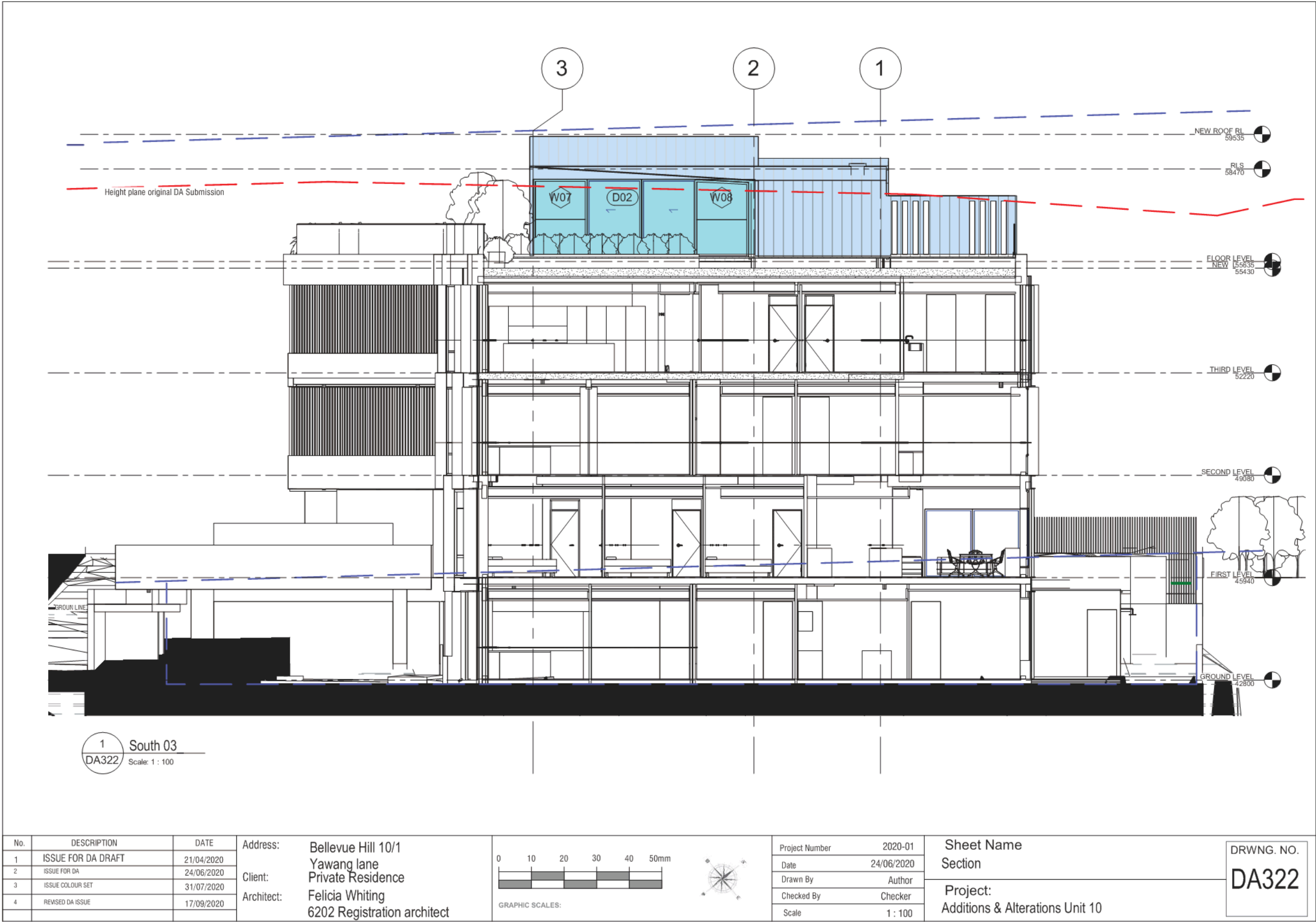


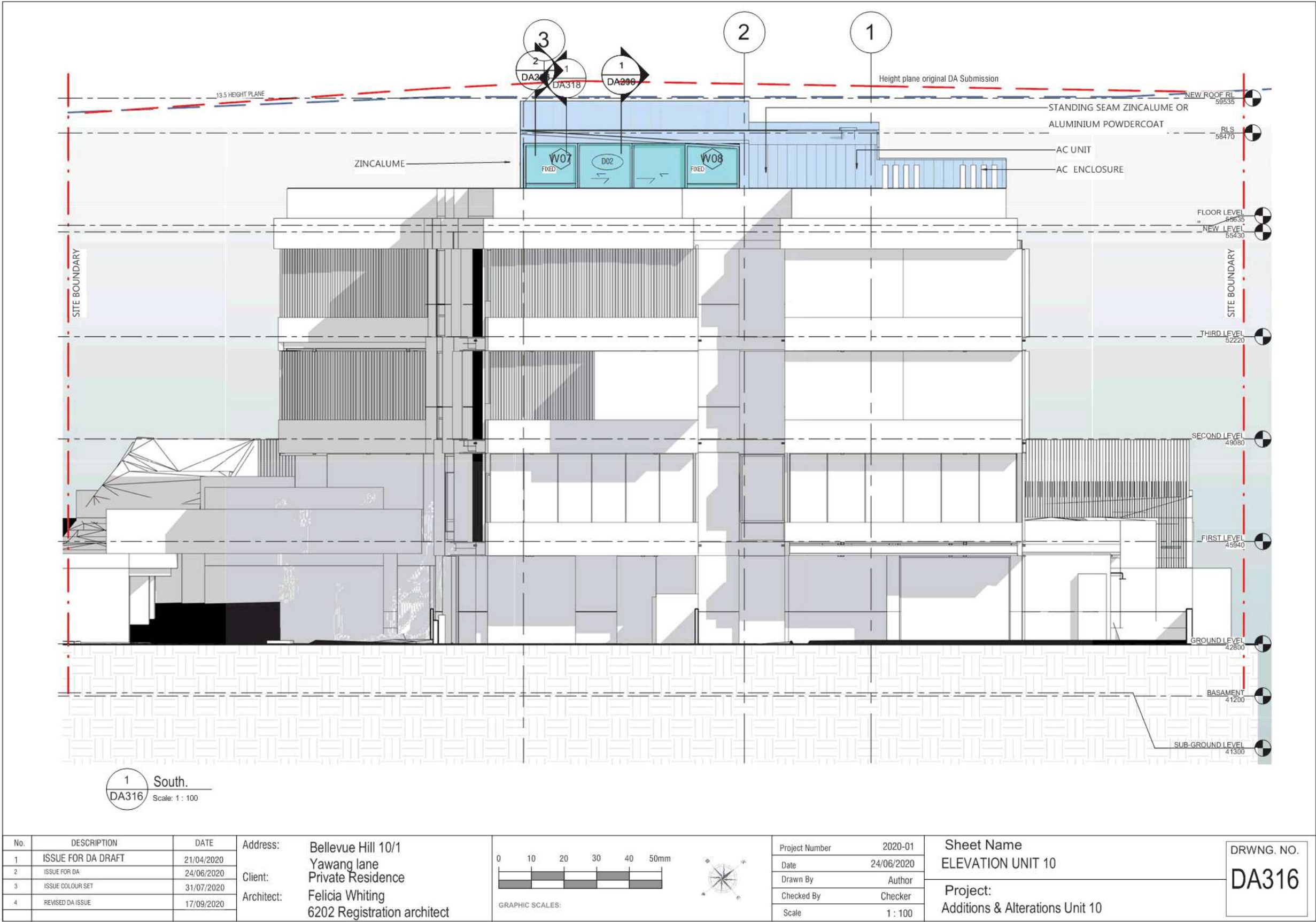


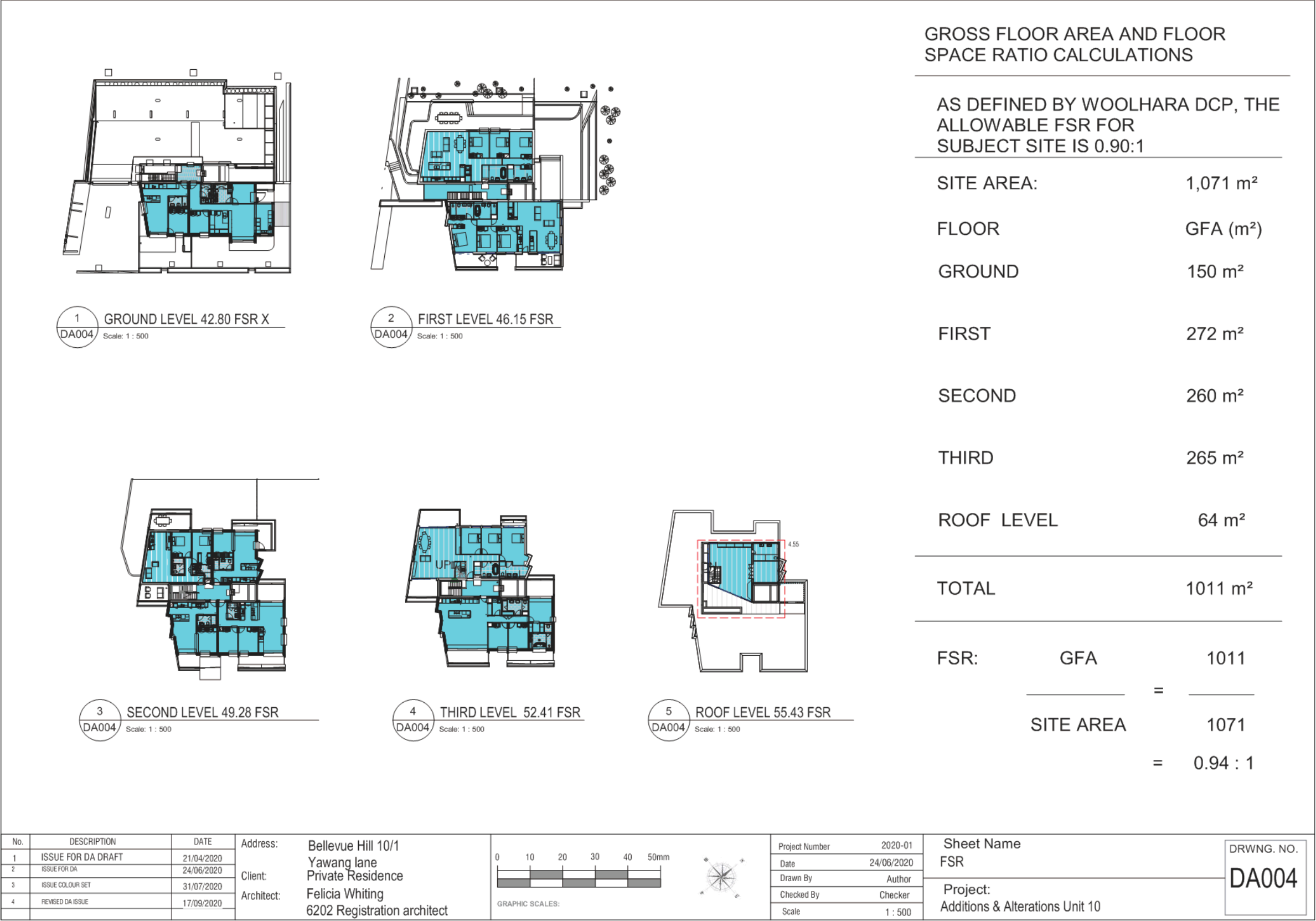










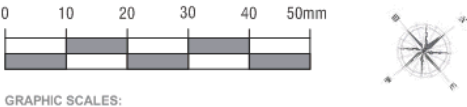


DOOR & FRAMES SCHEDULE- NEW

Mark	Description	Door Dimension		
		Width	Height	Thickness
D01		2877.75	2740.53	35
D02		3580	2725	35
D03	Smooth 2-Panel Solid Core Primed Molded Prehung Interior Door	557	2340	50
D04	Smooth 2-Panel Solid Core Primed Molded Prehung Interior Door	557	2340	50

WINDOWS & FRAMES SCHEDULE- NEW

Type Mark	Count		Description	Height	Width
W01	3		Window	2431	1320
W02	5	GLAZED	Louvre	727	1320
W04	1	GLAZED	Louvre	1500	900
W05	1	GLAZED		1500	900
W06	2	FIXED	Window	2700	1500
W07	1		Window	2400	1790
W08	1		Window	2400	1790
Grand total: 14					

No.	DESCRIPTION	DATE	Address:	Bellevue Hill 10/1		Project Number	2020-01	Sheet Name	DOOR&FRAMES SCHEDULE-NEW	DRWNG. NO. <b>DA217</b>
1	ISSUE FOR DA DRAFT	21/04/2020	Client:	Yawang lane		Date	24/06/2020			
2	ISSUE FOR DA	24/06/2020	Architect:	Private Residence		Drawn By	EVA RAMIREZ	Project:		
3	ISSUE COLOUR SET	31/07/2020		Felicia Whiting		Checked By	FW	Additions & Alterations Unit 10		
4	REVISED DA ISSUE	17/09/2020		6202 Registration architect		Scale				



# BASIX<sup>®</sup>Certificate

Building Sustainability Index [www.basix.nsw.gov.au](http://www.basix.nsw.gov.au)

## Alterations and Additions

Certificate number: A380090\_02

This certificate confirms that the proposed development will meet the NSW government's requirements for sustainability, if it is built in accordance with the commitments set out below. Terms used in this certificate, or in the commitments, have the meaning given by the document entitled "BASIX Alterations and Additions Definitions" dated 06/10/2017 published by the Department. This document is available at [www.basix.nsw.gov.au](http://www.basix.nsw.gov.au)

Secretary

Date of issue: Monday, 21, September 2020

To be valid, this certificate must be lodged within 3 months of the date of issue.



Planning,  
Industry &  
Environment

### Description of project

Project address	
Project name	Bellevue Hill_02
Street address	Unit 10/1 Yawang Lane Bellevue Hill 2023
Local Government Area	Woollahra Municipal Council
Plan type and number	Deposited Plan 95655
Lot number	n/a
Section number	n/a
Project type	
Dwelling type	Unit
Type of alteration and addition	My renovation work is valued at \$50,000 or more.

### Certificate Prepared by (please complete before submitting to Council or PCA)

Name / Company Name: CHAPMAN ENVIRONMENTAL SERVICES PTY LTD

ABN (if applicable): 58601921108

BASIX Certificate number: A380090\_02

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Fixtures and systems	Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
<b>Lighting</b>			
The applicant must ensure a minimum of 40% of new or altered light fixtures are fitted with fluorescent, compact fluorescent, or light-emitting-diode (LED) lamps.		✓	✓
<b>Fixtures</b>			
The applicant must ensure new or altered showerheads have a flow rate no greater than 9 litres per minute or a 3 star water rating.		✓	✓
The applicant must ensure new or altered toilets have a flow rate no greater than 4 litres per average flush or a minimum 3 star water rating.		✓	✓
The applicant must ensure new or altered taps have a flow rate no greater than 9 litres per minute or minimum 3 star water rating.		✓	

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Construction			Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
<b>Insulation requirements</b>					
The applicant must construct the new or altered construction (floor(s), walls, and ceilings/roofs) in accordance with the specifications listed in the table below, except that a) additional insulation is not required where the area of new construction is less than 2m <sup>2</sup> , b) insulation specified is not required for parts of altered construction where insulation already exists.			✓	✓	✓
Construction	Additional insulation required (R-value)	Other specifications	✓	✓	✓
external wall: framed (weatherboard, fibro, metal clad)	R1.30 (or R1.70 including construction)				
raked ceiling, pitched/skillion roof: framed	ceiling: R1.74 (up), roof: foil backed blanket (55 mm)	medium (solar absorptance 0.475 - 0.70)			

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Glazing requirements						Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
<b>Windows and glazed doors</b>								
The applicant must install the windows, glazed doors and shading devices, in accordance with the specifications listed in the table below. Relevant overshadowing specifications must be satisfied for each window and glazed door.						✓	✓	✓
The following requirements must also be satisfied in relation to each window and glazed door:							✓	✓
Each window or glazed door with standard aluminium or timber frames and single clear or toned glass may either match the description, or, have a U-value and a Solar Heat Gain Coefficient (SHGC) no greater than that listed in the table below. Total system U-values and SHGCs must be calculated in accordance with National Fenestration Rating Council (NFRC) conditions.							✓	✓
Each window or glazed door with improved frames, or pyrolytic low-e glass, or clear/air gap/clear glazing, or toned/air gap/clear glazing must have a U-value and a Solar Heat Gain Coefficient (SHGC) no greater than that listed in the table below. Total system U-values and SHGCs must be calculated in accordance with National Fenestration Rating Council (NFRC) conditions. The description is provided for information only. Alternative systems with complying U-value and SHGC may be substituted.							✓	✓
For projections described in millimetres, the leading edge of each eave, pergola, verandah, balcony or awning must be no more than 500 mm above the head of the window or glazed door and no more than 2400 mm above the sill.						✓	✓	✓
Pergolas with polycarbonate roof or similar translucent material must have a shading coefficient of less than 0.35.							✓	✓
Pergolas with fixed battens must have battens parallel to the window or glazed door above which they are situated, unless the pergola also shades a perpendicular window. The spacing between battens must not be more than 50 mm.							✓	✓
Overshadowing buildings or vegetation must be of the height and distance from the centre and the base of the window and glazed door, as specified in the 'overshadowing' column in the table below.						✓	✓	✓
<b>Windows and glazed doors glazing requirements</b>								
Window / door no.	Orientation	Area of glass inc. frame (m2)	Overshadowing		Shading device	Frame and glass type		
			Height (m)	Distance (m)				
W1	NW	3.2	6	9	eave/verandah/pergola/balcony >=450 mm	standard aluminium, single pyrolytic low-e, (U-value: 5.7, SHGC: 0.47)		
W2	NW	0.96	6	9	eave/verandah/pergola/balcony >=450 mm	standard aluminium, single pyrolytic low-e, (U-value: 5.7, SHGC: 0.47)		

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Glazing requirements							Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
Window / door no.	Orientation	Area of glass inc. frame (m2)	Overshadowing		Shading device	Frame and glass type			
			Height (m)	Distance (m)					
W2	NW	0.96	6	9	eave/verandah/pergola/balcony ≥450 mm	standard aluminium, single pyrolytic low-e, (U-value: 5.7, SHGC: 0.47)			
W2	NW	0.96	6	9	eave/verandah/pergola/balcony ≥450 mm	standard aluminium, single pyrolytic low-e, (U-value: 5.7, SHGC: 0.47)			
W2	NW	0.96	6	9	eave/verandah/pergola/balcony ≥450 mm	standard aluminium, single pyrolytic low-e, (U-value: 5.7, SHGC: 0.47)			
W2	NW	0.96	6	9	eave/verandah/pergola/balcony ≥450 mm	standard aluminium, single pyrolytic low-e, (U-value: 5.7, SHGC: 0.47)			
W4	NE	1.35	0	0	eave/verandah/pergola/balcony ≥450 mm	standard aluminium, single pyrolytic low-e, (U-value: 5.7, SHGC: 0.47)			
W5	NE	1.35	0	0	eave/verandah/pergola/balcony ≥450 mm	standard aluminium, single pyrolytic low-e, (U-value: 5.7, SHGC: 0.47)			
W6	SW	4.05	0	0	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W6	SW	4.05	0	0	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W7	S	4.29	0	0	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
W8	S	4.29	0	0	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
D01	SW	7.88	0	0	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
D02	S	7.51	0	0	none	standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)			
Glazed roofs									



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Glazing requirements				Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
The applicant must install the glazed roofs described in the table below, in accordance with the specifications listed in the table.				✓	✓	✓
The following requirements must also be satisfied in relation to each glazed roof:					✓	✓
Glazed roofs glazing requirements						
Glazed roof number	Area of glazing (m2)	Shading device	Glass type			
F9	5.4	no shading	standard aluminium, toned/air gap/clear, (U-value: 5.31, SHGC: 0.48)			

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Legend
In these commitments, "applicant" means the person carrying out the development.
Commitments identified with a "✓" in the "Show on DA plans" column must be shown on the plans accompanying the development application for the proposed development (if a development application is to be lodged for the proposed development).
Commitments identified with a "✓" in the "Show on CC/CDC plans & specs" column must be shown in the plans and specifications accompanying the application for a construction certificate / complying development certificate for the proposed development.
Commitments identified with a "✓" in the "Certifier check" column must be certified by a certifying authority as having been fulfilled, before a final occupation certificate for the development may be issued.

